

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROB BONTA
Attorney General of California
R. MATTHEW WISE
Supervising Deputy Attorney General
S. CLINTON WOODS
Deputy Attorney General
State Bar No. 246054
455 Golden Gate Ave
Suite 11000
San Francisco, CA 94102
Telephone: (415) 510-3807
Fax: (415) 703-5480
E-mail: Clint.Woods@doj.ca.gov
*Attorneys for the People of the State of California;
California Secretary of State and Dr. Shirley N.
Weber, in her official capacity as California
Secretary of State*

*Exempt from Payment of Filing Fee
Pursuant to Gov. Code, § 6103*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel. ROB BONTA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA; DR. SHIRLEY N. WEBER, in her official capacity as California Secretary of State,

Petitioners,

v.

COUNTY OF FRESNO; JAMES A. KUS, in his official capacity as the Fresno County Clerk; DOES 1 through 50, INCLUSIVE,

Respondents.

Case No.
PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

(Civ. Proc. Code, §§ 526, 1060, 1085)

1 This Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief is
2 brought by the People of the State of California, by and through Rob Bonta, Attorney General of
3 the State of California, and Dr. Shirley N. Weber, in her official capacity as Secretary of State of
4 the State of California, and is directed to Respondents County of Fresno, James A. Kus, in his
5 official capacity as the Fresno County Clerk, and DOES 1 through 50.

6 JURISDICTION AND VENUE

7 1. This Court has jurisdiction over this matter pursuant to Article VI, Section 10 of the
8 California Constitution and Sections 187, 1060, and 1085 of the Code of Civil Procedure.

9 2. Venue is proper in this Court pursuant to Section 394, subdivision (a) of the Code of
10 Civil Procedure because the County of Fresno is the subject jurisdiction.

11 PARTIES

12 3. Petitioner Rob Bonta is the Attorney General of the State of California. The Attorney
13 General is the chief law officer of the State and has the duty to see that the State's laws are
14 uniformly and adequately enforced for the protection of public rights and interests.

15 4. Petitioner Dr. Shirley N. Weber is the Secretary of State of the State of California.
16 The Secretary of State is the chief elections officer of the State and has the duty to see that the
17 State's elections are conducted in accordance with the State's laws.

18 5. Respondent County of Fresno is a charter county incorporated and existing under the
19 laws of the State of California.

20 6. Respondent James A. Kus is the County of Fresno Clerk and is named here in his
21 official capacity. The County Clerk is the chief elections official of the County and has the duty
22 of conducting all county elections.

23 7. Petitioners are unaware of the true names and capacities of Respondents DOES 1
24 through 50, who are therefore sued by fictitious names pursuant to Section 474 of the Code of
25 Civil Procedure. Petitioners allege on information and belief that each such fictitiously named
26 party is responsible or liable in some manner for the events and happenings referred to herein, and
27 Petitioners will seek leave to amend this Petition and Complaint to allege their true names and
28 capacities after they have been ascertained.

1 **FACTUAL BACKGROUND**

2 8. In September 2022, the Legislature enacted and the Governor signed Assembly Bill
3 759. AB 759 repealed former Elections Code section 1300 and replaced it with a provision
4 declaring that “[a]n election to select a district attorney and sheriff shall be held with the
5 presidential primary.” (Elec. Code § 1300, subd. (a)(1).) AB 759 shifted elections for these local
6 offices from gubernatorial election years to higher-turnout presidential election years because
7 “[e]nsuring that a larger and more inclusive pool of voters can vote for candidates who reflect
8 their values is critical to making democracy work.”¹

9 9. AB 759 specified that it applies to “both general and charter law counties, except
10 those charter counties that, on or before January 1, 2021, expressly specified in their charter when
11 an election for district attorney or sheriff would occur.” (Elec. Code § 1300, subd. (c).) Before
12 January 1, 2021, the Fresno County Charter did not specify when an election for district attorney
13 or sheriff would occur.

14 10. On August 22, 2023, the Fresno County Board of Supervisors approved Resolution
15 23-287 concerning the timing of county elections for district attorney and sheriff. (See Exh. A
16 [Res 23-287].) That resolution, among other things, called a Special Election to place Measure A
17 on the ballot for the March 5, 2024 primary election for the purpose of amending the Fresno
18 County Charter. (*Id.* at 2.) Measure A purports to amend Section 15 of the County Charter to
19 “establish the election dates for Sheriff and District Attorney to be held in gubernatorial, non-
20 presidential election years as done previously in the County of Fresno.” (*Id.* at 2.)

21 11. On March 5, 2024, voters in Fresno County approved Measure A by a vote of 54.92%
22 in favor, thereby incorporating Measure A’s provisions into Section 15 of the Fresno County
23 Charter.²

24
25
26
27 ¹ Report of the Senate Committee on Elections and Constitutional Amendments, Sept. 8,
28 2021, at p. 5. (See <https://tinyurl.com/2uhsu2sz>, last viewed July 25, 2024.)

² See <https://tinyurl.com/3uuhweym>, last viewed July 25, 2024.

1 CAUSES OF ACTION

2 FIRST CAUSE OF ACTION

3 Writ of Mandate (Code of Civil Procedure § 1085; Preemption)

4 [Against All Respondents]

5 12. Petitioners re-allege all paragraphs set forth above and incorporate them by reference
6 as though they were fully set forth in this cause of action.

7 13. “Our state Constitution allows cities and counties to enact and enforce local
8 ordinances so long as they are ‘not in conflict’ with the state’s ‘general laws.’ Any conflicting
9 ordinance is preempted by state law and thus void.” (*O’Connell v. City of Stockton* (2007) 41
10 Cal.4th 1061, 1065 [citing Cal. Const., art. XI, § 7].) Under the California Constitution, the laws
11 of charter counties may supersede state law with respect to some subjects specifically delegated
12 to those counties by the Constitution, but in all other matters state law prevails. (Cal. Const., art.
13 XI, § 4; *Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864, 870 (*Younger*).) “It is
14 elementary law that a charter provision relating to county officials is valid only if authorized by
15 the state Constitution.” (*Younger*, at p. 870 [quoting *Galli v. Brown* (1952) 110 Cal.App.2d 764,
16 777].) “Since counties constitute merely political subdivisions of the state, they have
17 independently only such legislative authority that has been expressly conferred by the
18 Constitution and laws of the state.” (*Ibid.* [citations omitted].) “If the latter sources are silent in
19 regard to the delegation of such authority, the authority must still rest with the Legislature.”
20 (*Ibid.* [citing *Simpson v. Payne* (1926) 76 Cal.App. 780, 785-86].)

21 14. While charter cities enjoy plenary authority as to those matters deemed municipal
22 affairs, the grant of authority to charter counties is not as expansive. (Cal. Const., art. XI, § 5;
23 *State Bldg. & Construction Trades Council of Cal. v. City of Vista* (2012) 54 Cal.4th 547, 552.)
24 Indeed, the California Constitution does not contain a corresponding grant of authority related to
25 the ‘county affairs’ of charter counties. (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200,
26 1207.) Rather, when there is a conflict between a charter county provision and state law, courts
27 “do not look to the Constitution to determine whether the legislature is authorized to do an act,
28 but only to see if it is prohibited.” (*County of Riverside v. Super. Ct.* (2003) 30 Cal.4th 278, 284

1 [cleaned up].) Moreover, “[i]f there is any doubt as to the Legislature’s power to act in any given
2 case, the doubt should be resolved in favor of the Legislature’s action.” (*Ibid.*)

3 15. The Legislature enacted AB 759 to hold elections for district attorney and sheriff
4 during the presidential election cycle. (Elec. Code § 1300, subd. (a).) The Legislature further
5 declared that AB 759 applies to both general law and charter counties. (Elec. Code § 1300, subd.
6 (c).) The only exception the Legislature allowed was for charter counties that, on or before
7 January 1, 2021, had specified when the elections of district attorney and sheriff would occur.
8 (*Ibid.*) Until Measure A passed, Fresno’s County Charter was silent on the timing of the elections
9 of district attorney and sheriff.

10 16. Measure A purports to hold County of Fresno elections for sheriff and district
11 attorney during gubernatorial, non-presidential election cycles.

12 17. AB 759 preempts Measure A. While the California Constitution requires county
13 charters to “provide for” the election of a sheriff and district attorney, it does not grant express
14 authority for charter counties to control the timing of those elections. (Cal. Const. art. XI, § 4,
15 subd. (c) [requiring the county to provide for “[a]n elected sheriff, an elected district attorney, an
16 elected assessor, other officers, their election or appointment, compensation, terms and
17 removal”].) Measure A is thus not authorized by the delegation of authority to charter counties
18 under the California Constitution.

19 18. Indeed, before AB 759’s enactment, the *Legislature*, not Fresno County, dictated the
20 timing of elections for sheriff and district attorney. The Legislature had required elections for
21 county offices to be held “with the statewide primary at which candidates for Governor are
22 nominated.” (See former Elec. Code, § 1300 (West 2019).) At that time, the Fresno County
23 Charter did not specify the timing for county elections for sheriff and district attorney, and thus
24 the County held those elections in gubernatorial years, consistent with state law. (Res 23-286 at
25 p. 2.)

26 19. The Legislature intended AB 759 to have statewide effect as to all general law and
27 charter counties that did not previously designate the timing of elections for district attorney and
28 sheriff. (Elec. Code § 1300, subd. (c).)

Exhibit A

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO
STATE OF CALIFORNIA

FILED

NOV 18 2023

FRESNO COUNTY CLERK

By_

RESOLUTION

DEPUTY

IN THE MATTER OF CALLING A
SPECIAL ELECTION TO BE
CONSOLIDATED WITH THE
STATEWIDE PRIMARY ELECTION TO
BE HELD ON MARCH 5, 2024 FOR THE
PURPOSE OF SUBMITTING TO THE
ELECTORS OF FRESNO COUNTY A
MEASURE TO AMEND
FRESNO COUNTY CHARTER
SECTION 15

WHEREAS, California Government Code Sections 23720(a) and 23722 permit a county board of supervisors to propose amendment to the county charter and to submit the amendment to the eligible registered voters of the county at a special election held on the next established election date not less than eight-eight (88) days after submission of the proposal; and

WHEREAS, the California Constitution, Article XI, Section 4, grants to charter counties such as the County of Fresno the authority to provide in their charters for "[a]n elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal." (Cal. Const. Art. XI, § 4(c)); and

WHEREAS, the California Legislature passed AB 759, effective January 1, 2023, adding Section 1300 to the California Elections Code purporting to set the election date for Sheriffs and District Attorneys in presidential election years in non-charter counties and in charter counties that did not specifically establish election dates in their charters on or before January 1, 2021; and

WHEREAS, new Elections Code Section 1300 is unconstitutional under California Constitution Article XI, Section 4, (c) and (g); and

1 **WHEREAS**, new Elections Code Section 1300 would have the effect of
2 extending the current terms of the Sheriff and District Attorney in the County of Fresno
3 to six years rather than the four year terms to which the incumbents to those offices
4 were elected, without legal basis or the consent of the voters of the County of Fresno;
5 and

6 **WHEREAS**, the Fresno County Board of Supervisors proposes to amend
7 Charter Section 15 to establish the election dates for Sheriff and District Attorney to be
8 held in gubernatorial, non-presidential election years as previously done in the County
9 of Fresno, keeping all elected County officials elections together in gubernatorial
10 election years except for those Supervisorial districts on alternating election cycles;
11 and

12 **WHEREAS**, a Statewide Primary Election will be held on March 5, 2024; and

13 **WHEREAS**, pursuant to California Elections Code Sections 10400 *et seq.*,
14 the Fresno County Board of Supervisors seeks consolidation of the countywide
15 special election on the charter amendment measure with the March 5, 2024
16 Statewide Primary Election; and

17 **WHEREAS**, under California Elections Code Sections 10400 *et seq.*, the
18 Fresno County Board of Supervisors has the power and authority to order the
19 consolidation of local elections with the Statewide Primary Election.

20 NOW THEREFORE, BE IT RESOLVED AND ORDERED:

- 21 1. The Board of Supervisors hereby calls, orders, and proclaims a special
22 election to be held in the County of Fresno on March 5, 2024 for the purpose
23 of submitting to the voters of the County the charter amendment measure
24 pursuant to California Elections Code Sections 10403 and 12001.
- 25 2. Pursuant to California Elections Code Section 10400 *et seq.*, the Board of
26 Supervisors hereby directs and approves the special election for the charter
27 amendment measure to be placed on the ballot for the March 5, 2024
28 Statewide Primary Election and be consolidated with that election.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The Board of Supervisors acknowledges that the consolidated election will be held and conducted in the manner prescribed in California Elections Code Section 10418.

4. The Fresno County Clerk/Registrar of Voters is designated as the elections official for the election, and the Fresno County Clerk/Registrar of Voters is hereby authorized and directed to provide all notices and take any and all other actions necessary to holding the election, including but not limited to providing notices of times within which arguments for and against are submitted.

5. The ballot question hereby approved for said election shall be as follows:

Shall the measure amending section 15 of the Fresno County Charter to keep the election dates for the office of Sheriff and District Attorney set in gubernatorial, non-presidential election years with other County elective offices be adopted?

YES ____ NO ____

6. The Fresno County Clerk/Registrar of Voters is hereby authorized and directed to cause the complete text of the proposed charter amendment to be printed as indicated in the attached Exhibit A in the County of Fresno Voter Information Guide, and a copy of the proposed amendment shall be made available to a voter upon request.

7. The charter amendment measure shall be designated on the ballot by a letter, as provided in California Elections Code Section 13116.

8. Arguments in favor of and in opposition to the charter amendment measure and rebuttal arguments shall be permitted and shall be filed with the Fresno County Clerk/Registrar of Voters in accordance with applicable provisions of the California Elections Code, including Sections 9161 through 9167 thereof. As provided in California Elections Code Section 9162, the Board of Supervisors or any member or members of the Board of Supervisors are

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

hereby authorized to act as an author of any ballot argument prepared in connection with the charter amendment measure election.

9. The Fresno County Clerk/Registrar of Voters shall fix the dates for submittal of arguments and rebuttals as provided for in the California Elections Code. The Board of Supervisors requests that the Fresno County Clerk/Registrar of Voters fix the dates for submittal of arguments and rebuttals after October 10, 2023.

THE FOREGOING, was passed and adopted by the following vote of the Board of Supervisors of the County of Fresno this 22nd day of August, 2023, to wit:

- AYES: Supervisors Brandau, Magsig, Mendes, Pacheco, Quintero
- NOES: None
- ABSENT: None
- ABSTAINED: None

Sal Quintero, Chairman of the Board of Supervisors of the County of Fresno

ATTEST:
BERNICE E. SEIDEL
Clerk of the Board of Supervisors
County of Fresno, State of
California

By: _____
Deputy