

Moore, Tania

From: Julia Gomez <JGomez@aclusocal.org>
Sent: Thursday, October 5, 2023 1:20 PM
To: CITY COUNCIL (INCL. CMO STAFF); supplementalcomm@surfcity-hb.org
Cc: Strickland, Tony; Van Der Mark, Gracey; Burns, Pat; Bolton, Rhonda; Kalmick, Dan; McKeon, Casey; Moser, Natalie; Gates, Michael; Fikes, Cathy; Paul Spencer Contact
Subject: Public Comment re Oct. 5 Special Meeting, Agenda No. 2
Attachments: 2023.10.05 Letter to Huntington Beach from DRC and ACLU re Item No. 2.pdf

Attached please find correspondence from Disability Rights California and the ACLU of Southern California opposing the proposed charter amendment relating to municipal elections.

Best,

Julia

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**SUPPLEMENTAL
COMMUNICATION**

Meeting Date: 10/5/2023

Agenda Item No.: 2 (23-844)



Sent via email

October 5, 2023

Huntington Beach Mayor and City Council
Council Chambers
2000 Main Street
Huntington Beach, CA 92648
SupplementalComm@Surfcity-hb.org
City.Council@surfcity-hb.org

**Re: October 5, 2023 Special City Council Meeting, Agenda Item No. 2
 Opposition to Proposed Charter Amendment Relating to Municipal Elections**

Dear Mayor Strickland and Members of the City Council:

We have serious concerns about the legality and negative implications of the proposal to add Section 705 to the city charter relating to municipal elections ("proposed charter amendment"). Section 705's voter identification ("voter ID") provision violates state law. What's more, the voter ID, drop box monitoring, and voting location provisions will likely result in voter suppression. We urge you to reject the proposed charter amendment to avoid voter disenfranchisement and to avoid the waste of taxpayer resources on an election, implementation, and unnecessary litigation.

I. The Voter ID Provision Violates State Law

Charter cities like Huntington Beach have home rule authority over certain local issues, including municipal elections. *Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781, 794-96 (2014). This authority, however, is not unlimited, and a charter provision must yield to state law where, as here: 1) the provision conflicts with state law; 2) the subject of the provision is a matter of statewide concern; and 3) the conflicting state law is narrowly tailored and does not unnecessarily interfere with municipal governance. *Id.* at 795-96; *see also City of Huntington Beach v. Becerra*, 44 Cal. App. 5th 243, 256 (2020) (holding that even issues listed in the California Constitution as municipal affairs "must give way to inconsistent state laws addressing issues of statewide concern").

As to the first factor, a local voter ID law that imposes requirements on top of the state's process conflicts with the state's detailed voter verification framework which, as laid out in the Attorney General's September 28 letter, strikes a careful balance between guarding elections and ensuring that voters can successfully cast a ballot. *See* September 28, 2023, Letter from Attorney General Rob Bonta and Secretary of State Shirley N. Weber, Ph.D., to the Huntington Beach City Council at 2-3 ("Sept. 28 Attorney General Letter"); *see also City of Huntington Beach*, 44 Cal. App. 5th at 270 ("Charter city law is contradictory to state law when it is inimical thereto") (quotation marks omitted). With respect to the second factor, it is well settled that the issues implicated by the proposed charter amendment—voting rights and the integrity of local elections—are matters of statewide concern. *See, e.g., Johnson v. Bradley*, 4 Cal. 4th 389, 409 (1992) (holding that "the integrity of the electoral process, at both the state and local level, is undoubtedly a statewide concern"); *Jauregui*, 226 Cal. App. 4th at 799-801 (voting rights,

including protections against voting restrictions and vote dilution, are state interests “that go to the legitimacy of the electoral process”). Finally, the state’s conflicting provisions are narrowly tailored to enhance the integrity of the electoral process and to ensure that eligible individuals can cast a ballot free of unnecessary burdens. *See* Sept. 28 Attorney General Letter at 2-3. The only way these provisions could possibly interfere with municipal governance is if the City adopted voter restrictions like the voter ID law. *See Jauregui*, 226 Cal. App. 4th 781 (the California Voting Rights Act (“CVRA”) “can necessarily only interfere with municipal governance when vote dilution is present”).

The city attorney’s heavy reliance on the *Redondo Beach* case is misplaced. In *Redondo Beach*, the court held that the Voter Participation Rights Act (“VPRA”), which requires consolidated local and state elections, does not apply to charter cities. *City of Redondo Beach v. Padilla*, 46 Cal. App. 5th 902, 906 (2020). The court came to this conclusion because the Elections Code exempts charter cities from following the state’s established election dates, and the Legislature did not demonstrate a clear intent to depart from this exemption and apply the VPRA to charter cities. *Id.* at 910-11, 918. The same is not true here—there is no language in the Elections Code that exempts charter cities from the state’s voter verification and voting rights provisions. Indeed, the California Constitution entrusts the Legislature with enacting legislation to protect election integrity and the rights of voters irrespective of where they live, Cal. Const. art. II, §§ 3 & 4, and courts have consistently ruled in favor of the state where, as here, a conflicting charter provision infringes on these rights, *see, e.g., Jauregui*, 226 Cal. App. 4th at 802 (holding that a charter city’s at-large election system that resulted in vote dilution and implicated election integrity was unlawful under state law); *People ex rel. Devine v. Elkus*, 59 Cal. App. 396, 407-08 (1923) (holding that a charter city’s voting restriction was unlawful under the California Constitution notwithstanding the city’s home rule authority over city council elections); *cf. Lacy v. City and Cnty. of San Francisco*, 94 Cal. App. 3d 391, 410 (2023) (clarifying that the court’s holding that charter cities have home rule authority to expand the right to vote does not mean that charter cities can narrow the electorate).

Changes made by city staff to Section 705 to provide that the city “may” instead of “shall” require voter ID does not save the proposed charter amendment because a grant of authority alone is sufficient to raise a conflict with state law and render a charter provision invalid. *Huntington Beach*, 44 Cal. App. 4th 243 at 271 (quoting *Johnson*, 4 Cal. 4th 389 at 339 (“A ‘conflict’ may exist between state and local authority even though the city has not specifically legislated on that point through its charter, or by other ‘enactment’”). Because the voter ID provision conflicts with narrowly tailored state law on issues of statewide concern, the City Council should reject the proposed charter amendment.¹

II. The Proposed Charter Amendment is Likely to Result in Voter Suppression

The voter ID proposal is illegal for a second reason—it will likely disenfranchise Huntington Beach voters. The same is true for the drop box monitoring and voting location provisions in Section 705.

Voter ID requirements disproportionately impact voters of color, voters who are low income, voters with disabilities, and voters who have limited mobility.² Additional voter ID requirements could

¹ The state also regulates the monitoring of drop boxes and the siting of voting locations to ensure voter access and the integrity of elections. *See, generally*, Sept. 28 Attorney General Letter at 2-4 (providing an overview of relevant Elections Code and regulatory provisions). For the same reasons discussed in this section, these provisions likely conflict with and violate state law. *See id.*

² Research over the past decade consistently shows that, when implemented, voter ID laws reduce turnout for individuals without proper identification, and these individuals are often voters of color, voters with disabilities, and elderly voters. *See, e.g., The Impacts of Voter Suppression on Communities of Color*, Brennan Center for Justice (Jan. 10, 2022), <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color> (collecting studies); Vanessa M. Perez, Ph.D., *Americans with Photo ID: A Breakdown of Demographic Characteristics*, Project Vote (Feb. 2015), <https://www.projectvote.org/wp-content/uploads/2015/06/AMERICANS->

also result in improper ballot challenges. *See* Sept. 28 Attorney General Letter at 3. Drop box monitoring by individuals other than trained poll workers can likewise result in voter suppression through voter intimidation, improper ballot challenges, or the misapplication of the state's laws. And although we commend the City's desire to increase the number of voting locations, more goes into siting locations than simply dispersing them evenly throughout the City. The Registrar of Voters selects voting locations to maximize accessibility by considering the proximity of voting locations to voters with disabilities, language minority communities, public transportation, communities with low rates of vehicle ownership, and communities with historically low vote by mail usage. Elec. Code § 4005(a)(10)(B).

The suppressive and disproportionate impact that Section 705 will no doubt have on certain voters raises serious equal protection concerns. While the U.S. Supreme Court has weakened voter protections in recent years, California's more robust equal protection and voting rights guarantees remain strong safeguards against voter disenfranchisement. *See* Cal. Const., art. I, § 24 ("Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution"); *see also Vergara v. State of California*, 246 Cal. App. 4th 619, 648 n.13 (2016) (holding that California's equal protection clause proscribes policies that have discriminatory *effect*, regardless of motive or intent).

* * *

We urge the City Council to reject the proposed charter amendment because it violates state law and will no doubt result in voter suppression. If you have any questions, please do not hesitate to contact us at jgomez@acusocal.org or paul.spencer@disabilityrightsca.org.

Sincerely,



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[WITH-PHOTO-ID-Research-Memo-February-2015.pdf](#) (finding that voters of color and low-income individuals are less likely to have photo ID); *Impact of Voter ID Laws on People with Disabilities*, Vote Riders (Oct. 2019), <https://www.voteriders.org/impact-of-voter-id-laws-on-people-with-disabilities/> (citing studies showing that the elderly and voters with disabilities are less likely to have photo ID).