

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

**Exempt from filing fee per
Gov. Code, § 6103**

E-FILED
3/12/2025 10:15 AM
Superior Court of California
County of Fresno
By: Maria Lopez, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF FRESNO
12

13
14 **THE PEOPLE OF THE STATE OF**
CALIFORNIA, ex rel. ROB BONTA,
15 **ATTORNEY GENERAL OF THE STATE**
OF CALIFORNIA; DR. SHIRLEY N.
16 **WEBER, in her official capacity as**
California Secretary of State,

Petitioners,

18
19 **v.**

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

22 Respondents.
23
24
25
26
27
28

Case No. 24CECG03179

**PETITIONERS' REPLY BRIEF IN
SUPPORT OF PETITION FOR WRIT OF
MANDATE**

Date: March 26, 2025
Time: 1:30 p.m.
Dept: 97E
Judge: Hon. Daniel Brickey

Action Filed: July 26, 2024

INTRODUCTION

Assembly Bill 759 requires an election for district attorney and sheriff to be held with the presidential primary. (Elec. Code, § 1300, subd. (a)(1). The law, which is intended to ensure that more voters participate in these elections, applies to counties statewide, with the exception of charter counties that had previously specified different timing for such elections. (*Id.*, subd. (c).)

Respondent County of Fresno, which is not one of the few counties that falls within AB 759’s exception, purports to have amended its county charter to set the elections for district attorney and sheriff to occur on the gubernatorial cycle, rather than the presidential cycle. That recent enactment, known as Measure A, violates state law on two grounds: (1) it is not authorized by the state Constitution, and (2) it is preempted by AB 759.

The County argues that because article XI, section 4, subdivision (c) of the state Constitution authorizes a charter county to set the “terms” for a district attorney and sheriff, Fresno County can determine when to hold an election for those offices. Yet “terms” has long been understood to mean the period of time officers may serve, not the election cycle for an office or the date a term begins. (*Younger v. Bd. of Supervisors* (1979) 93 Cal.App.3d 864, 872 [defining “terms” in Article XI, Section 4 as “the prescribed period for which an officer has been elected and may serve”]) The County advances an overbroad reading of “terms,” mistakenly relying on cases that interpret a different subdivision of section 4. (Opposition [Opp.], pp. 7-10.) That part of section 4—subdivision (e)—authorizes charter counties to provide for the “powers and duties” of government officers. Because no particular “power” or “duty” is defined in the state Constitution, courts have interpreted this general phrase broadly to allow charter counties to control basic county government functions, such as the issuance of subpoenas (*Dibb v. County of San Diego* (1994) 8 Cal.4th 1200, 1214) and the adoption of budgets (*Coalition of County Unions v. Los Angeles County Bd. of Supervisors* (2023) 93 Cal.App.5th 1367, 1392). But unlike “powers and duties,” “terms” has a narrow meaning—the period of time an officer may serve—that has been established in case law for over a century. (*Younger, supra*, 93 Cal.App.3d at p. 872, citing *Chenoweth v. Chambers* (1917) 33 Cal.App. 104, 107.) Thus, Measure A’s enactment was not authorized by the state Constitution’s charter county provisions,

1 and elections for district attorney and sheriff must be set in accordance with AB 759's
2 requirements.

3 The County also argues that an ordinance that is enacted by a charter county cannot be
4 preempted by state law under any circumstance if it is authorized by the state Constitution.
5 (Opp., pp. 14-17.) That is wrong. Under longstanding precedent, the Legislature may regulate a
6 matter of statewide concern even if the challenged law “impinge[s] to a limited extent” on powers
7 normally reserved for counties. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 139; *County of*
8 *Sacramento v. Fair Political Practices Com.* (1990) 222 Cal.App.3d 687, 691.) Here, AB 759
9 addresses a matter of statewide concern—increasing voter turnout for important local elections—
10 and it has little effect on the ability of charter counties to set terms for the offices of district
11 attorney and sheriff. Measure A is thus preempted by AB 759.

12 ARGUMENT

13 I. MEASURE A IS NOT AUTHORIZED UNDER THE CALIFORNIA CONSTITUTION

14 As explained in Petitioners' opening brief, “terms” in article XI, section 4, subdivision (c)
15 has long been defined as the period of time that an officer may serve. (*Younger, supra*, 93
16 Cal.App.3d at p. 872, citing *Chenoweth, supra*, 33 Cal.App. at 107.) The County does not cite
17 any authorities otherwise defining the “terms” for the offices of district attorney and sheriff.
18 Thus, while a charter county can regulate the period a district attorney or sheriff may serve,
19 neither the state Constitution nor case law supports the County's theory that it can select the
20 timing of elections for district attorney and sheriff. Rather, that authority has long rested with the
21 Legislature. (See former Elec. Code, § 1300 (West 2019) [elections for county offices were to be
22 held “with the statewide primary at which candidates for Governor are nominated”]; see also
23 Request for Judicial Notice (RJN), Exh. A [Res. 23-287], p. 2 [prior to Measure A the County
24 charter did not specify the date of elections, and thus the County followed state law].)

25 AB 759 is consistent with this longstanding scheme. It regulates only the timing of
26 elections for district attorney and sheriff. (Elec. Code § 1300, subd. (a)(1) [“An election to select
27 a district attorney and sheriff shall be held with the presidential primary.”].) It does not regulate
28

1 the period of time those officers may serve.¹ In short, AB 759 does not conflict with the state
2 Constitution’s charter county provisions. And even if there were “any doubt as to the
3 Legislature’s power” to enact AB 759, “the doubt should be resolved in favor of the Legislature’s
4 action.” (*County of Riverside v. Super. Ct.* (2003) 30 Cal.4th 278, 284.)

5 The County nonetheless asserts that *Younger* does not control here and that subdivision
6 (c)’s grant of authority to set “terms” should also be read to encompass the power to set the
7 timing of elections. (Opp., pp. 7-10.) The County principally relies on two cases interpreting an
8 entirely different subdivision of section 4—subdivision (e), which directs county charters to
9 provide for the “powers and duties” of government officers. (See *Dibb, supra*, 8 Cal.4th at pp.
10 1214 [interpreting subdivision (e)]; *Coalition, supra*, 93 Cal.App.5th at p. 1389 [same].) Neither
11 case concerns the definition of “terms.”

12 In *Dibb*, the court addressed a county charter that granted a governmental body the power
13 to issue subpoenas. (*Id.* at p. 1205.) The plaintiffs asserted that because the subpoena power was
14 not specifically listed in the state Constitution as a power and duty the charter county could grant,
15 the county could not convey that authority in the charter. (*Ibid.*) The court disagreed, holding
16 that the issuance of subpoenas falls within the general “powers and duties” authorized in
17 subdivision (e) because such authority is commonly conferred to governmental bodies and is
18 reasonably necessary to implement the legislation the governmental body was created to pursue.
19 (*Id.* at p. 1216-1217.) Following *Younger*, the court observed that the relevant inquiry is
20 “whether, given the Constitution’s text, the challenged power was ‘authorized.’” (*Id.* at p. 1214,
21 citing *Younger, supra*, 93 Cal.App.3d at pp. 869-70.) Notwithstanding the County’s contrary
22

23
24 ¹ The County suggests that Government Code section 1300, subdivision (d), which
25 establishes the effective date of the law in counties that had elections for district attorney and
26 sheriff close in time to AB 759’s enactment, supports its argument because that subdivision
27 changes the “term” of the district attorney and sheriff in those counties. (Opp., p. 10, citing Gov.
28 Code, § 1300, subd. (d) [“A district attorney or sheriff elected in 2022 shall serve a six-year term
and the next election for that office shall occur at the 2028 presidential primary.”]) But because
subdivision (d) addresses the timing of just one election, it is, at most, a limited impingement on
the County’s power to set the length of the terms for district attorney and sheriff. (See *County of
Riverside* (2003) 30 Cal.4th 278, 287-88.)

1 assertions, *Dibb* does not shed light on the meaning of the much narrower word “terms” in
2 subdivision (c), other than to cite the *Younger* analysis with approval.

3 In *Coalition*, the court held that Los Angeles County’s attempt to control county budgets
4 was “properly grounded on the county’s authority to provide for the ‘powers and duties’ of its
5 local officers and the operation of local government.” (*Id.* at p. 1388, citing *Dibb*, *supra*, 8
6 Cal.4th at p. 1217, fn. 10.) Among other reasons, it did so because adopting county budgets is a
7 commonly granted power and is necessary to the operation of local government. (*Coalition*,
8 *supra*, 93 Cal.App.5th at p. 1389-1392.) At no point did the court address *Younger* or subdivision
9 (c)’s use of the word “terms.”

10 The County also suggests that *Coalition* stands for the far-reaching principle that, in many
11 circumstances, “a county charter may include provisions that are ‘different from and inconsistent
12 with those provided by general laws.’” (Opp. at p. 7-8, citing *Coalition*, *supra*, 93 Cal.App.5th at
13 p. 1392.) Yet the *Coalition* court was not referring to county charter provisions generally, but
14 rather to provisions addressing “the duties of county officers.” (*Coalition*, *supra*, at p. 1392.)
15 Nothing in *Dibb* or *Coalition* overrules longstanding case law establishing the limited home rule
16 powers of charter counties as they are balanced against statewide interests. (See, e.g. *Wilson v.*
17 *Beville* (1957) 47 Cal.2d 852, 359 “[C]harter provisions cannot control in matters of statewide
18 concern where the state has occupied the field. . . . “If there is any doubt as to the Legislature’s
19 power to act in any given case, the doubt should be resolved in favor of the Legislature’s action”];
20 *County of Sacramento*, *supra*, 222 Cal.App.3d at p. 691 [“the general law prevails . . . regardless
21 of the provisions of the county’s charter, if it is the intent and purpose of such general laws to
22 occupy the field to the exclusion of municipal regulation,” internal citations omitted].) There can
23 be no dispute that the state Constitution’s grant to charter cities is substantially more expansive
24 than the one to charter counties. (*Dibb*, *supra*, 8 Cal.4th at p. 1207.) And even in charter cities, it
25 is undisputed that the Legislature can legislate as to traditionally municipal affairs in areas of
26 statewide concern. (*State Bldg. & Construction Trades Council of Cal. v. City of Vista* (2012) 54
27 Cal.4th 547, 559 [the “bedrock inquiry” in charter city preemption cases is whether the state law
28 at issue serves statewide concerns].) The County’s position, if accepted, would grant charter

1 counties substantially more power than charter cities. There is no authority to suggest such a
2 dramatic reworking of charter entity law. Neither *Dibb* nor *Coalition* should be read so broadly
3 to embrace one.²

4 **II. THE COUNTY FAILS TO ESTABLISH THAT MEASURE A IS NOT PREEMPTED**

5 Even if Measure A were validly enacted, it would still be preempted by state law. That is
6 because, as described in Petitioners' opening brief, AB 759 addresses a matter of statewide
7 concern and is narrowly tailored to achieve its purpose. While the County suggests that the Court
8 need not conduct a preemption analysis here, the California Supreme Court has made clear that as
9 to matters of statewide concern, charter counties, just like charter cities, "remain subject to state
10 law." (*Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d
11 296, 315; see also *County of Sacramento, supra*, 222 Cal.App.3d at p. 691.) "[A] county charter
12 supersedes state law only when the county is legislating in its proper sphere. (*San Bernardino*
13 *County Bd. of Supervisors v. Monell* (2023) 91 Cal.App.5th 1248, 1275.) Hence, "charter
14 provisions cannot control in matters of statewide concern where the state has occupied the field."
15 (*Id.* at 1275-1276, citing *Wilson v. Beville, supra*, 47 Cal.2d at p. 859.) Moreover, the Legislature
16 may regulate as to matters of statewide concern even if the regulation impinges "to a limited
17 extent ... on powers the Constitution specifically reserves to counties (§ 1) or charter cities (§ 5)."
18 (*County of Riverside, supra*, 30 Cal.4th at pp. 287-88, citing *Baggett v. Gates* (1982) 32 Cal.3d
19 128, 139.) Thus, the County's position that the Legislature's interest is irrelevant runs contrary to
20 the vast weight of authority on charter preemption.

21 The County also mistakenly disregards cases analyzing charter city preemption. (Opp. at
22 p. 15.) The County cites no authority holding that such cases are immaterial to the charter county
23 analysis here. Nor could it, because cases analyzing charter county preemption regularly rely on
24 authorities concerning charter cities. (See, e.g., *County of Sonoma*, 23 Cal.3d 296, 315, citing
25 *Professional Fire Fighters Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276 and *Bishop v. City of*

26 ² Even if the analysis used in *Coalition* were applied here, Measure A would fail the test.
27 Measure A's election timing determination is not the type of power commonly granted to
28 counties, as that is typically reserved for state law. (See *Coalition, supra*, 93 Cal.App.5th at
p. 1388.)

1 *San Jose* (1969) 1 Cal.3d 56, among others; *County of Sacramento, supra*, 222 Cal.App.3d at
2 p. 691 [same]; *Monell, supra*, 91 Cal.App.5th at pp. 1275-1276, citing *American Financial*
3 *Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239.)

4 As discussed in Petitioners' opening brief, the preemption analysis for charter counties
5 resembles the four-step analytical framework set forth by the California Supreme Court for
6 resolving whether a charter city's law is preempted by a state statute, with a significant exception.
7 (*Vista, supra*, 54 Cal.4th 547, 559.) Because the California Constitution grants charter *cities* but
8 not *counties* certain authority over "municipal affairs" (see *Monell, supra*, 91 Cal.App.5th at
9 p. 1275, fn. 6), there is no need to determine whether the timing of elections for district attorney
10 and sheriff is a "municipal" or "county" affair. (See, e.g., *Younger, supra*, 93 Cal.App.3d at
11 p. 870.)

12 Instead, the preemption analysis for charter counties must begin at the second step—
13 whether there is an actual conflict between the local and state law. (*Vista, supra*, 54 Cal.4th at
14 p. 556.) Assuming there is a conflict between two validly enacted provisions, the next step is
15 whether the state law addresses a matter of "statewide concern." (*Vista, supra*, 54 Cal.4th at
16 p. 556, citing *Cal. Federal Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 16.)
17 The last step is whether the state law is reasonably related to the resolution of that statewide
18 concern and "'narrowly tailored' to avoid unnecessary interference in local governance." (*Vista,*
19 *supra*, 54 Cal.4th at p. 556, citing *Cal Federal Savings & Loan, supra*, 54 Cal.3d at p. 24.)

20 Here, the County fails to carry its burden to show that AB 759 is not a matter of statewide
21 concern. Indeed, as a legal matter, whether increasing turnout for elections is a matter of
22 statewide concern is not in dispute. (See, e.g., *Jauregui v. City of Palmdale* (2014) 226
23 Cal.App.4th 781, 801 [voter dilution of a protected class is a statewide concern justifying
24 legislative impingement]; see also *Johnson v. Bradley* (1992) 4 Cal.4th 389, 409 [agreeing with
25 the Attorney General that the purity of the electoral process was a matter of statewide concern].)
26 The County makes no argument to the contrary. While the County contends that AB 759 is a
27 "poor vehicle" for boosting turnout in local elections, it cites no authority to support this
28

1 irrelevant assertion. (Opp., p. 18.) And the County makes no effort to show that AB 759 is not
2 narrowly tailored to meet its ends or that it would unduly interfere with county operations.

3 The County's attempts to distinguish applicable cases similarly fail. The County suggests
4 that the principles applied in *County of Riverside* are inapposite here because Riverside is not a
5 charter county. (Opp., p. 16.) But that case addressed the inherent powers of *all* counties,
6 including charter counties. (*County of Riverside, supra*, 30 Cal.4th at pp. 287-88 [the Legislature
7 may regulate as to matters of statewide concern even if the regulation impinges "to a limited
8 extent ... on powers the Constitution specifically reserves to counties" in article XI, section 1].)
9 To be sure, the law at issue there was struck down because it was "not merely procedural," but
10 "substantive," encroaching constitutionally delegated county powers. (*Id.* at p. 289.) But AB 759,
11 in contrast, does not impermissibly impinge on the County's authority to dictate the "terms" of
12 elections for district attorney or sheriff. Rather, it makes a procedural change to the timing of
13 elections for district attorney and sheriff.

14 The County also asserts that *Monell* supports its position. (Opp., p. 17.) But like *County of*
15 *Riverside*, the challenged law in *Monell* substantively encroached the county charter's expressly
16 delegated powers to set the compensation of members of the local governing body pursuant to
17 article XI, section 4, subdivision (b). (*Monell, supra*, 91 Cal.App.5th at p. 1276.) Again, AB 759
18 is not a substantive encroachment on the County's delegated authority to set the length of "terms"
19 for district attorney and sheriff. The County's argument should be rejected.

20 CONCLUSION

21 Petitioners respectfully request that the Court issue a writ of mandate invalidating Measure
22 A and granting the other relief requested in the Petition.

1 Dated: March 12, 2025

Respectfully submitted,

2 ROB BONTA
3 Attorney General of California
4 R. MATTHEW WISE
5 Supervising Deputy Attorney General

6 /s/ S. Clinton Woods
7 S. CLINTON WOODS
8 Deputy Attorney General
9 *Attorneys for the People of the State of*
10 *California, ex rel. Rob Bonta, Attorney*
11 *General of the State of California, and Dr.*
12 *Shirley N. Weber, in her official capacity*
13 *as California Secretary of State*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE BY E-MAIL

Case Name: ***The People of the State of California, et al. v. County of Fresno, et al.***

Case No.: **24CECG03179**

I declare:

I am employed by the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am over the age of 18 years and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. I am familiar with the business practice at the Office of the Attorney General for collection and processing of electronic correspondence.

On March 12, 2025, I served the attached document entitled:

“PETITIONERS’ REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDATE”

by transmitting a true copy via electronic mail to the following e-mail address:

Peter Wall, Chief Deputy County Counsel
OFFICE OF THE FRESNO COUNTY COUNSEL
2220 Tulare Street, Suite 500
Fresno, California 93721-2128

E-mail Address: pwall@fresnocountyca.gov

*Attorney for Respondents County of Fresno
and James A. Kus*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct.

Executed on March 12, 2025, at San Francisco, California.

Vanessa Jordan
Declarant

Vanessa Jordan
Signature