
NOTE

Consolidating Charter City Elections: An Argument for Extending the California Voter Participation Rights Act

*Anthony Rogari**

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INTRODUCTION

Los Angeles — the largest city in California — is home to almost 3.9 million people.¹ But in 2015, only 11% of all registered voters cast ballots in the city's March primary election, which included nominating contests for seven out of fifteen seats on the city council.² In the city's March 2017 election, when the mayor and city attorney, along with the other eight city council seats, were on the ballot, just 21% of registered voters cast votes in primary contests.³ Meanwhile, 43% of registered voters cast votes in the June 2016 presidential primary election.⁴ The city of Glendale — home to 196,543 residents⁵ — shows a similar pattern. Just 19% of registered voters participated in the city's April 2015 municipal election,⁶ while 22% of registered voters participated in the April 2017 election.⁷ In the June 2016 presidential primary, however, 45% of registered voters cast ballots.⁸

This phenomenon is hardly unique to either city or even to California. Across the nation, cities that hold local elections on different dates than

¹ *QuickFacts: Los Angeles City, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/losangelescitycalifornia/PST045219> (last visited Sept. 21, 2022) [<https://perma.cc/86FC-N979>] (population as of April 1, 2020).

² CITY OF L.A., OFFICIAL ELECTION RESULTS: MARCH 3, 2015, at 1 (2015), http://ens.lacity.org/clk/elections/clkelections3386116398_11082017.pdf [<https://perma.cc/5QS3-QAAS>].

³ CNTY. OF L.A., VOTES CAST BY COMMUNITY: MARCH 20, 2017 CONSOLIDATED MUNICIPAL AND SPECIAL ELECTIONS 49 (2017), https://www.lavote.net/documents/SVC/3577_Community.pdf [<https://perma.cc/5FZM-5QH9>].

⁴ CNTY. OF L.A., VOTES CAST BY COMMUNITY: JUNE 7, 2016 PRESIDENTIAL PRIMARY ELECTION 87 (2016), https://www.lavote.net/documents/SVC/980_Community.pdf [<https://perma.cc/X65E-RJ34>].

⁵ *QuickFacts: Glendale City, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/glendalecitycalifornia/PST045219> (last visited Sept. 21, 2022) [<https://perma.cc/6V84-YT4V>] (population as of April 1, 2020).

⁶ CITY OF GLENDALE, DECLARING THE RESULT OF THE GENERAL MUNICIPAL ELECTION OF APRIL 7, 2015, at 2 (2015), <https://www.glendalevotes.org/home/showpublisheddocument/36250/636232737495800000> [<https://perma.cc/SD27-AUN3>].

⁷ CITY OF GLENDALE, DECLARING THE RESULT OF THE GENERAL MUNICIPAL ELECTION OF APRIL 4, 2017, at 2 (2017), <https://www.glendalevotes.org/home/showpublisheddocument/44851/636606996643870000> [<https://perma.cc/U4S8-W2AS>].

⁸ CNTY. OF L.A., VOTES CAST BY COMMUNITY: JUNE 7, 2016 PRESIDENTIAL PRIMARY ELECTION, *supra* note 4, at 48.

statewide primary or general elections (known as “off-cycle” elections⁹) consistently feature low voter turnout, especially compared to cities that hold local elections concurrent with statewide elections (known as “on-cycle” elections¹⁰).¹¹ Notably, the demographics of those who vote in off-cycle elections differ significantly from those who vote in state and federal elections. Research suggests that voters who are old, white, and wealthy are more likely to vote in off-cycle elections than voters who are poor, young, and non-white.¹² Research also suggests that off-cycle elections may grant disproportionate influence to special interest groups.¹³ These differences are problematic not only because they result in local officials being elected by an electorate that does not reflect the community as a whole — raising questions about equal representation — but also because they subsequently affect policy outcomes in ways that benefit those who are overrepresented in low turnout off-cycle elections.¹⁴

In 2015, the California Legislature attempted to address the issue of low voter turnout in off-cycle elections through the California Voter Participation Rights Act (“CVPRA”), which restricts cities from holding

⁹ NICOLAS HEIDORN, CALIFORNIA MUNICIPAL DEMOCRACY INDEX 37 (2016), <https://www.commoncause.org/california/wp-content/uploads/sites/29/2018/03/california-municipal.pdf> [<https://perma.cc/EN6G-D7B8>].

¹⁰ *Id.*

¹¹ See ZOLTAN L. HAJNAL, PAUL G. LEWIS & HUGH LOUCH, MUNICIPAL ELECTIONS IN CALIFORNIA: TURNOUT, TIMING, AND COMPETITION 36 (2002), https://www.ppic.org/content/pubs/report/R_302ZHR.pdf [<https://perma.cc/P82R-RXYZ>] [hereinafter MUNICIPAL ELECTIONS]; see also Vladimir Kogan, Stéphane Lavertu & Zachary Peskowitz, *Election Timing, Electorate Composition, and Policy Outcomes: Evidence from School Districts*, 62 AM. J. POL. SCI. 637, 637 (2018); Melissa Marschall & John Lappie, *Turnout in Local Elections: Is Timing Really Everything?*, 17 ELECTION L.J. 221, 227 (2018).

¹² Zoltan L. Hajnal, Vladimir Kogan & G. Agustin Markarian, *Who Votes: City Election Timing and Voter Composition*, 116 AM. POL. SCI. REV. 374, 377-78 (2021) [hereinafter *Who Votes*]; Joshua S. Sellers & Erin A. Scharff, *Preempting Politics: State Power and Local Democracy*, 72 STAN. L. REV. 1361, 1410 (2020); see HAJNAL ET AL., MUNICIPAL ELECTIONS, *supra* note 11, at 3-4.

¹³ Sarah F. Anzia, *Election Timing and the Electoral Influence of Interest Groups*, 73 J. POL. 412, 424 (2011); see Christopher R. Berry & Jacob E. Gersen, *The Timing of Elections*, 77 U. CHI. L. REV. 37, 55 (2010).

¹⁴ See Anzia, *supra* note 13, at 424; Berry & Gersen, *supra* note 13, at 55.

off-cycle local elections if they result in low voter turnout.¹⁵ Dozens of cities subsequently changed the dates of their local elections in order to comply with the new law.¹⁶ In the years immediately following the shift, many cities experienced significant increases in voter turnout, with many seeing turnout in the new on-cycle elections that was more than triple the turnout in the off-cycle election preceding the switch.¹⁷ However, in 2020, the Second District Court of Appeal held in *City of Redondo Beach v. Padilla* that the CVPRA does not apply to charter cities.¹⁸ As a result, the 121 charter cities throughout California¹⁹ remain free to hold off-cycle elections, regardless of turnout.

This Note argues that the California Legislature can constitutionally enact legislation to apply the CVPRA to charter cities. It further argues that the Legislature should extend the CVPRA to charter cities in order to advance important policy outcomes. Part I discusses the CVPRA and the Second District Court of Appeal's decision in *City of Redondo Beach v. Padilla*, while providing background context on charter cities and their home-rule authority under the California Constitution.²⁰ Part II first contends that extending the CVPRA would promote important policy concerns, particularly increasing voter turnout and addressing shortages of affordable housing.²¹ It then examines an amended CVPRA in light of the preemption test outlined by the California Supreme Court and argues that both equal representation in the electorate and housing development are matters of statewide concern and that the CVPRA is

¹⁵ California Voter Participation Rights Act, CAL. ELEC. CODE §§ 14050-57 (2022). The CVPRA requires cities to hold local elections concurrent with statewide elections if turnout for a regularly scheduled off-cycle election is at least 25 percent less than the city's average voter turnout in the last four statewide general elections. *Id.* § 14051.

¹⁶ ALVIN VALVERDE MENESES & ERIC SPENCER, CONSOLIDATION OF ELECTIONS IN CALIFORNIA CREATES MASSIVE GAINS IN LOCAL VOTER TURNOUT 1 (2021), <https://www.commoncause.org/california/wp-content/uploads/sites/29/2021/02/Consolidation-of-Elections-Creates-Massive-Gains-in-Local-Voter-Turnout.pdf> [<https://perma.cc/Z8UN-YHCM>].

¹⁷ *Id.* at 1-2.

¹⁸ *City of Redondo Beach v. Padilla*, 260 Cal. Rptr. 3d 263, 266 (Ct. App. 2020).

¹⁹ LEAGUE OF CAL. CITIES, CHARTER CITIES, <https://www.cacities.org/UploadedFiles/LeagueInternet/6b/6bbb4ee3-88f9-4d8f-93ad-0075a7b486c4.pdf> (last visited Sept. 21, 2022) [<https://perma.cc/6NN7-GV2G>].

²⁰ *See infra* Part I.

²¹ *See infra* Part II.A.

reasonably related and narrowly tailored to addressing those concerns.²² Finally, Part III argues that the state legislature should enact legislation to extend the CVPRA to charter cities and proposes legislative language.²³

I. BACKGROUND

A. *The California Voter Participation Rights Act and City of Redondo Beach v. Padilla*

1. The California Voter Participation Rights Act

In 2015, the California Legislature enacted Senate Bill 415, also known as the California Voter Participation Rights Act.²⁴ The law, which went into effect on January 1, 2018, prohibits a political subdivision from holding “an election other than on a statewide election date if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout.”²⁵ It defines “a significant decrease in turnout” as voter turnout in a non-concurrent election that is at least 25% less than the average voter turnout in the four most recent statewide general elections.²⁶ Moreover, the law allows any voter to file a civil action alleging noncompliance against the political subdivision in which they reside²⁷ and grants courts the authority to provide appropriate remedies upon a finding of noncompliance, including “the imposition of concurrent election dates for future elections.”²⁸

²² See *infra* Part II.B–D.

²³ See *infra* Part III.

²⁴ California Voter Participation Rights Act, CAL. ELEC. CODE §§ 14050–57 (2022).

²⁵ *Id.* § 14052(a). The Act defines “political subdivision” as “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.” *Id.* §14051(a). State law establishes three statewide elections: an election held in November of an even-numbered year; an election held in June of an even-numbered year that is not evenly divisible by four; and an election held in March of an even year that is evenly divisible by four. *Id.* § 1001.

²⁶ *Id.* § 14051(b).

²⁷ *Id.* § 14055.

²⁸ *Id.* § 14053.

When the CVPRA was enacted, 114 (24%) of the state's 482 cities held off-cycle elections.²⁹ Of those 114 cities, the law seemed poised to require a significant number to move their local elections to coincide with statewide elections.³⁰ Indeed, while the law was still under consideration in the state legislature, a committee review of election results from more than five dozen cities found that just two of the cities analyzed had turnout in their most recent election that satisfied the bill's requirements.³¹ In response to the new law, dozens of cities quickly shifted their election dates to coincide with statewide elections.³² While questions about the applicability of the CVPRA to charter cities remained, on July 11, 2017, then-California Attorney General Xavier Becerra released an opinion asserting that the law applies to charter cities.³³

2. *City of Redondo Beach v. Padilla*

Despite the Attorney General's opinion, in February 2018, the City of Redondo Beach ("the City"), a charter city, filed a petition for a writ of mandate and a complaint for declaratory relief against the Secretary of State ("the Secretary") and the State of California ("the State").³⁴ The petition sought to prohibit the Secretary from applying and enforcing the CVPRA against the City and pursued a declaratory judgment that the Act was unconstitutional as applied to charter cities.³⁵ After a hearing on the merits, the superior court entered judgment in favor of the City and

²⁹ HEIDORN, *supra* note 9, at 50.

³⁰ ASSEMB. COMM. ON ELECTIONS & REDISTRICTING, S.B. 415, at 5 (Cal. 2015) ("[T]his bill may force almost all local jurisdictions to hold their regularly scheduled elections at the same time as statewide elections."); HEIDORN, *supra* note 9, at 50; Stephanie K. Baer, *A Bill Aimed at Increasing Voter Participation in LA County Is Creating a Lot of Confusion, Frustration*, SAN GABRIEL VALLEY TRIB., <https://www.sgytribune.com/2016/10/31/a-bill-aimed-at-increasing-voter-participation-in-la-county-is-creating-a-lot-of-confusion-frustration/> (last updated Aug. 30, 2017, 6:01 AM) [<https://perma.cc/7CDX-9EEQ>] (noting the law will force "nearly all of the 79 cities holding off-cycle elections" in LA County to move their elections to coincide with statewide elections).

³¹ ASSEMB. COMM. ON ELECTIONS AND REDISTRICTING, S.B. 415, at 5 (Cal. 2015).

³² HEIDORN, *supra* note 9, at 38.

³³ 100 Ops. Cal. Att'y Gen. 4 (2017).

³⁴ *City of Redondo Beach v. Padilla*, 260 Cal. Rptr. 3d 263, 267 (Ct. App. 2020).

³⁵ *Id.*

declared the CVPRA unconstitutional to the extent that it covered charter cities.³⁶

The Secretary and the State appealed the superior court ruling, and in March 2020, the Second District Court of Appeal affirmed the trial court ruling insofar as it prohibited the State and the Secretary from enforcing the CVPRA against Redondo Beach.³⁷ The Second District noted that if applicable to charter cities, the CVPRA would conflict with the City's charter.³⁸ As such, the court was required to determine — using the four-prong test first outlined by the California Supreme Court in *California Federal Savings & Loan Association v. City of Los Angeles* and restated in *State Building & Trades Council v. City of Vista* — whether the statute constitutionally preempted the city's home-rule authority.³⁹ However, the Second District declined to address the constitutional claims, instead finding the Legislature did not indicate a clear intention to have the Act apply to charter cities, and thus the Act did not apply to charter cities.⁴⁰

B. Charter Cities and Home Rule Authority

1. Charter Cities, Home Rule Authority, and the *Cal Fed/Vista* Test

California law distinguishes between two types of cities — “general law” cities and “charter” cities — based on their structure of governance.⁴¹ General law cities are organized and governed under the general law of the state Legislature, and their powers are limited to those “expressly conferred upon [them] by the Legislature, together with such powers as are necessarily incident to those expressly granted or essential

³⁶ *Id.* at 267-68.

³⁷ *Id.* at 266.

³⁸ *Id.* at 269.

³⁹ *Id.* (“When a statute clearly intended to apply to charter cities appears to conflict with a city's constitutional home rule authority, a court must utilize a four-part analytical framework to determine whether the city's authority must cede to the state's . . .”).

⁴⁰ *Id.* at 275 (“[G]uided by the precept that, when reasonable, we will construe a statute to render it free from doubt as to its constitutionality . . . we will not infer an intent to contravene that authority without more explicit guidance from the Legislature.”).

⁴¹ CAL. GOV'T CODE § 34101-02 (2022).

to the declared object and purposes of the [city].”⁴² Meanwhile, charter cities are organized and governed under a charter, which must be adopted by a majority vote by the city’s electorate.⁴³ The charter serves as the city’s constitution and defines and gives the city “all the powers it possesses.”⁴⁴

While general law cities must abide by all general laws passed by the state legislature,⁴⁵ charter cities have exclusive, or “home rule,” authority over local matters. This authority is outlined in Article XI, section 5, subdivision (a) of the California Constitution, which provides, in relevant part: “with respect to municipal affairs [city charters] shall supersede all laws inconsistent therewith.”⁴⁶ The California Supreme Court has explained that this constitutional provision means “that ‘so far as ‘municipal affairs’ are concerned,’ charter cities are ‘supreme and beyond the reach of legislative enactment.’”⁴⁷ Article XI, section 5, subdivision (b) of the California Constitution provides a non-exhaustive list of governmental functions that are to be considered “municipal affairs,” including “(1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority . . . to provide . . . the manner in which, the method by which, the times at which, and the terms for which [municipal officials] shall be elected.”⁴⁸ However, with respect to regulations that fall outside of “municipal affairs” — known as matters of “statewide concern” — charter cities remain subject to general state laws regardless of any provision of their charter so long as the intent and purpose of the general laws are to preempt municipal regulation in that area.⁴⁹

⁴² *City of Orange v. San Diego Cnty. Emps. Ret. Ass’n*, 126 Cal. Rptr. 2d 405, 410 (Ct. App. 2002); see GOV’T § 34102.

⁴³ CAL. CONST. art. XI, § 3; GOV’T § 34101.

⁴⁴ *Platt v. City & County of San Francisco*, 110 P. 304, 308 (Cal. 1910).

⁴⁵ See *State Bldg. & Constr. Trades Council v. City of Vista*, 279 P.3d 1022, 1025 n.1 (Cal. 2012) (citing *City of Orange*, 126 Cal. Rptr. 2d at 410).

⁴⁶ CAL. CONST. art. XI, § 5.

⁴⁷ *State Bldg.*, 279 P.3d at 1027 (quoting *Cal. Fed. Sav. & Loan Ass’n v. City of Los Angeles*, 812 P.2d 916, 922 (Cal. 1991)).

⁴⁸ CAL. CONST. art. XI, § 5; *Johnson v. Bradley*, 841 P.2d 990, 995 (Cal. 1992).

⁴⁹ *Bishop v. City of San Jose*, 460 P.2d 137, 140 (Cal. 1969).

Where a general law statute that is clearly intended to apply to a charter city appears to conflict or otherwise interfere with the city's home rule authority, a court must determine whether the state law or the city charter prevails.⁵⁰ In *California Federal Savings & Loan Association v. City of Los Angeles* (“*Cal Fed*”), the California Supreme Court established a four-part test for resolving conflicts between state law and a charter city ordinance.⁵¹ The test, which was subsequently affirmed and restated in *State Building & Trades Council v. City of Vista* (“*Vista*”), asks: “(1) whether the city ordinance at issue regulates an activity that can be characterized as a ‘municipal affair;’ (2) whether there is ‘an actual conflict between [local and state law];’ (3) whether the state law addresses a matter of ‘statewide concern;’ and (4) whether the law is ‘reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance.’”⁵²

Where the subject of the state law is not a matter of “statewide concern,” the charter city measure is a “municipal affair” that falls within the city's home rule authority and is beyond the reach of state regulation.⁵³ But if the subject of the state law is a matter of statewide concern and the law is reasonably related to that concern, “then the conflicting charter city measure ceases to be a ‘municipal affair’ pro tanto” and the state law prevails.⁵⁴ However, the *Cal Fed* court emphasized that when deciding home rule conflicts, courts should avoid making categorical determinations of what constitutes a “municipal affair” or a matter of “statewide concern.”⁵⁵ Thus, as the court explained, a decision that “invalidates a charter city measure in favor of a conflicting state statute . . . does not necessarily rest on the conclusion that the subject matter of the former is not appropriate for municipal regulation. It means,

⁵⁰ See *Cal. Fed.*, 812 P.2d at 925.

⁵¹ See *id.*

⁵² *City of Redondo Beach v. Padilla*, 260 Cal. Rptr. 3d 263, 269 (Ct. App. 2020) (citing *State Bldg.*, 279 P.3d at 1027).

⁵³ *Cal. Fed.*, 812 P.2d at 925.

⁵⁴ *Id.*

⁵⁵ *Id.* at 925-26 (“In performing that constitutional task, courts should avoid the error of ‘compartmentalization,’ that is, of cordoning off an entire area of governmental activity as either a ‘municipal affair’ or one of statewide concern.”).

rather, that *under the historical circumstances presented*, the state has a more substantial interest in the subject than the charter city.”⁵⁶

II. THE LEGISLATURE SHOULD PASS LEGISLATION TO EXTEND THE
CVPRA TO CHARTER CITIES

A. *Extending the CVPRA to Charter Cities Would Advance Important
Policy Concerns*

1. Extending the CVPRA Would Result in Increased Voter Turnout,
Particularly Among Non-White and Young Voters

Elections throughout the United States, at all levels of government, are plagued by low turnout.⁵⁷ California is no exception — in the last three presidential elections, voter-eligible turnout in the state averaged just 59.7%,⁵⁸ while in the last three gubernatorial elections, just 41.7% of eligible Californians cast ballots (including just 30.9% in 2014).⁵⁹ However, the problem is even more dramatic at the municipal level, particularly in off-cycle elections, where turnout regularly falls below

⁵⁶ *Id.* at 926 (emphasis added).

⁵⁷ See Drew Desilver, *In Past Elections, U.S. Trailed Most Developed Countries in Voter Turnout*, PEW RSCH. CTR. (Nov. 3, 2020), <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/> [<https://perma.cc/52S8-XXSU>]; Zoltan L. Hajnal, *Why Does No One Vote in Local Elections?*, N.Y. TIMES (Oct. 22, 2018), <https://www.nytimes.com/2018/10/22/opinion/why-does-no-one-vote-in-local-elections.html> [<https://perma.cc/C5BU-BHQP>] (“Nationwide, only 27 percent of eligible voters vote in the typical municipal election.”).

⁵⁸ See *2012 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2012g> (last updated Sept. 3, 2014) [<https://perma.cc/4WAS-BDK4>]; *2016 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2016g> (last updated Sept. 5, 2018) [<https://perma.cc/T3QX-A9KE>]; *2020 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT, <http://www.electproject.org/2020g> (last updated Dec. 7, 2020) [<https://perma.cc/4WXD-AEWK>].

⁵⁹ See *Historical Voter Registration and Participation in Statewide General Elections 1910-2021*, CAL. SEC’Y OF STATE, <https://elections.cdn.sos.ca.gov/sov/2021-recall/sov/04-historical-voter-reg-participation.pdf> (last visited Sept. 19, 2022) [<https://perma.cc/F6YH-95RU>].

30% of the voting-age population.⁶⁰ Indeed, research suggests that off-cycle elections generate systematically lower turnout.⁶¹ In seeking to enact the CVPRA, members of the California Legislature explicitly recognized the significant problems posed by low turnout in local, off-cycle elections. State Senator Ben Hueso, who authored the bill, noted that “voter turnout in local elections held on odd-numbered years has been abysmal,” and claimed that the bill would “give citizens the right to challenge local government for holding costly elections with little voter turnout.”⁶² Turnout has significantly increased in municipal elections in cities covered by the CVPRA.⁶³ Thus, extending the CVPRA to charter cities would result in similar increases in those charter cities falling under the law’s purview.

An abundance of research, conducted both before and after the CVPRA was enacted, firmly supports the CVPRA’s implicit claim that holding local elections concurrently with statewide elections significantly increases voter turnout.⁶⁴ A 2002 study conducted by researchers at the Public Policy Institute of California found that presidential general elections were associated with a twenty-three-point increase in turnout among adults compared to off-cycle elections, while presidential primaries and gubernatorial elections were associated with an eleven- to fifteen-point increase.⁶⁵ A regression analysis of California municipal elections conducted between 1996 and 2004 found a similar seventeen-point difference in turnout between municipal elections held in even years and those held in odd years.⁶⁶ Moreover, studies conducted after the CVPRA’s enactment illustrate that shifting municipal elections to

⁶⁰ Berry & Gersen, *supra* note 13, at 64; Marschall & Lappie, *supra* note 11, at 227. Turnout as a percentage of the voting-eligible population is not available for many municipal elections, though it would certainly be lower than turnout as a percentage of voting-age population (“VAP”), as more than 200,000 felons are ineligible to vote, along with non-citizens, who make up an estimated 15% of the state’s VAP. 2020 *November General Election Turnout Rates*, *supra* note 58.

⁶¹ Berry & Gersen, *supra* note 13, at 55.

⁶² ASSEMB. COMM. ON ELECTIONS & REDISTRICTING, S.B. 415, at 3 (Cal. 2015).

⁶³ MENESES & SPENCER, *supra* note 16, at 1.

⁶⁴ See HAJNAL ET AL., *supra* note 11, at 36; MENESES & SPENCER, *supra* note 16, at 1; Berry & Gersen, *supra* note 13, at 52; Sellers & Scharff, *supra* note 12, at 1410-11.

⁶⁵ HAJNAL ET AL., *supra* note 11, at 36.

⁶⁶ Berry & Gersen, *supra* note 13, at 51-52.

coincide with statewide elections has resulted in significant increases in turnout.⁶⁷ A comparison of voter turnout in fifty-four California cities that switched from off-cycle to on-cycle elections after the passage of the CVPRA found that average registered voter turnout nearly tripled.⁶⁸ Similarly, an analysis of Los Angeles City Council races showed that registered voter turnout increased from just 11% in 2015 and 21% in 2017, when the city held off-cycle elections, to 38% in 2020, when the city held its election concurrently with the presidential primary.⁶⁹ Thus, it is clear that extending the CVPRA to charter cities — and requiring qualifying cities to hold local elections concurrently with statewide elections — would result in substantial increases in turnout in charter city elections.

In addition to increasing turnout as a whole, extending the CVPRA to charter cities would also create an electorate that more accurately reflects the voting-age population by boosting turnout among non-white and younger voters.⁷⁰ Individuals who are old, white, and wealthy are substantially more likely to participate in off-cycle local elections than those who are young, non-white, and poor.⁷¹ Research suggests that shifting local elections to coincide with statewide elections would increase turnout among each of these latter groups.⁷²

With respect to age, the move from off-cycle to on-cycle elections results in dramatic shifts. Californians aged fifty-five and over, who make up about one-quarter of the population, make up almost 50% of the vote in off-cycle elections.⁷³ However, these voters see their vote share drop by almost twenty-two percentage points when local elections are held on the same day as presidential contests, and by more than twelve points

⁶⁷ MENESES & SPENCER, *supra* note 16, at 1; see SEAN MCMORRIS & KATHAY FENG, GETTING TO 100: HOW MOVING ELECTIONS TO EVEN YEARS INCREASED VOTER PARTICIPATION IN LOCAL ELECTIONS (2020), <https://www.commoncause.org/california/wp-content/uploads/sites/29/2020/10/LA-City-Voter-Turnout-Analysis-1.pdf> [<https://perma.cc/R8HB-6VG3>].

⁶⁸ MENESES & SPENCER, *supra* note 16, at 1.

⁶⁹ MCMORRIS & FENG, *supra* note 67.

⁷⁰ See Hajnal et al., *supra* note 12, at 377-78.

⁷¹ HAJNAL ET AL., *supra* note 11, at 3; Hajnal et al., *supra* note 12, at 377-78; Sellers & Scharff, *supra* note 12, at 1410.

⁷² Hajnal et al., *supra* note 12, at 377-78.

⁷³ *Id.* at 377.

when they coincide with midterm elections.⁷⁴ Meanwhile, voters under age forty, who comprise just 13% of the vote in off-cycle local elections, increase their vote share by nearly twelve points when local elections are held with presidential contests and by 3.6 points when they are held concurrent with midterms.⁷⁵

A similar pattern emerges when looking at race. Despite accounting for just 44.8% of the statewide citizen voting-age population (“CVAP”),⁷⁶ non-Hispanic white voters typically make up more than two-thirds of the vote in local off-cycle elections.⁷⁷ But when local elections are moved to coincide with presidential elections, the non-Hispanic white vote share decreases by almost ten points, while when local elections are moved to coincide with midterm elections, the non-Hispanic white vote share decreases by nearly six points.⁷⁸ Meanwhile, Latinos constitute 30.9% of the CVAP,⁷⁹ but just 17.8% of the vote in off-cycle elections.⁸⁰ However, their vote share increases by 6.8 points (to 24.6%) in local elections held concurrently with presidential elections and by 2.7 points (to 20.5%) in those that coincide with midterm contests.⁸¹ Asians, who make up 14.3% of the CVAP⁸² and 7.7% of the off-cycle vote,⁸³ see similar gains. Their vote share increases by 2.3 points (to 10%) in local elections held on the same day as presidential contests and 1.4 points (to 9.1%) in midterms.⁸⁴ Finally, while there is significantly less impact with respect to wealth, shifting local elections to coincide with presidential contests does increase the vote share of voters with little wealth (under \$30,000) and

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *American Community Survey: California Citizen Voting Age Population by Selected Characteristics*, U.S. CENSUS BUREAU (2019), <https://data.census.gov/cedsci/table?g=0400000US06&hidePreview=true&tid=ACSS1Y2019.S2901> [<https://perma.cc/4BR8-PLFH>] [hereinafter *American Community Survey*].

⁷⁷ Hajnal et al., *supra* note 12, at 376-77.

⁷⁸ *Id.*

⁷⁹ *American Community Survey*, *supra* note 76.

⁸⁰ Hajnal et al., *supra* note 12, at 376.

⁸¹ *Id.*

⁸² *American Community Survey*, *supra* note 76.

⁸³ Hajnal et al., *supra* note 12, at 376-77.

⁸⁴ *Id.*

decrease the vote share of voters with substantial wealth (more than \$100,000).⁸⁵

Thus, extending the CVPRA to charter cities would substantially increase turnout in charter city elections, particularly among groups who historically have been underrepresented in local contests.

2. Extending the CVPRA Would Increase Residential Development and the Supply of Affordable Housing

Like many states across the country, California is mired in a devastating housing crisis,⁸⁶ with home prices at all-time highs⁸⁷ and the state experiencing a massive housing shortage (estimated as high as four million homes).⁸⁸ Efforts to combat the crisis have ranged from statewide propositions and local ballot measures to litigation against local governments.⁸⁹ Given that other legislative efforts to address the housing shortage have largely failed,⁹⁰ requiring cities to hold local

⁸⁵ *Id.* at 378.

⁸⁶ Conor Dougherty, *California Housing Is a Crisis Newsom Can Take into His Own Hands*, N.Y. TIMES, <https://www.nytimes.com/2021/09/16/business/california-housing-crisis.html> (last updated Nov. 9, 2021) [<https://perma.cc/5V54-6J49>].

⁸⁷ Debra Kamin, *California's Red-Hot Real Estate Market Cools Just a Bit*, N.Y. TIMES (June 29, 2021), <https://www.nytimes.com/2021/06/29/realestate/california-housing-prices.html> [<https://perma.cc/9MB3-WR6E>]; Ryan Lillis, *Unaffordable: California Home Prices Break yet Another Record. How Do We Compare to US?*, SACRAMENTO BEE, <https://www.sacbee.com/news/california/article262865873.html> (last updated June 29, 2022, 3:43 PM) [<https://perma.cc/R2MK-RPJZ>].

⁸⁸ Liam Dillon, *California Lawmakers Killed One of the Biggest Housing Bills in the Country*, L.A. TIMES (Apr. 17, 2018, 6:40 PM PT), <https://www.latimes.com/politics/la-pol-ca-big-housing-bill-dies-20180417-story.html> [<https://perma.cc/ZA4M-B955>].

⁸⁹ See Kerry Cavanaugh, *Gavin Newsom Just Declared War on NIMBYs*, L.A. TIMES (Jan. 25, 2019, 11:55 AM PT), <https://www.latimes.com/opinion/enterthefray/la-ol-newsom-huntington-beach-lawsuit-20190125-story.html> [<https://perma.cc/3QPY-E33T>]; David Garcia, *Housing on the Ballot: How Californians Voted on Key Measures in 2020*, TERNER CTR. FOR HOUS. INNOVATION (Dec. 5, 2020), <https://turnercenter.berkeley.edu/research-and-policy/housing-on-the-ballot-2020/> [<https://perma.cc/4URB-2NVJ>].

⁹⁰ See Liam Dillon & Taryn Luna, *California Bill to Dramatically Increase Home Building Fails for the Third Year in a Row*, L.A. TIMES (Jan. 30, 2020, 4:49 PM PT), <https://www.latimes.com/california/story/2020-01-29/high-profile-california-housing-bill-to-allow-mid-rise-apartments-near-transit-falls-short> [<https://perma.cc/UNSS-5CGB>]. *But see California Enacts Two Laws to Slice Through Local Zoning Rules*, L.A. TIMES,

elections concurrently with statewide elections could be one way of addressing the problem. Although requiring charter cities to hold local elections concurrently with statewide elections will not directly solve the housing shortage and affordability crisis, evidence suggests that forcing cities to move their local elections could facilitate the promotion and implementation of pro-development policies.⁹¹ Indeed, cities that hold off-cycle elections issue just half as many building permits as comparable cities with on-cycle elections, while median home prices in off-cycle cities are roughly \$75 higher per square foot than in on-cycle cities.⁹² A similar pattern exists with respect to ballot initiatives on housing development — support for the pro-housing side is roughly seven percentage points higher in on-cycle than in off-cycle elections.⁹³

Existing literature makes clear that these policy outcomes are not incidental, but are directly related to election timing.⁹⁴ With respect to local housing policy, off-cycle elections strongly benefit anti-development constituencies.⁹⁵ As previously noted, off-cycle local elections feature an electorate that is older and whiter than the electorate in on-cycle elections.⁹⁶ These voters are more likely to be homeowners than those who are younger or non-white,⁹⁷ and homeowners — particularly older homeowners — generally support greater restrictions on housing development than renters.⁹⁸

<https://www.latimes.com/california/story/2021-09-16/california-local-zoning-laws> (last updated Sept. 16, 2021, 9:14 PM PT) [<https://perma.cc/46SE-66EJ>].

⁹¹ See Hajnal et al., *supra* note 12, at 375-78; Joseph T. Ornstein, Municipal Election Timing and the Politics of Urban Growth 11, 26 (Apr. 30, 2018) (unpublished manuscript), <https://sites.lsa.umich.edu/ornstein/wp-content/uploads/sites/157/2018/04/election-timing.pdf> [<https://perma.cc/P6Q6-WNR4>].

⁹² Ornstein, *supra* note 91, at 26.

⁹³ *Id.* at 18.

⁹⁴ See Anzia, *supra* note 13, at 424; Berry & Gersen, *supra* note 13, at 55; Ornstein, *supra* note 91, at 25-26.

⁹⁵ See Hajnal et al., *supra* note 12, at 375-78; Ornstein, *supra* note 91, at 12.

⁹⁶ Hajnal et al., *supra* note 12, at 375-78.

⁹⁷ See Amanda Lee, Lillian Kilduff & Mark Mather, *U.S. Homeownership Rates Fall Among Young Adults, African Americans*, POPULATION REFERENCE BUREAU (Feb. 13, 2020), <https://www.prb.org/resources/u-s-homeownership-rates-fall-among-young-adults-african-americans/> [<https://perma.cc/M7AP-TBA4>].

⁹⁸ See Hajnal et al., *supra* note 12, at 377; Ornstein, *supra* note 91, at 11-12.

In addition, by generating systematically low turnout, off-cycle elections empower well-organized interest groups, such as homeowners, that mobilize their supporters to turn out in all elections.⁹⁹ Interest group members — like homeowners — make up a greater proportion of the electorate in off-cycle elections than in on-cycle elections.¹⁰⁰ As a result, cities that hold off-cycle elections are more likely to elect local officials who promote the interests of homeowners and who, once elected, act accordingly by rejecting new housing developments.¹⁰¹ As noted above, the subsequent policy impact is considerable. Requiring charter cities to move their local elections from off-cycle to on-cycle would not only create a more representative electorate and minimize the impact of anti-development interests, but also could result in increased development and decreased housing prices.

B. *Applying the Initial Steps of the Cal Fed/Vista Test*

In *California Federal Savings & Loan Association v. City of Los Angeles*, the California Supreme Court established a four-part test for resolving conflicts between state law and a charter city ordinance.¹⁰² The test, which was subsequently affirmed and restated in *State Building & Trades Council v. City of Vista*, asks: “(1) whether the city ordinance at issue regulates an activity that can be characterized as a ‘municipal affair;’ (2) whether there is ‘an actual conflict between [local and state law];’ (3) whether the state law addresses a matter of ‘statewide concern;’ and (4) whether the law is ‘reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance.’”¹⁰³ Where the subject of the state law is not a matter of “statewide concern,” the charter city measure is a “municipal affair” that falls within the city’s home rule authority and is beyond the reach of state regulation.¹⁰⁴ However, where the subject of the state law is a matter of statewide concern and the law is reasonably related to that concern,

⁹⁹ See Anzia, *supra* note 13, at 424; Berry & Gersen, *supra* note 13, at 55.

¹⁰⁰ See Anzia, *supra* note 13, at 414.

¹⁰¹ See Ornstein, *supra* note 91, at 14.

¹⁰² Cal. Fed. Sav. & Loan Ass’n v. City of Los Angeles, 812 P.2d 916 (Cal. 1991).

¹⁰³ City of Redondo Beach v. Padilla, 260 Cal. Rptr. 3d 263, 269 (Ct. App. 2020) (citing State Bldg. & Constr. Trades Council v. City of Vista, 279 P.3d 1022, 1027 (Cal. 2012)).

¹⁰⁴ Cal. Fed., 812 P.2d at 925.

“then the conflicting charter city measure ceases to be a ‘municipal affair’ pro tanto” and the state law prevails.¹⁰⁵

1. The Timing of Local Elections Is a Municipal Affair

Under the test outlined by the California Supreme Court in *Cal Fed* and *Vista*, when deciding whether a matter falls within the home rule authority, the court must determine whether the issue is a “municipal affair.”¹⁰⁶ In this case, the plain language of article XI, section 5 of the California Constitution and longstanding court precedent establish that local elections and the timing of such elections are “municipal affairs.”¹⁰⁷ Article XI, section 5 of the California Constitution, which outlines the home rule authority of charter cities, provides in relevant part: “plenary authority is hereby granted . . . to provide . . . the times at which . . . the several municipal officers . . . shall be elected.”¹⁰⁸ California courts have long held that the conduct of municipal elections is a “municipal affair.”¹⁰⁹ As part of the “conduct” of municipal elections, the timing of local elections would certainly qualify as a “municipal affair.”

After determining whether a law seeks to address a municipal affair, the court must then determine whether there is an “actual conflict” between the state law and the charter city measure.¹¹⁰ This Note will assume that any potential challenge to the expanded CVPRA would feature an “actual conflict” between the law and the charter of a complaining charter city.¹¹¹ As such, a reviewing court would then need to address the two remaining — and likely the most contested — elements of the *Cal Fed/Vista* test: whether the law addresses a matter of statewide concern and whether the law is narrowly tailored.

¹⁰⁵ *Id.*

¹⁰⁶ *State Bldg.*, 279 P.3d at 1027 (citing *Cal. Fed.*, 812 P.2d at 924-25).

¹⁰⁷ CAL. CONST. art. XI, § 5(b); see *Socialist Party v. Uhl*, 103 P. 181, 186 (Cal. 1909); *Mackey v. Thiel*, 68 Cal. Rptr. 717, 720 (Ct. App. 1968).

¹⁰⁸ CAL. CONST. art. XI, § 5(b).

¹⁰⁹ *Johnson v. Bradley*, 841 P.2d 990, 999 (Cal. 1992); *Socialist Party*, 103 P. at 186; *Mackey*, 68 Cal. Rptr. at 720.

¹¹⁰ See *State Bldg.*, 279 P.3d at 1027; *Cal. Fed.*, 812 P.2d at 925.

¹¹¹ See *City of Redondo Beach v. Padilla*, 260 Cal. Rptr. 3d 263, 269 (Ct. App. 2020) (“If construed to apply to charter cities, the [C]VPRA conflicts with the City’s charter, requiring the City to adopt an ordinance altering the date of its municipal elections.”).

C. *The CVPRA Deals with a Matter of Statewide Concern*

1. Equal Representation Is a Matter of Statewide Concern

The third step in the *Cal Fed/Vista* test requires the court to determine whether the state law addresses a matter of statewide concern.¹¹² When analyzing whether an issue is a matter of statewide concern, the court must ultimately decide whether there is “a convincing basis for legislative action originating in extramunicipal concerns, one justifying legislative supersession based on sensible, pragmatic considerations.”¹¹³ Put differently, the court must conclude whether “there are good reasons, grounded on statewide interests, to label a given matter a ‘statewide concern.’”¹¹⁴ In this case, the lack of equal representation in the electorate of municipal elections is a matter of statewide concern that justifies application of the CVPRA to charter cities. These issues raise questions about democratic legitimacy and electoral integrity, particularly where the pool of actual voters is unrepresentative of the greater electorate.

California courts have previously held that issues dealing with electoral integrity and democratic legitimacy qualify as matters of statewide concern.¹¹⁵ In *Johnson v. Bradley*, the California Supreme Court considered a conflict between a Los Angeles charter measure providing for partial public financing of city political campaigns and a state law prohibiting the use of public money to fund political campaigns.¹¹⁶ Although it upheld the charter measure, the *Johnson* court noted that “the integrity of the electoral process, at both the state and local level” was “undoubtedly” a statewide concern.¹¹⁷

Meanwhile, in *Jauregui v. City of Palmdale*, the Second District Court of Appeal considered a charter city challenge to the California Voting Rights Act (“CVRA”).¹¹⁸ Enacted in 2001, the CVRA allows residents to bring a

¹¹² See *State Bldg.*, 279 P.3d at 1027; *Cal. Fed.*, 812 P.2d at 925.

¹¹³ *Cal. Fed.*, 812 P.2d at 926.

¹¹⁴ *Johnson*, 841 P.2d at 1000.

¹¹⁵ See *id.* at 1003; *Jauregui v. City of Palmdale*, 172 Cal. Rptr. 3d 333, 346 (Ct. App. 2014).

¹¹⁶ *Johnson*, 841 P.2d at 990.

¹¹⁷ *Id.* at 1003.

¹¹⁸ *Jauregui*, 172 Cal. Rptr. 3d at 333.

claim alleging that a city's at-large electoral system dilutes or otherwise abridges a protected class's opportunity to elect candidates of their choice or influence the outcome of an election.¹¹⁹ In finding that the CVRA dealt with a matter of statewide concern, the Second District held that the right of protected classes to be protected from vote dilution arises not "merely from a municipal concern," but rather from the "essence of a democratic form of government."¹²⁰ The court noted it was not an "abstract state interest," but one that "goes to the legitimacy of the electoral process."¹²¹ The *Jauregui* court also followed the reasoning of the *Johnson* court and held that integrity in city council elections is a matter of statewide concern, explaining: "[e]lectoral results lack integrity where a protected class is denied equal participation in the electoral process because of vote dilution."¹²²

In this case, a court should find that a lack of equal representation in municipal elections is a matter of statewide concern, particularly given the Second District's decision in *Jauregui*. There, the Second District implicitly recognized that the integrity and legitimacy of an election are challenged where a group is systematically denied an equal opportunity to participate or where electoral processes dilute a group's electoral influence.¹²³ This reflects a widely held understanding that while electoral legitimacy may generally be unthreatened by voluntary abstention, it *is* threatened where participation by identifiable groups is systematically diluted such that their share of the electorate is much smaller than their share of the voting-eligible population.¹²⁴

As mentioned throughout this Note, off-cycle local elections not only generate systematically lower turnout than on-cycle elections, but also systematically dilute participation among minorities.¹²⁵ This is hardly an

¹¹⁹ See CAL. ELEC. CODE § 14027 (2022); *Jauregui*, 172 Cal. Rptr. 3d at 339. The CVRA defines "protected class" as a class of voters who are members of a race, color or language minority group, as defined in the federal Voting Rights Act. ELEC. § 14026(d); see also *Jauregui*, 172 Cal. Rptr. 3d at 339.

¹²⁰ *Jauregui*, 172 Cal. Rptr. 3d at 346.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See James A. Gardner, *Democratic Legitimacy Under Conditions of Severely Depressed Voter Turnout*, 2020 U. CHI. L. REV. ONLINE 24, 30-31.

¹²⁵ See discussion *supra* Section II.A.1.

accident; historians have long suggested municipal elections were initially disjoined from federal and statewide elections in order to limit the participation of racial and ethnic minorities and of working-class individuals.¹²⁶ Regardless of whether these invidious motives are still relevant, the systematic depression of the minority vote in local elections constitutes vote dilution, raising concerns about election legitimacy and integrity that arise not merely from municipal concerns, but from the “essence of a democratic form of government.”¹²⁷ These concerns are heightened when considering local officials elected in off-cycle elections subsequently enact policies that reflect the interests of dominant interest groups, rather than the community as a whole.¹²⁸ Moreover, these concerns exist in every off-cycle election conducted throughout California. As such, it can hardly be said that the lack of equal representation and participation in municipal elections is not a matter of “statewide concern.”

Opponents may claim low voter turnout and depressed minority participation in local elections are the sorts of “abstract state interest[s]” expressly disapproved of by the California Supreme Court in *Vista*.¹²⁹ Yet in *Jauregui*, the Second District Court of Appeal held that “integrity driven concerns” about how local elections are conducted provided the necessary “convincing basis” for the California Legislature’s actions to interfere in local affairs.¹³⁰ In this case, given that the systematic depression of minority participation *is* vote dilution, a court should follow *Jauregui* and find that the same “integrity driven concerns” can justify the Legislature’s move to regulate the timing of local elections. Moreover, when analyzing whether a matter is of statewide concern, the California Supreme Court has noted that where doubt exists, courts should show deference to the Legislature.¹³¹ In *Baggett v. Gates*, the California Supreme Court noted: “[t]here must always be doubt whether

¹²⁶ See HAJNAL ET AL., *supra* note 11, at 6-7; Marschall & Lappie, *supra* note 11, at 225.

¹²⁷ See *Jauregui*, 172 Cal. Rptr. 3d at 346.

¹²⁸ See Anzia, *supra* note 13, at 424; Berry & Gersen, *supra* note 13, at 55; Ornstein, *supra* note 91, at 25-26.

¹²⁹ See *State Bldg. & Constr. Trades Council v. City of Vista*, 279 P.3d 1022, 1030 (Cal. 2012).

¹³⁰ *Jauregui*, 172 Cal. Rptr. 3d at 345.

¹³¹ See *Baggett v. Gates*, 649 P.2d 874, 881 (Cal. 1982).

a matter . . . is of sufficient statewide concern to justify a new legislative intrusion into an area traditionally regarded as ‘strictly a municipal affair.’ Such doubt, however, must be resolved in favor of the legislative authority of the state.”¹³² Thus, even if a court has lingering doubts about whether the lack of equal representation is a sufficient statewide interest, the court should defer to the Legislature’s judgment and find that it suffices as a matter of statewide concern.

Alternatively, critics may suggest charter cities have a more substantial interest in holding off-cycle municipal elections than the state does in requiring charter cities to hold them concurrently with statewide elections.¹³³ In *Vista*, the California Supreme Court noted that where a court finds state law preempts a charter city measure, it means that “under the historical circumstances presented, the state has a more substantial interest in the subject than the charter city.”¹³⁴ Here, opponents may contend cities have a significant interest in holding municipal elections separate from statewide elections in order to focus attention on local issues.¹³⁵ They may also argue concurrent elections would fail to increase turnout in local contests, since local contests would fall prey to “roll off” — the phenomenon in which voters are less likely to cast a vote as they move down the ballot.¹³⁶ However, while

¹³² *Id.*

¹³³ See Ned Augenblick & Scott Nicholson, *Ballot Position, Choice Fatigue, and Voter Behaviour*, 83 REV. ECON. STUD. 460, 460 (2016); Alan Greenblatt, *The Elections No One Cares About*, GOVERNING (Aug. 10, 2015), <https://www.governing.com/archive/gov-moving-municipal-elections-concurrent.html> [<https://perma.cc/9MHV-B6UH>].

¹³⁴ *State Bldg.*, 279 P.3d at 1028.

¹³⁵ See Greenblatt, *supra* note 133 (“Forcing our local campaigns to compete with state and federal races for money, for volunteers, for voter attention, I think is the wrong way,” said California state Rep. David Hadley in arguing against the proposal to hold elections there concurrently.”); see also Brief of Amicus Curiae League of California Cities in Support of Respondent City of Redondo Beach at 21, *City of Redondo Beach v. Padilla*, 260 Cal. Rptr. 3d 263 (Ct. App. 2020) (No. B294016), 2019 WL 4564163 (arguing “separate local elections enable voters to focus more closely on local candidates and concerns without dividing their attention between local and statewide contests”); Editorials, *City Elections Belong in April*, GRAND JUNCTION DAILY SENTINEL, https://www.gjsentinel.com/opinion/editorials/city-elections-belong-in-april/article_798deef0-de93-11eb-a44c-6730a692cd19.html (last updated Aug. 11, 2022) [<https://perma.cc/969D-PZZE>] (claiming city council elections should “stand on their own” because “the city’s issues could easily get buried in a general election”).

¹³⁶ Augenblick & Nicholson, *supra* note 133, at 460.

studies have found that some roll off, particularly among younger voters, results from moving off-cycle elections to coincide with statewide or national contests, it is modest compared to the increase in turnout and the representational gains obtained by moving to concurrent elections.¹³⁷

2. Increasing Housing Development Is a Matter of Statewide Concern

In addition to promoting the statewide concern of equal representation, an expanded CVPRA can also satisfy the third prong of the *Cal Fed/Vista* test under the theory that increasing housing development is a matter of statewide concern. The California Supreme Court and multiple courts of appeal have repeatedly recognized that the provision of housing is a matter of statewide concern.¹³⁸ In *Green v. Superior Court*, the California Supreme Court recognized that contemporary conditions supported adoption of a common law implied warranty of habitability in residential leases, noting “urbanization and population growth have wrought an enormous transformation in the contemporary housing market, creating a scarcity of adequate low cost housing in virtually every urban setting.”¹³⁹ Although the court in *Green* did not consider housing scarcity as part of a preemption analysis, several courts of appeal have pointed to the abovementioned passage in *Green* in the context of state preemption of charter cities to support the proposition that the housing shortage is a statewide concern.¹⁴⁰ Additionally, in *California Building Industry Association v. City of San Jose* — a case concerning the constitutionality of a local inclusionary housing ordinance — the California Supreme Court emphasized that the “lack of affordable housing is a very significant problem in this state.”¹⁴¹

¹³⁷ See Anzia, *supra* note 13, at 413; Hajnal et al., *supra* note 12, at 381.

¹³⁸ See *Cal. Bldg. Indus. Ass’n v. City of San Jose*, 351 P.3d 974, 977 (Cal. 2015); *Green v. Superior Ct.*, 517 P.2d 1168, 1173 (Cal. 1974); *Reugg & Ellsworth v. City of Berkeley*, 277 Cal. Rptr. 3d 649, 675 (Ct. App. 2021); *Anderson v. City of San Jose*, 255 Cal. Rptr. 3d 654, 671 (Ct. App. 2019).

¹³⁹ *Green*, 517 P.2d at 1173.

¹⁴⁰ See *Reugg & Ellsworth*, 277 Cal. Rptr. 3d at 675; *Anderson*, 255 Cal. Rptr. 3d at 672.

¹⁴¹ *Cal. Bldg.*, 351 P.3d at 977.

Moreover, the California Legislature has declared that the housing shortage is a matter of statewide importance.¹⁴² In relevant part, California Government Code section 65589.5, subdivision (g) states: “This section shall be applicable to charter cities because the Legislature finds that the lack of housing, including emergency shelter, is a critical statewide problem.”¹⁴³ Although legislative declarations of intent to preempt local law are not determinative for the purpose of establishing a statewide concern,¹⁴⁴ courts accord them “great weight.”¹⁴⁵ Given the lack of evidence to refute the Legislature’s determination, a court should follow the Legislature’s lead and find that increasing housing development is a matter of statewide concern.

D. The CVPRA Is Reasonably Related and Narrowly Tailored

1. The CVPRA Is Reasonably Related and Narrowly Tailored as It Relates to the Statewide Interest in Equal Representation in Municipal Elections

The fourth and final prong of the *Cal Fed/Vista* test requires the court to determine whether the state law is “reasonably related to the resolution of the statewide concern and narrowly tailored to avoid unnecessary interference in local governance.”¹⁴⁶ In this case, recent court precedent suggests the CVPRA, as applied to charter cities, would be reasonably related and narrowly tailored to the statewide interest in equal representation in municipal elections.¹⁴⁷ In *Jauregui*, the Second District Court of Appeal held that the CVRA was reasonably related to the statewide concerns of the right to vote, equal protection, and integrity of elections, since it gave citizens the authority to challenge city elections and permitted courts, upon a finding of vote dilution, to impose

¹⁴² See CAL. GOV’T CODE § 65589.5 (2022).

¹⁴³ *Id.* § 65589.5(g).

¹⁴⁴ *DeVita v. County of Napa*, 889 P.2d 1019, 1032 (Cal. 1995).

¹⁴⁵ *Baggett v. Gates*, 649 P.2d 874, 878 (Cal. 1982).

¹⁴⁶ *State Bldg. & Constr. Trades Council v. City of Vista*, 279 P.3d 1022, 1027 (Cal. 2012) (citing *Cal. Fed. Sav. & Loan Ass’n v. City of Los Angeles*, 812 P.2d 916, 925 (Cal. 1991)).

¹⁴⁷ *Cf. Jauregui v. City of Palmdale*, 172 Cal. Rptr. 3d 333, 347 (Ct. App. 2014) (holding that the CVRA was reasonably related and narrowly tailored).

remedies to alleviate the problem.¹⁴⁸ It further held that the CVRA was narrowly tailored to avoid unnecessary interference in local governance since it not only did not apply to cities that elect city council members by district, but also only applied to cities that hold city-wide council elections if vote dilution has occurred.¹⁴⁹

A reviewing court should apply a similar rationale to the CVPRA. The CVPRA is structured similarly to the CVRA — it allows any voter to file a civil action against the political subdivision in which they reside alleging noncompliance¹⁵⁰ and grants courts the authority to provide appropriate remedies upon a finding of noncompliance, including “the imposition of concurrent election dates for future elections.”¹⁵¹ As such, a court should find it is reasonably related to the statewide concern of equal representation in municipal elections. Moreover, a court should conclude the CVPRA is narrowly tailored since it not only does not apply to cities that hold on-cycle local elections, but also only applies to cities that hold off-cycle local elections with a voter turnout that is at least 25% less than the average voter turnout in the four most recent statewide general elections.¹⁵²

2. The CVPRA Is Reasonably Related and Narrowly Tailored as It Relates to the Statewide Interest in the Provision of Housing

Assuming a reviewing court recognizes increasing the supply of housing is a matter of statewide concern, the court will also have to determine whether the CVPRA is reasonably related and narrowly tailored to that concern. The court should find the CVPRA is reasonably related to increasing residential development, since research suggests that moving off-cycle local elections to coincide with statewide elections would result in cities approving more new construction permits and subsequently decrease housing prices.¹⁵³

Opponents may contend that the CVPRA cannot be narrowly tailored with respect to increasing the supply of housing since the law has only

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ CAL. ELEC. CODE § 14055 (2022).

¹⁵¹ *Id.* § 14053.

¹⁵² *Id.* § 14051(b).

¹⁵³ *See* Ornstein, *supra* note 91, at 26.

indirect effects on housing and because the state could enact many other laws to more directly combat the housing shortage with less interference into municipal governance. However, the California Supreme Court has never interpreted “narrowly tailored” in the home-rule context to be a strict requirement that can only be satisfied where the state shows that there are no less restrictive alternatives.¹⁵⁴ Indeed, the only home-rule case in which the California Supreme Court has addressed the narrowly tailored principle is *Cal Fed*.¹⁵⁵ In *Cal Fed*, the court refused to closely examine the Legislature’s decision to eliminate local taxes on savings bank.¹⁵⁶ However, the *Cal Fed* court did note one express limitation on its deference to the legislature — “the sweep of the state’s protective measures may be no broader than its interest.”¹⁵⁷ At the narrowly tailored stage, significant deference to the legislature is appropriate since the court has already determined, by means of a probing inquiry, that a statewide interest exists.¹⁵⁸ Thus, given the extreme nature of the housing shortage¹⁵⁹ and evidence that shifting the date of local elections can increase the supply of affordable housing,¹⁶⁰ the court should defer to the Legislature and hold that the CVPRA is narrowly tailored to the statewide interest in increasing the supply of housing.

Moreover, deference to the Legislature is particularly appropriate in this case given that previous legislative efforts to address the housing crisis have failed, largely due to resistance by local governments. Two particularly illustrative examples include local efforts to undermine the Housing Accountability Act (“HAA”)¹⁶¹ and outright defiance of state law regarding “accessory dwelling units” (“ADUs”).¹⁶² Originally enacted in

¹⁵⁴ See Brief for Law Professors Christopher S. Elmendorf, Michelle Wilde Anderson, Anika Singh Lemar, Dave Owen, Darien Shanske & Kenneth Stahl as Amici Curiae Supporting Petitioners at 33-34, *Cal. Renters Legal Advoc. & Educ. Fund v. City of San Mateo*, 283 Cal. Rptr. 3d 877 (Ct. App. 2021) (No. A159320), 2021 WL 4129452.

¹⁵⁵ *Id.* at 33.

¹⁵⁶ See *Cal. Fed. Sav. & Loan Ass’n v. City of Los Angeles*, 812 P.2d 916, 931 (Cal. 1991).

¹⁵⁷ *Id.*; see Brief for Law Professors, *supra* note 154, at 35.

¹⁵⁸ See Brief for Law Professors, *supra* note 154, at 35.

¹⁵⁹ See CAL. GOV’T CODE § 65589.5 (2022); CAL. HEALTH & SAFETY CODE § 50003 (2022).

¹⁶⁰ See Ornstein, *supra* note 91, at 26.

¹⁶¹ See Assemb. B. 1515, 2017-2018 Leg., Reg. Sess., 2017 Cal. Stat. 3085.

¹⁶² See Margaret F. Brinig & Nicole Stelle Garnett, *A Room of One’s Own? Accessory Dwelling Unit Reforms and Local Parochialism*, 45 URB. LAW. 519, 547 (2013).

1982, the HAA sought to compel local governments to approve more housing by limiting the ability of local governments to disapprove of development projects that comply with applicable planning, zoning, and development policies.¹⁶³ The Legislature amended the HAA in 1990 to make it expressly applicable to charter cities,¹⁶⁴ and in doing so, made several notable findings, including that “the excessive cost of the state’s housing supply is partially caused by the activities and policies of many local governments which limit the approval of affordable housing.”¹⁶⁵ In response to continued resistance by local governments, the Legislature subsequently amended the HAA in 1999,¹⁶⁶ 2002,¹⁶⁷ 2005,¹⁶⁸ 2016,¹⁶⁹ and 2017.¹⁷⁰ In enacting the 2017 amendments, which significantly strengthened the enforcement provisions of the HAA, the Legislature made several findings, including implying that the law had repeatedly been undermined by local resistance to housing development.¹⁷¹ Indeed, the Legislature found that “the . . . intent in enacting [the HAA] in 1982 and in expanding its provisions since then was to significant increase the approval and construction of new housing . . . *by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects . . . [t]hat intent has not been fulfilled.*”¹⁷²

Local governments have also effectively defied the Legislature’s attempts to restrict local authority regarding ADUs. In 2002, the

¹⁶³ Gov’t § 65589.5(j)(1); *Cal. Renters Legal Advoc. & Educ. Fund v. City of San Mateo*, 283 Cal. Rptr. 3d 877, 886 (Ct. App. 2021).

¹⁶⁴ Act of Sept. 28, 1990, ch. 1439, 1990 Cal. Stat. 6552, 6554; *Cal. Renters Legal Advoc. & Educ. Fund*, 283 Cal. Rptr. 3d at 886.

¹⁶⁵ Act of Sept. 28, 1990, ch. 1439, 1990 Cal. Stat. 6552.

¹⁶⁶ See Act of Oct. 10, 1999, ch. 968, 1999 Cal. Stat. 6992, 6999-7004; see also *Cal. Renters Legal Advoc. & Educ. Fund*, 283 Cal. Rptr. 3d at 886 (noting the amendment served to “narrow the kinds of policies that could be invoked to defeat an application”).

¹⁶⁷ See Act of July 10, 2002, ch. 147, 2002 Cal. Stat. 746; see also *Cal. Renters Legal Advoc. & Educ. Fund*, 283 Cal. Rptr. 3d at 887.

¹⁶⁸ See Act of Oct. 6, 2005, ch. 601, 2005 Cal. Stat. 4486; see also *Cal. Renters Legal Advoc. & Educ. Fund*, 283 Cal. Rptr. 3d at 887 (“[A] 2005 amendment authorized fines if a local agency denied a project in bad faith.”).

¹⁶⁹ See Assemb. B. 2584, 2015-2016 Leg., Reg. Sess., 2016 Cal. Stat. 3310.

¹⁷⁰ See Assemb. B. 1515, 2017-2018 Leg., Reg. Sess., 2017 Cal. Stat. 3085.

¹⁷¹ *Id.*

¹⁷² *Id.* at 3086 (emphasis added).

Legislature enacted a mandate requiring local governments to amend their zoning laws to permit ADUs in single-family zones or comply with a state-dictated regulatory regime. If the local government did neither, the law required them to demonstrate why they could not conform to the state mandate.¹⁷³ Some cities¹⁷⁴ chose to expressly defy the law, either by refusing to act or passing local ordinances that were clearly inconsistent with the mandate. Other cities¹⁷⁵ engaged in “passive resistance” by amending their zoning laws to permit ADUs but also enacting costly regulatory requirements that would dramatically reduce the likelihood that ADUs will be developed.¹⁷⁶

Thus, since previous legislative efforts to combat the statewide housing crisis have been thwarted by local governments and the CVPRA targets the political incentives of local elected officials by changing the date of local elections, the court should defer to the Legislature and hold that the CVPRA is narrowly tailored to the statewide interest in increasing the supply of housing.

III. SOLUTION

To ensure all cities in California — both general law cities *and* charter cities — hold municipal elections with an electorate that is representative of the local voting-eligible population, California should enact the following law. This proposed statute would address the decision in *City of Redondo Beach v. Padilla* by expressing a clear intent for the CVPRA to apply to charter cities.¹⁷⁷

¹⁷³ Brinig & Garnett, *supra* note 162, at 523.

¹⁷⁴ As of 2013, “expressly defiant” cities included Los Angeles and San Francisco. *Id.* at 547-51.

¹⁷⁵ As of 2013, “passive resisters” included Alameda, Chula Vista, Folsom, and San Bernardino. *Id.* at 557-61.

¹⁷⁶ *Id.* at 547.

¹⁷⁷ See *City of Redondo Beach v. Padilla*, 260 Cal. Rptr. 3d 263, 272-75 (Ct. App. 2020). In *Padilla*, the court noted that the CVPRA borrowed the definition of “political subdivision” from the California Voting Rights Act (“CVRA”). *Id.* at 272. The court further noted that just weeks before the CVPRA was introduced, a co-author of the CVPRA introduced legislation to amend the CVRA’s definition of “political subdivision” to “clarify the CVRA’s application to charter cities and counties.” *Id.* The legislation proposed in this Note is adopted from that bill. See A.B. 277, 2015-2016 Leg., Reg. Sess., 2015 Cal. Stat. 5434.

The people of the State of California do enact as follows:

Section 14051 of the Elections Code is amended to read:

14051. As used in this chapter:

(a) “Political subdivision” means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county city, charter city and county, a school district, a community college district, or other district organized pursuant to state law.

(b) “Significant decrease in voter turnout” means the voter turnout for a regularly scheduled election in a political subdivision is at least twenty-five percent less than the average voter turnout within that political subdivision for the previous four statewide general elections.

(c) “Voter turnout” means the percentage of voters who are eligible to cast ballots within a given political subdivision who voted.

CONCLUSION

The California State Legislature should pass legislation to extend the CVPRA to apply to charter cities. Extending the CVPRA to charter cities would ensure that all cities in California — regardless of whether they are a general law city or charter city — hold municipal elections that feature an electorate that is representative of the local voting-eligible population. Moreover, extending the CVPRA to charter cities could help address the state’s housing crisis by decreasing the influence of homeowners, who exercise disproportionate influence in off-cycle elections,¹⁷⁸ resulting in policies that increase housing development and lower housing prices.¹⁷⁹

Opponents may claim that while extending the CVPRA to charter cities would promote the important policy goals mentioned above, it would also unconstitutionally infringe on the home rule authority of charter cities. However, if a charter city challenged the law, the CVPRA would likely pass constitutional muster under the four-prong *Cal Fed/Vista* preemption test. First, the timing of local elections is a “municipal

¹⁷⁸ See Anzia, *supra* note 13, at 424; Berry & Gersen, *supra* note 13, at 55; Ornstein, *supra* note 91, at 13-14.

¹⁷⁹ See Ornstein, *supra* note 91, at 26.

affair.”¹⁸⁰ Second, the CVPRA would likely conflict with the charter of the city bringing the potential challenge.¹⁸¹ Third, the lack of equal representation in the electorate of municipal elections¹⁸² or increasing housing development¹⁸³ — or both — constitutes a matter of statewide concern. Fourth, the CVPRA is reasonably related and narrowly tailored to either statewide concern.¹⁸⁴ Given that an extended CVPRA would promote important policy goals and survive any potential constitutional challenge, the state Legislature should take action to extend the CVPRA to apply to charter cities.

¹⁸⁰ See CAL. CONST. art. XI, § 5; see also *Socialist Party v. Uhl*, 103 P. 181, 186 (Cal. 1909); *Mackey v. Thiel*, 68 Cal. Rptr. 717, 720 (Ct. App. 1968).

¹⁸¹ See *City of Redondo Beach*, 260 Cal. Rptr. 3d at 269 (“If construed to apply to charter cities, the [C]VPRA conflicts with the City’s charter, requiring the City to adopt an ordinance altering the date of its municipal elections.”).

¹⁸² See *supra* Part II.C.1.

¹⁸³ See *supra* Part II.C.1.

¹⁸⁴ See *supra* Part II.D.1, II.D.2.