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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF FRESNO

10 PEOPLE ex rel. BONTA, et al.,  
11 Petitioners,  
v.  
12 COUNTY OF FRESNO, et al.,  
13 Respondents.

Case No. 24CECG03179  
**Respondents' Opposition to Petition  
for Writ of Mandate**

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

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1       **1. Introduction**

2           The California Constitution<sup>1</sup> authorizes a county charter to establish the terms of  
3 elective county officers. In 2024, Fresno County voters approved an amendment of the  
4 Charter of the County of Fresno, called Measure A, to do just that. Under Measure A,  
5 each elective officer of the County of Fresno (“**County**”), other than members of the  
6 Board of Supervisors, is elected in the same year as the Governor, to serve a four-year  
7 term. As a county charter provision that is authorized by the Constitution, Measure A  
8 has the same force and effect as a state statute, and it supersedes conflicting state  
9 statutes.

10          Despite that, the petitioners in this case argue that a state statute, namely  
11 Assembly Bill No. 759 (“**AB 759**”), should trump the County’s charter to overturn the will  
12 of the Fresno County voters that approved Measure A. In effect, the petitioners contend  
13 that the Legislature may curtail a county power that is provided in the Constitution—an  
14 argument that turns the law on its head. The petitioners are wrong. By characterizing  
15 this matter as raising an issue of statutory preemption, rather than constitutional  
16 authorization, they fail to apply the correct law, and their analysis misses the mark. The  
17 court should deny their petition.

18       **2. Background**

19          Until January 1, 2023, Elections Code section 1300 provided generally for the  
20 election of county officers in the years when the Governor is elected. (Respondents’  
21 Request for Judicial Notice in Support of Opposition to Petition for Writ of Mandate  
22 (“**Respondents’ RJN**”), exh. B.) The Governor is “elected every fourth year at the same  
23 time and places as members of the Assembly” (Const., art. V, § 2), which is “on the first  
24 Tuesday after the first Monday in November of even-numbered years unless otherwise  
25 prescribed by the Legislature” (Const., art. IV, § 2, subd. (b)). The Governor is currently  
26 elected in even-numbered years that are *not* evenly divisible by four, most recently in

27 \_\_\_\_\_  
28 <sup>1</sup> All further references to the Constitution are to the California Constitution.

1 2022. (And see Elec. Code, §§ 316, 1201.)

2 On September 29, 2022, the Governor signed AB 759, which repealed former  
3 Elections Code section 1300, effective January 1, 2023, and replaced it with a new  
4 section. The new section provides that elections for district attorneys and sheriffs “shall  
5 be held with the presidential primary” (Elec. Code, § 1300, subd. (a)(1)), while the  
6 election for every other county officer<sup>2</sup> “shall be held with the statewide primary at which  
7 candidates for Governor are nominated” (*id.*, at subd. (b)(1)). Presidential primaries  
8 occur in “any year that is evenly divisible by four” (Elec. Code, §§ 340, 1202), most  
9 recently in 2024.

10 By enacting AB 759, the Legislature recognized that county charters may provide  
11 for the terms of elected county officers, but also purported to limit that power for county  
12 charters established or amended after January 1, 2021. (Elec. Code, § 1300, subd. (c).)

13 On March 5, 2024, the voters of Fresno County approved Measure A, which  
14 amended section 15 of the Charter of the County of Fresno. (Respondents’ RJN, exh.  
15 A.) Previously, section 15 provided that “[a]ll elective officers [of the County] shall be  
16 nominated and elected at the time and in the manner and for the terms now or hereafter  
17 provided by general law.” (Respondents’ RJN, exh. A, third unnumbered page, struck  
18 through text.) As amended by Measure A, section 15 provides that members of the  
19 County’s Board of Supervisors shall be elected pursuant to general law, while all other  
20 County officers shall be elected in years when the Governor is elected, as follows:

21 Members of the Board of Supervisors shall be nominated  
22 and elected at the time and in the manner for the terms now  
or hereinafter provided by general law.

23 All elective officers [of the County] other than members of  
24 the Board of Supervisors shall be nominated and elected for  
25 four-year terms in the year in which the Governor of the  
State of California is elected, in the manner provided for by  
general law concerning primaries and general elections.

27 \_\_\_\_\_  
28 <sup>2</sup> “County officer” means any elected officer enumerated in Division 2 (commencing with Section 24000)  
of Title 3 of the Government Code.” (Elec. Code, § 314.)

1 Nothing in this section shall extend or shorten the four-year  
2 term being served by any elected officer of the county at the  
3 time of the adoption of this section. Nothing in this section  
shall change or amend any provision in this Charter  
governing the filling of vacancies in elective county offices.

4 (Respondents' RJN, third unnumbered page (paragraph breaks added here for  
5 readability).)

6 On June 13, 2024, as required by Government Code sections 23724 and 23714,  
7 the Secretary of State filed Measure A and assigned it Charter Chapter Number 11 for  
8 publication in the Statutes of 2024. (Respondents' RJN, exh. A.)

9 About six weeks later, on July 26, 2024, the petitioners filed this action to  
10 challenge Measure A.

### 11 3. Argument

#### 12 **A. Measure A is a lawful county charter provision that supersedes state 13 law, including AB 759, because Measure A is authorized by the text of the Constitution.**

14 Provisions of a county charter “are the law of the State and have the force and  
15 effect of legislative enactments.” (Const., art. XI, § 3, subd. (a).) If a county “has framed  
16 and adopted a charter, and the same shall have been approved by the Legislature as  
17 herein provided, the general laws adopted by the Legislature in pursuance of Section  
18 1(b) of this article, shall, as to such county, be *superseded by said charter* as to matters  
19 for which, under this section it is competent to make provision in such charter, and for  
20 which provision is made therein, except as herein otherwise expressly provided.” (*Id.*,  
21 art. XI, § 4, subd. (g), italics added.)

22 That is, a county charter may include provisions that are “different from and  
23 inconsistent with those provided by general laws,” if those provisions “are [1] properly  
24 grounded in the county’s constitutional authority and [2] do not incapacitate the county  
25 from performing its public functions.” (*Coalition of County Unions v. Los Angeles County  
26 Board of Supervisors* (2023) 93 Cal.App.5th 1367 (“*Coalition*”), 1392.)

27 Both of those tests are satisfied here, as discussed below, which means that  
28 Measure A is lawful and should stand, and this court should deny all relief sought by the

1 petitioners here.

2 **1) Measure A is an authorized exercise of county power because it is**  
3 **properly grounded in the text of article XI, § 4, of the Constitution.**

4 A county charter provision that is properly grounded in article XI, section 4, of the  
5 Constitution is “an authorized exercise of county power.” (*Coalition, supra*, 93  
6 Cal.App.5th at p. 1389.) The question is “‘not whether the Constitution *expressly*  
7 conferred the specific challenged power,’ but whether ‘given the Constitution’s text, the  
8 challenged power was “*authorized*.”” (*Ibid.*, quoting *Dibb v. County of San Deigo* (1994)  
9 8 Cal.4th 1200, 1214.) Proper grounding in the Constitution also requires that the  
10 charter provision “is not limited by the Constitution” itself. (Const., art. XI, § 4, subd. (g);  
11 *Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864, 870.)

12 In *Dibb*, the California Supreme Court explained that “Article XI, section 4—the  
13 provision at issue in this case” —and at issue here, too— “addresses the structure and  
14 operation of county government.” (*Dibb, supra*, 8 Cal.4th at p. 1206.) And counties  
15 enjoy “home rule” on these “matters concerning the structure and operation of local  
16 government.” (*Id.* at p. 1207.) Such matters include providing for the terms of elected  
17 county officers other than members of the board of supervisors. (*Id.* at p. 1206, citing  
18 Const., art. XI, § 4, subd. (c).) That means county charter provisions on these matters  
19 supersede conflicting state statutes. (*Ibid.*)

20 In *Coalition*, the plaintiffs challenged a charter provision requiring the board of  
21 supervisors to allocate 10 percent of locally generated unrestricted revenues to address  
22 racial injustice. (*Coalition, supra*, 93 Cal.App.5th at pp. 1377–1379.) The plaintiffs  
23 argued that provision was “invalid because the state Constitution does not *specifically*  
24 permit county charters to address budgeting.” (*Id.* at p. 1389, italics added.) But the  
25 court held that the charter provision in that case was “an authorized exercise of county  
26 power,” because “article XI, section 4(e) provides that county charters ‘shall provide for  
27 ... [t]he powers and duties of governing bodies and all other county officers,’” and that is  
28 “precisely” what the challenged provision did: it “define[d] a ‘power’ (allocating locally

1 generated unrestricted revenues) and a ‘duty’ (directing 10 percent of such revenues to  
2 particular purposes) of the County’s ‘governing body’ (the Board).” (*Id.* at p. 1389.)

3 In *Dibb*, the plaintiff challenged a county charter provision granting subpoena  
4 power to a Citizens Law Enforcement Review Board. (*Dibb, supra*, 8 Cal.4th at pp.  
5 1204–1205.) The plaintiff argued that the provision was “invalid because our state  
6 Constitution nowhere *specifically* grants to citizens’ review boards the power to issue  
7 subpoenas.” (*Id.* at p. 1213, italics added.) The court rejected that argument, holding  
8 that the provision was authorized “pursuant to the general ‘powers and duties’ clause of  
9 article XI, section 4(e) of the Constitution.” (*Id.* at pp.1214–1217.)

10 This case arises under a different subdivision of the same section of the  
11 Constitution. So the *specific* question is not the same (that is, the question is *not*  
12 whether “the general ‘powers and duties’ clause” authorizes Measure A). But the same  
13 rules for proper grounding apply. The crucial question here is what the Constitution  
14 means when it authorizes a county charter provide for the “terms” of its elected officers.  
15 (Const., art. XI, § 4, subd. (c).) We turn now to that question.

16 **(i) Article XI, § 4, of the Constitution authorizes a county charter**  
17 **to establish the terms of elected officers, including by**  
**choosing the cycle in which those officers are elected.**

18 “The principles of constitutional interpretation are similar to those governing  
19 statutory construction. In interpreting a constitution’s provision, [the court’s] paramount  
20 task is to ascertain the intent of those who enacted it.” (*Thompson v. Department of*  
21 *Corrections* (2001) 25 Cal.4th 117, 122.) “To determine that intent, [the court must] ‘look  
22 first to the language of the constitutional text, giving words their ordinary meaning.’”  
23 (*Ibid.*) Under the principles of statutory construction, the court must “accor[d]  
24 significance, if possible, to every word, phrase and sentence in pursuance of legislative  
25 purpose. A construction making some words surplusage is to be avoided.” (*Dyna-Med,*  
26 *Inc. v. Fair Employment and Housing Commission* (1987) 43 Cal.3d 1379, 1387.) As  
27 well, the court must “construe constitutional enactments in a manner that comports with  
28 reason, avoids absurd results and ‘fulfill[s] the apparent intent of the framers.’” (*City of*

1 *Costa Mesa v. Connell* (1999) 74 Cal.App.4th 188, 195.)

2 The California Supreme Court has defined the word “terms” for purposes of a  
3 county charter to mean “the period of time fixed by statute during which [an officer] may  
4 serve.” (*Younger, supra*, 93 Cal.App.3d at p. 872.) This necessarily includes  
5 establishing which cycle an officer is elected in because statute provides that officers  
6 “take office at 12 o’clock noon on the first Monday after the January 1 succeeding their  
7 election.” (Gov. Code, § 24200.<sup>3</sup>) Where a county charter provision, such as Measure A,  
8 does not specify when county officers take office, that “gap” is filled by “the applicable  
9 provision of general law.” (*People ex rel. Kerr v. County of Orange* (2003) 106  
10 Cal.App.4th 914, 925.) So even if a county charter does not specify when a county  
11 officer takes office, it may specify which year, or which cycle, that officer is elected in,  
12 and that officer will take office the following January as provided by statute. Thus, a  
13 county charter specifying an election cycle and the number of years the officer will serve  
14 establishes the *term* for that officer. That is what Measure A does.

15 With AB 759, the Legislature demonstrated that it understands the word “terms”  
16 in just this way. Under AB 759, “[a]n election to select a district attorney and sheriff shall  
17 be held with the presidential primary.” (Elec. Code, § 1300, subd. (a)(1).) Thus AB 759  
18 does not *directly* specify the “terms” of those officers. Even so, in subdivision (d) of  
19 Elections Code section 1300, the Legislature acknowledges that, for district attorneys  
20 and sheriffs in counties to which that section applies, the shift in their election cycle  
21 means that if they were elected in 2022, they “shall serve a six-year **term** and the next  
22 election for that office shall occur at the 2028 presidential primary” (emphasis added).  
23 By that provision, the Legislature shows that choosing which cycle a county officer is  
24 elected in will change their *term* of office. So when the Constitution authorizes a county  
25 charter to provide the “terms” for elected county officers, that authorization plainly  
26

27 \_\_\_\_\_  
28 <sup>3</sup> While AB 759 amended Gov. Code, § 24200, it did not alter that provision, except to change “January  
1st” to “January 1.” (Respondents’ RJN, exh. C.)

1 includes choosing which cycle those county officers are elected in—as Measure A does  
2 here.

3 **(ii) To authorize Measure A, the law does not require any further**  
4 **specificity in the Constitutional text than the word “terms.”**

5 The petitioners assert that the Constitution does not “allo[w] a charter county to  
6 choose when to hold an election for district attorney and sheriff.” (Petitioners’ Opening  
7 Brief (“**POB**”), 9:18–20.) The petitioners also assert that the Constitution only authorizes  
8 a county charter to establish “the prescribed period for which an officer has been  
9 elected and may serve,” and not the “time” of their election. (POB, 10:8–13.) And, like  
10 the plaintiffs in *Dibb* and *Coalition*, the petitioners appear to believe that county charter  
11 provisions supersede conflicting state law only if they are *specifically* provided in the  
12 Constitution. (POB, 8:12–14.)

13 But under *Dibb* and *Coalition*, the question is not whether article XI, section 4 of  
14 the Constitution *specifically* confers upon counties the power to provide in their charters  
15 whether such officers are elected with the President or with the Governor. The question  
16 is whether, given what the text of the Constitution *does* say, a county charter may  
17 provide which cycle its officers are elected in. In *Dibb* and *Coalition*, even though the  
18 phrase “powers and duties” did not specifically reference subpoena power or budgeting  
19 authority, the Constitution still authorized and properly grounded county charter  
20 provisions for those things. Likewise, the word “terms” plainly encompasses what  
21 Measure A does, which is to provide which election cycle county officers are elected in.  
22 (Presumably, there are other ways to set the “terms” of County officers, but those are  
23 not at issue here.)

24 Indeed, the petitioner Attorney General, applying an analysis much like the one  
25 that respondents argue here, has previously opined that “a county charter may grant the  
26 board of supervisors the authority to remove for cause by a four-fifths vote the sheriff,  
27 district attorney, and other county officers upon due notice and opportunity to be heard.”  
28 (84 Ops.Cal.Atty.Gen. 88 (2001).) That opinion appears to have been based, in

1 essence, on little more than the presence of the word “removal” in article XI, section 4,  
2 subdivision (c), of the Constitution, and the absence of any express provision to the  
3 contrary in the Constitution. (*Id.*) So the petitioners’ assertion of a requirement for  
4 constitutional specificity falls flat.

5 By providing that County officers will be elected “for four-year terms in the year in  
6 which the Governor of the State of California is elected,” Measure A exercises an  
7 authorized county power that is properly grounded in the Constitution, namely the power  
8 to establish the “terms” of county officers. Specifically, Measure A provides that the term  
9 of an elected county officer, other than a member of the board of supervisors, shall be  
10 four years, effectively coinciding with the term of the Governor.

11 Nothing is “otherwise expressly provided” in the Constitution (Const., art. XI, § 4,  
12 subd. (g)) that precludes the lawfulness of Measure A.

13 The petitioners assert that *Younger* “forecloses this argument.” (POB, 9:20.)  
14 They are mistaken. The *Younger* court invalidated a county charter provision that  
15 imposed term limits on elected county officers. The court first observed that the  
16 Constitution does not permit a county charter to provide for the “qualifications” or  
17 “tenure” of elected county officers. (*Younger, supra*, 93 Cal.App.3d at pp. 871–872.)  
18 Then the court explained that “the requirement of not having been elected for two prior  
19 six-year terms or three prior four-year terms”—that is, a term limit—was, in effect, “an  
20 additional, but unauthorized, qualification for candidacy.” (*Id.* at p. 872.) Therefore, a  
21 term limit was not a constitutional county charter provision.<sup>4</sup> But Measure A is not a term  
22 limit, and imposes no qualifications for candidacy.

23 The *Younger* court also rejected the argument that “the words ‘terms’ and  
24 ‘tenure’ are synonymous,” holding instead that “terms” means “the prescribed period for  
25

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26 <sup>4</sup> About 40 years later, as described in *San Bernardino County Board of Supervisors v. Monell* (2023) 91  
27 Cal.App.5th 1248, 1261, the Legislature amended Gov. Code, § 25000, to provide that a county, including  
28 a charter county (see Const., art. XI, § 4, subd. (h)), may enact term limits for members of its board of  
supervisors.

1 which an officer has been elected and may serve, *not* his incumbency.” (*Younger*,  
2 *supra*, 93 Cal.App.3d at p. 872.) And that is “not to be confused with the *tenure* of  
3 office.” (*Ibid.*, quoting *Holbrook v. Board of Directors* (1937) 8 Cal.2d 158, 161.) The  
4 *tenure* of an officer might not coincide with their *term*. “When we speak of the ‘term’ for  
5 which an officer has been elected, we mean the period of time fixed by statute during  
6 which he may serve, and not the time he may happen to serve.” (*Chenoweth v.*  
7 *Chambers* (1917) 33 Cal.App. 104, 107.) For example, an officer who is elected to a  
8 four-year *term* might serve a *tenure* of only two years before leaving office. Likewise, an  
9 officer who is elected for two successive four-year *terms* might serve a *tenure* of eight  
10 years. And a term limit, as in *Younger*, would affect the *tenure* of a county officer by  
11 limiting the number of *terms* that officer may serve. But Measure A imposes no such  
12 limits.

13 **2) Measure A does not incapacitate the County from performing its**  
14 **public functions.**

15 Nothing in Measure A would incapacitate the County from performing its public  
16 functions. (*Coalition, supra*, 93 Cal.App.5th at p. 1392.) Whether they are elected with  
17 the President or the Governor, officers of the County will continue to be elected and will  
18 continue to carry out their constitutional and statutory duties, as applicable.

19 **3) The petitioners’ comparison to the “municipal affairs” doctrine is a**  
20 **red herring.**

21 The petitioners correctly observe that charter cities have broad authority over  
22 “municipal affairs.” (POB, 8:22–23.) And it may well be that the authority granted to  
23 charter counties can reasonably be characterized as “much narrower.” (*Ibid.*) But, as in  
24 *Dibb*, the “distinction between the grant of autonomy over ‘municipal affairs’ to charter  
25 cities and the corresponding absence of any such grant of autonomy over ‘county  
26 affairs’ of charter counties” is “irrelevant in this case.” (*Dibb, supra*, 8 Cal.4th at p.  
27 1208.) That is because the constitutional authority for Measure A “rests, not on any  
28 purported ‘county affairs’ power of charter counties, but instead on the longstanding  
grant of *structural* and *operational* ‘home rule’ powers found in article XI, section 4.”

1 (*ibid.*, and *id.* at p. 1206 [“Article XI, section 4—the provision at issue in this case—  
2 addresses the structure and operation of county government”].)

3 So even if the authority in the Constitution for what a county charter may contain  
4 is “narrower” than the authority for what a city charter may contain, that comparison is a  
5 red herring. The question here is not whether a city charter might go further; the  
6 question is whether a county charter may include a provision like Measure A. For all the  
7 reasons argued above, it may.

8 **B. Preemption is not the proper analysis to determine whether Measure A**  
9 **is constitutional because county charter provisions that are properly**  
10 **grounded in the Constitution supersede conflicting state statutes.**

11 The petitioners assert that Measure A is preempted by AB 759 because the latter  
12 “addresses a matter of statewide concern and is narrowly tailored to achieve its  
13 purpose.” (POB, § II, 10:14–12:23.) They have applied the wrong analysis.

14 **1) There is no preemption analysis for county charter provisions that**  
15 **are properly grounded in the constitutional text.**

16 The only effective limitation on a county charter provision that is authorized by  
17 the Constitution is something “otherwise expressly provided” *in the Constitution*.  
18 (Const., art. XI, § 4, subd. (g); 84 Ops.Cal.Atty.Gen. 88.) A limitation imposed, or  
19 purportedly imposed, by the *Legislature* will not do it. (See *San Bernardino County*  
20 *Board of Supervisors v. Monell* (2023) 91 Cal.App.5th 1248 (“*Monell*”), 1277–1278.)  
21 That means “preemption” is not the correct analysis where a county charter provision  
22 has been authorized by the Constitution, as here.

23 In *Dibb*, the plaintiff argued that the county charter amendment authorizing a  
24 Citizens Law Enforcement Review Board to issue subpoenas was invalid because the  
25 Legislature had “preempted the field of ‘entities entitled to issue subpoenas.’” (*Dibb*,  
26 *supra*, 8 Cal.4th at p. 1210.) But the court expressly declined to engage in a preemption  
27 analysis because the county charter provision in question was “properly grounded” in  
28 the constitutional text. (*Dibb, supra*, 8 Cal.4th at pp. 1210–1211.) And “charters adopted  
by counties ‘for [their] own government’ ‘shall supersede any existing charter *and all*

1 *laws inconsistent therewith*. The provisions of a charter are the law of the State and  
2 have the force and effect of legislative enactments.” (*Id.* at p. 1211, quoting Cal. Const.,  
3 art. XI, § 3, subd. (a), italics in original.) The court here should likewise decline to take  
4 the path of a preemption analysis.

5 **2) The preemption analysis proposed by the petitioners for Measure A**  
6 **has no support in the law.**

7 Further, the preemption analysis proposed by the petitioners here (POB, § II,  
8 10:43–12:23) has no support in the law. The petitioners assert a “preemption analysis  
9 for charter counties” based primarily on *Jauregui v. City of Palmdale* (2014) 226  
10 Cal.App.4th 781, 795, and *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th  
11 385, 430. The “see” signal at the head of the petitioners’ citation to those cases belies  
12 their analytical weight: this is a signal that those cases provide only weak or indirect  
13 support for the assertion. (*OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 144 (dis. opn. of  
14 Chin, J.), citing Cal. Style Manual (4th ed. 2000) § 1:4, p. 9.)

15 Indeed, *Jauregui* and *Yumori-Kaku* do not apply any preemption analysis to  
16 county charters. They do not even contain dicta suggesting that their analyses *might* be  
17 applied to county charters. Those are cases about cities, which arose under article XI,  
18 section 5, of the Constitution. (*Jauregui, supra*, 226 Cal.App.4th at pp. 794–795;  
19 *Yumori-Kaku, supra*, 59 Cal.App.5th at pp. 429–430.) But this case arises under article  
20 XI, sections 3 and 4, of the Constitution, so *Jauregui* and *Yumori-Kaku* are not  
21 applicable here. Likewise *Wilson v. Beville* (1957) 47 Cal.2d 852, 859, *State Building*  
22 *and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54  
23 Cal.4th 547, 555–556, and *California Federal Savings & Loan Association v. City of Los*  
24 *Angeles* (1991) 54 Cal.3d 1, 16–17. The petitioners cite those cases for their proposed  
25 county charter preemption analysis, but none of them deals with a county charter.

26 The other cases cited by the petitioners also do not support the application of  
27 their proposed preemption analysis:

28 In *Younger*, the court invalidated a county charter provision, but not based on

1 preemption. Instead, the court held that a charter provision imposing term limits on  
2 elected county officials was invalid because a term limit is a “qualification” for office,  
3 which article XI, section 4, of the Constitution did not authorize county charters to  
4 provide. (*Younger, supra*, 93 Cal.App.3d at pp. 872–873.) Here, however, Measure A  
5 does not establish term *limits* or any qualification of office; rather, it establishes the  
6 terms of county officials, as the Constitution permits a county charter to do. (Const., art.  
7 XI, § 4, subd. (c).)

8 In *Wilkinson v. Lund* (1929) 102 Cal.App. 767, the court similarly held that a  
9 county charter provision—this one limiting the property tax rate—was invalidated  
10 because it was not authorized by the Constitution. The rule of decision was that “only  
11 such provisions of a county charter as are authorized by the Constitution supersede  
12 state laws in conflict therewith and then only to the extent that such provisions are not  
13 limited by the Constitution,” and in that case the Constitution provided a limitation.  
14 (*Wilkinson, supra*, 102 Cal.App. at pp. 770–771.) Here, however, there is no  
15 constitutional limitation on the authorization of county charters to provide for the terms  
16 of elected officials.

17 *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278 did not involve any  
18 alleged conflict between a county charter provision and a state statute. The issue in that  
19 case was whether a state statute conflicted with sections of the Constitution providing  
20 generally that all counties—not just chartered counties<sup>5</sup>—may provide for the  
21 compensation of their employees, and limiting legislative interference in that power. So  
22 that case provides no guidance here.

23 Finally, in *Monell*—which the petitioners cite only for the uncontroversial  
24 proposition that there is no county version of the “municipal affairs” doctrine—the court  
25 *upheld* a county charter provision against a challenge based on state statute. And that  
26

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27 <sup>5</sup> And the County of Riverside, the county involved in that case, is not a charter county. California State  
28 Association of Counties, “County Structure & Powers,” available at <https://www.counties.org/general-information/county-structure-0> (accessed on February 20, 2025).

1 conclusion was based not on a preemption analysis, but on the fact that the charter  
2 provision in question, which limited compensation payable to members of the board of  
3 supervisors, was authorized by article XI, section 4, subdivision (b), of the Constitution.  
4 (*Monell, supra*, 91 Cal.App.5th at pp. 1275–1277.) The court even observed that,  
5 because “section 4(b) [of article XI] says that a county charter must provide for ‘[t]he  
6 compensation ... of members of the governing body,’” then if a statute providing  
7 differently “purported to apply to a charter county, it would be unconstitutional,” and  
8 “[t]his is true *even if* setting supervisors’ salaries is a statewide matter.” (*Id.* at pp. 1277–  
9 1278.) Which is to say that the analysis for counties is *not* whether a charter provision is  
10 a matter of local or statewide concern, but whether it is authorized by Article XI, section  
11 4, of the Constitution.

12 *Monell* is thus directly opposed to the petitioners’ position in this matter, and  
13 instead supports the respondents’ position. Here, Constitution article XI, section 4,  
14 subdivision (c), provides that a county charter may provide for the terms of its elected  
15 officers, which means that Elections Code section 1300, to the extent it purports to  
16 apply to charter counties, is unconstitutional under *Monell*, and this court should uphold  
17 Measure A.

18 **3) Even if the petitioners’ proposed preemption analysis were correct, it**  
19 **would fail on the facts.**

20 The petitioners argue that AB 759 addresses “a matter of statewide concern”  
21 because it “regulates *all* counties, regardless of charter status, provided the county  
22 charter did not previously specify the timing of elections for district attorney and sheriff,”  
23 and because its purpose of “boost[ing] turnout in elections for district attorney and  
24 sheriff” is “a matter of profound statewide concern.” (POB, 11:19–26.)

25 What petitioners fail to observe is exactly how many Californians AB 759, even  
26 on its own terms, *does not affect*. By its own terms, AB 759 does not apply to “charter  
27 counties that, on or before January 1, 2021, expressly specified in their charter when an  
28 election for district attorney or sheriff would occur.” There are three counties that come

1 within that exception: Los Angeles, Santa Clara, and San Bernardino. (Respondents’  
2 RJN, exhs. D, E, F.) Section 15 of the Charter of the County of Los Angeles provides  
3 that the District Attorney is elected in the years when the President is elected, while the  
4 Sheriff is elected in the years when the Governor is elected. (Respondents’ RJN, exh.  
5 D.) Section 303 of the Charter of San Bernardino County provides that all elective  
6 County officers are elected in the year that the Governor is elected. (Respondents’ RJN,  
7 exh. E.) Section 501 of the Charter of the County of Santa Clara provides that the  
8 District Attorney and the Sheriff are elected in the same year as supervisors of that  
9 county’s First and Fourth supervisorial districts, which, under section 202 of that charter,  
10 are elected in the year that the Governor is elected. (Respondents’ RJN, exh. F.)  
11 According to the United States Census Bureau, as of July 1, 2023, Los Angeles County  
12 was estimated to have a population of 9,663,345 (Respondents’ RJN, exh. H), San  
13 Bernardino County was estimated to have a population of 2,195,611 (Respondents’  
14 RJN, exh. I), and Santa Clara County was estimated to have a population of 1,877,592  
15 (Respondents’ RJN, exh. J)—giving those three counties together a total estimated  
16 population of 13,736,548. At the same time, the total population of California was  
17 estimated to be 38,965,193. (Respondents’ RJN, exh. G.) That means AB 759, by its  
18 own terms *does not apply* to about 35 percent of the population.

19         If the Legislature truly believes that “boost[ing] turnout in elections for district  
20 attorney and sheriff” is a matter of “profound statewide concern,” then it has chosen a  
21 poor vehicle, in AB 759, to advance that cause.

22         To the contrary, if the Legislature believes that voter turnout should be boosted, it  
23 ought to consider the effects on voter turnout of the Attorney General and the Secretary  
24 of State attempting by litigation to overturn the results of a local election, such as the  
25 one in which Fresno County’s voters approved Measure A. Surely few things are better  
26 at suppressing voter turnout than contributing to the voters’ perception that their votes  
27 do not matter.

28         The timing of AB 759 also tends to erode voter confidence. By the time AB 759

1 was signed into law by the Governor, all five of the County’s non-supervisor elective  
2 officers, including the District Attorney and the Sheriff, had, over three months before,  
3 already been elected at the June 7, 2022 primary to four-year terms beginning the first  
4 Monday after January 1, 2023. (Elec. Code, § 8140; Gov. Code, § 24200; Respondents’  
5 RJN, K.) For the Legislature to purport to change the four-year terms of *two* of those five  
6 officers—but for some reason not the other three—*after they had already been elected*,  
7 to six-year terms (Elec. Code, § 1300, subd. (d)), gives the lie to its alleged concern for  
8 the general problem of “turnout.” If the Legislature were truly concerned with voter  
9 turnout, then it would have respected the will of the June 7, 2022 primary voters, and it  
10 would have treated other elective county officers—in Fresno County, the Assessor, the  
11 Auditor-Controller/Treasurer-Tax Collector, and the Clerk/Registrar of Voters—with  
12 precisely the same concern as it treated the law enforcement officers.

#### 13 **4. Conclusion**

14 The Constitution expressly authorizes a county charter to provide for the terms of  
15 its elected officials, and provides that such charter provisions prevail over conflicting  
16 state laws. Measure A, which provides for the terms of the County’s elected officials, is  
17 thus properly grounded in the Constitution and equivalent to a state statute. That means  
18 it supersedes conflicting state laws, including AB 759. The petitioners’ arguments that  
19 AB 759, a state statute, preempts Measure A, a county charter provision are misplaced  
20 and not supported by the law. To the contrary, to the extent AB 759 purports to limit the  
21 powers of charter counties, it is unconstitutional.

22 For those reasons, and for all the reasons argued above, the court should deny  
23 the writ petition and enter judgment in favor of the respondents.

24 DANIEL C. CEDERBORG, County Counsel



25  
26 Date: February 24, 2025

27 By Peter Wall, Chief Deputy County Counsel  
28 Attorneys for Respondents County of Fresno  
and James A. Kus

1 **PROOF OF SERVICE**

2 *People ex rel. Bonta, et al. v. County of Fresno, et al.*  
3 *Fresno Superior Court Case No. 24CECG03179*

4 I, Vincent Soliz, declare as follows:

5 I am a resident of the State of California, over the age of eighteen years, and not  
6 a party to the within action. I am employed at the Fresno County Counsel's Office, 2220  
7 Tulare Street, Fifth Floor, Fresno, California, 93721.

8 On February 24, 2025, I served a copy of the within:

9 **Respondents' Opposition to Petition for Writ of Mandate**

10 on the interested parties in said action addressed as follows:

11 Rob Bonta  
12 Attorney General Of California  
13 R. Matthew Wise  
14 Supervising Deputy Attorney General  
15 S. Clinton Woods  
16 Deputy Attorney General  
17 455 Golden Gate Ave., Suite 11000  
18 San Francisco, CA 94102  
19 E-mail: [Clint.Woods@doj.ca.gov](mailto:Clint.Woods@doj.ca.gov)  
20 E-mail: [Matthew.Wise@doj.ca.gov](mailto:Matthew.Wise@doj.ca.gov)  
21 *Attorneys for the People of the State of  
22 California; California Secretary of State and  
23 Dr. Shirley N. Weber, in her official capacity  
24 as California Secretary of State*

25 **X** by transmitting via Electronic Mail, the above listed document(s) to the Electronic  
26 Mail address(es) set forth above on this date before 5:00 p.m. pacific daylight  
27 time.

28 I declare under penalty of perjury under the laws of the State of California that  
the foregoing is true and correct. Executed on February 24, 2025, at Fresno, California.

/s/ Vincent Soliz  
Vincent Soliz, Paralegal