Superior Court of California
County of San Bernardino
247 W. Third Street, Dept. S23
San Bernardino, CA 92415-0210

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO,
Plaintiff,

v

LYNNA MONELL, Clerk of the Board of Supervisors of the County of San Bernardino, et al,
Defendants

Case No.: CIVSB2025319

RULING ON PETITION FOR WRIT OF MANDATE

This matter came before the Court for a hearing on a Petition for Writ of Mandate by the Board of Supervisors of the County of San Bernardino. The Court has reviewed and considered the Petition, the briefs of the parties and the arguments of counsel and issues its ruling as follows:

PROCEDURAL/FACTUAL BACKGROUND

This litigation is a challenge to the implementation of voter-approved Measure K. On December 2, 2020, Petitioner Board of Supervisors of the County of San Bernardino ("Board") filed their Petition and Complaint against Respondent Lynna Monell, in her official capacity as the Clerk of the Board of Supervisors of the County of San Bernardino. Later, Nadia Renner was permitted to intervene as a respondent in light of her standing as the proponent of Measure K. The Petition/Complaint pleads three

claims: (1) writ of mandate, (2) injunctive relief, and (3) declaratory relief. Respondent Monell answered.

Petitioner Board alleges and argues the November 3, 2020, voter adoption of Measure K, which seeks to amend the County charter, is unconstitutional, legally invalid, and/or unenforceable (¶¶1, 20, 33-34, 41, 49, 57, 60, and 65).

After the filing of the Board's Petition, Inland Oversight Committee ("IOC") filed a writ petition against Lynna Monell, Curt Hagman, and Bob Page in their official capacities as Clerk of the Board of Supervisors, Chair of the Board of Supervisors, and Registrar of Voters with the County of San Bernardino (CIVSB2028114). Renner later intervened with her own petition. Both petitions seek redress by having the Court order Monell, Hagman, and Page to comply with their ministerial duties of ratifying/implementing Measure K.

Lastly, Gage Bruce and The Red Brennan Group filed a Complaint for declaratory relief and injunctive relief against the Board and the County seeking a finding the County/Board's Measure J is invalid and holding it may not be implemented (CIVSB2104907).

On June 8, 2021, the Court related the three matters.

Under the writ petition solely, Petitioner Board filed its opening brief to declare Measure K invalid and unenforceable in whole or in part. Respondent Monell filed an opposition that merely stated she was taking no substantive position. Intervener Renner filed a substantive opposing brief. Petitioner Board replies.

Also, on the calendar is IOC/Renner's Writ Petition in the related CIVSB2028114 matter.

DISCUSSION

Statement of the Law

Code of Civil Procedure section 1085, subdivision (a) grants any court the power to issue a writ of mandate to "any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and

enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." The writ must be issued in cases where there is no plain, speedy, and adequate remedy in the ordinary course of law. (Code Civ. Proc., §1086.)

If an agency acts in its ordinary Legislative authority, review of its action is by ordinary mandamus with the review limited to whether the action was "arbitrary, capricious, or entirely lacking in evidentiary support" or whether the legislative agency "failed to follow the procedure and give the notices required by law." (*Strumsky v. San Diego County Employees Retirement Assn* (1974) 11 Cal.3d 28, 34, fn. 2; *Taylor Bus. Serv. v. San Diego Board of Educ.* (1987) 195 Cal.App.3d 1331, 1340 ["*Taylor Bus.*"].)

Although "arbitrary and capricious" has no precise meaning, courts have indicated it includes conduct that is not supported by a fair or substantial reason or a stubborn insistence on following an unauthorized course of action. (*A.B.C. Federation of Teachers v. A.B.C. Unified School Dist.* (1977) 75 Cal.App.3d 332, 343; *Madonna v. County of San Louis Obispo* (1974) 39 Cal.App.3d 57, 61-62.) An agency's action lacks evidentiary support if its decision is unsupported by substantial evidence. (*Taylor Bus., supra,* 195 Cal.App.3d at p. 1340.) Substantial evidence is relevant evidence that a reasonable mind might accept as adequate support for a conclusion. (*Ibid.*; *Hill v. National Collegiate Athletic Assn* (1994) 7 Cal.4th 1, 51 ["Substantial is not any evidence-it must be reasonable in nature, credible, and of solid value."].)

In reviewing the legislative action, the court may not reweigh the evidence and must view the evidence in the light most favorable to the legislative actor and indulge all reasonable inferences in support thereof. (*Taylor Bus., supra,* 195 Cal.App.3d at p. 1340.) "A presumption exists that an administrative action was supported by substantial evidence." (*Id.* at p. 1341.)

Judicial Notice[1]

[1] "Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." *Kilroy v. State of California* (2004) 119 Cal.App.4th 140, 145.

Intervener Renner requests judicial notice of the County's Charter (Exh. A), text of the Compensation of County Supervisors, Proposition 12 (1970) (Exh. B), text of the County Supervisor compensation Reduction and Term Limits Initiative [i.e., Measure K] (Exh. C), and the Certificate of the Statement of the Vote of the November 3, 2020 Election (Exh. D). GRANT judicial notice per Evidence Code section 452, subdivision (c).

Analysis

At the November 2020 election, the voters approved Measure K. Measure K approved amendments to the County's Charter in two regards: (1) compensation of the Board of Supervisors shall be $5,000 per month, which includes the actual costs to the County for all benefits, which includes salary, allowances, credit cards, health insurance, life insurance, leave, retirement, membership, portable communications devices, and vehicle licenses; and (2) the Board of Supervisors shall be elected to office to serve one term.[2] (Exhs. 1 & 4 to Sanders' Decl.; RJN, Exh. B.)

The County of San Bernardino is a charter county. (*Penrod v. County of San Bernardino* (2005) 126 Cal.App.4th 185, 190 ["*Penrod*"].)

1. Supervisors' Compensation

In challenging the constitutionality and/or validity of the compensation section of Measure K, the Board makes two arguments. The Board argues its compensation cannot be implemented by voter initiative. And the voter initiative intrudes into a matter exclusively delegated to the Board.

Initially, the California Supreme Court notes, "[W]e will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors-including local employee compensation decisions [citation]-are subject to initiative and referendum." (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 777; *see also DeVita v. County of Napa* (1995) 9 Cal.4th 763, 777 {"*DeVita*"} [noting local voters right to legislate by initiative is presumed on any subject the local governing body could also legislate, and "[i]f doubts

[2] The term is 4-years. (RJN, Exh. A [art. I, §2].)

can [be] reasonably resolved in favor of the use of [the] reserve initiative power, courts will preserve it."].)

Generally, under the California Constitution, the Legislature shall provide for county powers and an elected governing body in each county. (Cal. Const., art. XI, §1, subd. (b).) But when a county adopts a charter, its provisions are the law of the state and have the force and effect of legislative enactments. (*Dimon v. County of Los Angeles* (2008) 166 Cal.App.4th 1276, 1281-82 ["*Dimon*"].) "Under the 'home rule' doctrine, county charter provisions *concerning the operation of the county* ... trump conflicting state laws." (*Id.* at p. 1282; *see also* Cal. Const., art. XI, §4, subd. (g); *Penrod, supra,* 126 Cal.App.4th at p. 190.)

For counties in general, "Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum." (Cal. Const., art. XI, §1, subd. (b).) Now for charter counties, the charter versus an ordinance shall set forth the governing body's compensation, terms, and removal.[3] (Cal. Const., art. XI, §4, subd. (b).) Interplaying with these constitutional provisions is Government Code section 25300 that states, in relevant part, "The board of supervisors shall prescribe the compensation of all county officers[4]...."

Based on these two constitutional provisions and the government code, the governing body of a non-charter county will set forth their compensation by an ordinance, subject to referendum,[5] and the governing body of a charter county will set

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[3] Quickly, the Constitution at article XI, section 4, subdivision (b) also provides if the charter states the Legislature sets the governing body's compensation, then the compensation is set by the governing body through an ordinance. But that language is irrelevant here because the County's charter does not provide for the Legislature to set their salary. (RJN, Exh. A [art. VI, §1].)

[4] County officer includes the members of the board of supervisors. (Gov. Code, §24000, subd. (o).)

[5] *See Meldrim, supra,* 57 Cal.App.3d at pp. 343-44 (holding the initiative process cannot be used to challenge compensation set by an ordinance per article XI, section 1, subdivision (b) of the California Constitution); *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, 1254 (reaffirming *Meldrim's* opinion that article XI, section 1, subdivision (b) does not provide for an initiative process to set a local county's governing board's compensation) ["*Jahr*"].

forth their compensation within the county's charter.[6] (*Meldrim v. Board of Supervisors* (1976) 57 Cal.App.3d 341, 343 ["*Meldrim*"].) The County is a charter county. Thus, its charter sets the Board's compensation.

Nevertheless, constitutionally, a charter may be amended or repealed by the initiative process.[7] (Cal. Const., art. XI, §3, subd. (b).) So the argument goes, since the County's charter sets the Board's compensation and the charter can be amended by the initiative process, then constitutionally, the voters through the initiative process may amend the compensation provision within the charter. In *San Francisco Fire Fighters v. Board of Supervisors* (1979) 96 Cal.App.3d 538, 543 "*San Fran Fire Fighters*"), the Supreme Court recognized article XI, section 3, subdivision (b) of the Constitution gave the board of supervisors the unabridged right to propose charter amendments to the city electors. And this includes the right to propose amendments concerning wages, hours, and conditions of employment. (*Id.* at pp. 542-45.) But this constitutional provision also gives the right of amending charters by the initiative power thereby indicating the initiative process may also amend the compensation provisions within a charter. (*Id.* at p. 545.)

Thus, all implication is an initiative may be permissible to amend a charter, including the charter's provision setting the salaries of the governing body. But this leads to the next inquiry of whether despite such appearing to be the case, the initiative process cannot amend a charter's provision addressing the governing body's compensation because setting their compensation is a matter exclusively delegated to the governing body.

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[6] Now if the charter provided for the compensation to be set by the Legislature, then the governing board would set their compensation through the ordinance procedure, which arguably can be challenged through a referendum. (*See, e.g., Meldrim, supra,* 57 Cal.App.3d at pp. 343-44; *Jahr, supra,* 70 Cal.App.4th at p. 1254.)

[7] In its Reply, the Board for the first time references that the initiative process may not be used to revise a charter, but only to amend it. The statement is accurate under the language within article XI, section 3, subdivision (b) of the Constitution. But the Board in its opening brief never argued Measure K revises the charter versus amending it to render it invalid. Thus, the contention being asserted in the Reply is a new argument that is not considered.

As seen above, for charter counties, the charter sets the governing body's compensation, as determined by the governing body. (Cal. Const., art. XI, §1, subd. (b) and §4, subd. (b); Gov. Code, §25300.) Yet the governing body may only propose revisions and amendments to a charter. (Cal. Const., art. XI, §3, subd. (b).) The adoption of those proposals is by the voters at an election. (Gov. Code, §§23710, 23711, 23712.) Thus, the Board never truly sets its compensation; it only proposes its compensation with the voters having final approval.

Now, case law holds the power of the initiative process can be restricted and precluded when the Legislature delegates certain authority exclusively to the local governing body. (*DeVita, supra,* 9 Cal.4th at p. 776; *Gates v. Blakemore* (2019) 39 Cal.App.5th 32, 38 ["*Gates*"].) The *DeVita* Court found the following factors were paramount in determining if authority is exclusively delegated to the local governing body: "(1) statutory language, with reference to 'legislative body' or 'governing body' deserving of a weak inference that the Legislature intended to restrict the initiative and referendum power, and reference to 'city council' and/or 'board of supervisors' deserving of a stronger one [citation]; (2) the question whether the subject at issue was a matter of 'statewide concern' or a 'municipal affair,' with the former indicating a greater probability of intent to bar initiative and referendum [citation]." (*DeVita, supra,* 9 Cal.4th at p. 776.) Other indications of the Legislature's intent can also be considered. (*Ibid.*)

Under the first paramount factor, Government Code section 25300 speaks of the board of supervisors setting the county officers' compensation and county officer includes the members of the board of supervisors. Here "board of supervisors" is used twice whereby a stronger inference of the intent to restrict the initiative process could exist. But the general constitutional provision references the governing body setting its members' compensation. (Cal. Const., art. XI, §1, subd. (b).) By the constitutional provision, a weaker inference exists to the Legislature intending the governing body to have exclusive authority to set their compensation. On the second paramount factor, case law notes wages embraced in a charter are a matter of local, not statewide,

concern. (*Dimon, supra,* 166 Cal.App.4th at p. 1281; *San Fran Fire Fighters, supra,* 96 Cal.App.3d at pp. 543-44.)

Using the *DeVita* standard, there is no clear indication that the Legislature intended the governing body to exclusively hold the right to set their salary within the charter and exclude the use of the initiative power to amend the charter associated with the governing body's compensation.

The Board relies on *Gates, supra,* as supporting it holds the exclusive authority to set their salary. In *Gates,* the 4th District Court of Appeal found the Constitution at article XI, section 4, subdivision (f), which addresses the governing body fixing and regulating the number of employees, and prescribing their compensation, is an exclusive authority given to the supervisors whereby an initiative cannot seek to set limits on the minimum or the maximum number of employees, limits on employees' compensation, and mandate the duties of employees. (*Gates, supra,* 39 Cal.App.5th at p. 39.) Now, under article XI, section 1, subdivision (b) and section 4, subdivision (b), the governing body is authorized to set their compensation within the charter; however, as noted above, the setting of the compensation is subject to voter approval. Additionally, the *Gates* constitutional provision concerned the charter providing for fixing, regulating, and compensating non-elected employees with the specific compensation, duties, and terms of employment provided under an ordinance or a resolution. (Gov. Code, §25300.) In contrast, the compensation of the elected governing body is to be specifically defined in the charter. And that specific compensatory language may only be adopted through the voter process. And the adoption process includes the use of an initiative to amend the charter. (Cal. Const., art. XI, §3, subd. (b).)

Considering all the above with the principal voter initiative power should be upheld lends to concluding the initiative process may alter the Board's compensation provision. Therefore, (a) as the County's charter sets the compensation package for the governing body (versus by ordinance), (b) the California Constitution allows voters the power through the initiative process to amend a county charter with no showing the

Legislature expressly or by a clear intent excluded from the initiative power the right to amend a charter's provision that sets the governing body's compensation, and (c) amendments to a county charter is through the election process, the Board is incorrect in concluding Measure K's compensation provision is unconstitutional and/or invalid since it was amended through the initiative power.

2. Term Limits

In challenging the constitutionality of the term limit provision in Measure K, the Board argues it violates the 1st and 14th amendments of the U.S. Constitution.

The 1st amendment's right of association covers the fundamental right to vote. (*Burdick v. Takushi* (1992) 504 U.S. 528, 433 ["*Burdick*"].) That right is imposed on the state through the 14th amendment. When a law seeks to hinder that right, the courts will weigh "'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" (*Id.* at p. 434; *Legislature v. Eu* (1991) 54 Cal.3d 492, 517 ["*Eu*"].)

The standard of the inquiry on the restrictive voter law depends on the extent the regulation burdens the 1st and 14th amendments. (*Burdick, supra,* 504 U.S. at p. 434.) In other words, if the restriction severely hinders the rights under the 1st and 14th amendments, then the restriction must be narrowly drawn to advance a state interest of compelling importance; but if the restriction imposes only reasonable, nondiscriminatory restrictions, then a state's important regulatory interests are generally sufficient to justify the restriction. (*Burdick, supra,* 504 U.S. at p. 433; *Bates v. Jones* (9th Cir. 1997) 131 F.3d 843, 846.)

Now, neither side disputes the right of the electorate to impose term limits on a County's board of supervisors. (Gov. Code, §25000, subd. (b) ["Notwithstanding any other provision of law, the board of supervisors of any general law or charter county may adopt or the residents of the county may propose, by initiative, a proposal to limit

... the number of terms a member of the board of supervisors may serve...."]; *Eu, supra,* 54 Cal.3d at p. 524.)

The issue here is whether imposing a one-term limit, i.e., any person may only be elected once to the Board for one 4-year term, creates an unreasonable burden on the voters' right to vote and an incumbent's right to seek office.

As indicated by the Board and case law, the rights at issue are the right of the electorate to vote for the candidate of their choice and the right of an incumbent to run for his office again. (*See, e.g., Eu, supra,* 54 Cal.3d at p. 514; *Bates v. Jones, supra,* 131 F.3d at p. 847.) So the first question is whether such a burden is severe to require the strict scrutiny analysis or not so severe to impose a general balancing test. Per the 9th Circuit, the imposition of term limits on state officeholders is a neutral candidacy qualification that a state has the right to impose, and lifetime term limits do not constitute a discriminatory restriction. (*Bates v. Jones, supra,* 131 F.3d at p. 847.) Thus, indicating any burden is not severe. But the Northern District Court of Appeal held a term limit excluding permanently a class of candidates and depriving voters of the right to cast votes for the candidate of their choice constitutes a severe infringement of their associational rights. (*Bates v. Jones* (N.D.Cal. 1995) 904 F.Supp. 1080, 1096.)

Here, since Measure K's voter-adopted term limit is not merely about limiting the term but limiting the term to one time, the burden on voter's and incumbent's rights is a severe restriction versus a slight restriction.

Per the proponents of Measure K, the one-term limit is about ensuring the attraction of representatives interested in public service and committed to following the will of the people. Its purpose is to shut out outside interest groups and focus the leaders on doing what is best for the voters. "Measure K will ensure our elected officials are inspired by service to San Bernardino County residents, not an oversized paycheck or raising money to win their next election." (Exh. 9 to Sanders' Decl.)

So what the Court is presented with is balancing the one-term limit imposing a burden on a voter's right to choose the candidate of his/her choice, i.e., re-elect an

incumbent who is performing competently, and an incumbent's right to seek re-election against the interest of the voters ensuring the members of the Boards are there to serve the public interest, committed to following the will of the people, and not be influenced by interest groups or the need to seek re-election.

Under a strict scrutiny analysis, the burden imposed of a one-term limit is not narrowly drawn to meet the interest stated for adopting Measure K. The stated interest for Measure K can arise by reducing the salary of the supervisors (as done) or imposing a reasonable number of times an incumbent can be re-elected without precluding the candidate never being able to seek re-election and never allowing a voter to re-elect a candidate they believe is performing competently. Furthermore, the state interest of stopping an incumbent from being distracted with re-election during his tenure is not stopped by merely limiting him to one term, as the incumbent may then be distracted by seeking election to another office or seeking a job after his term ends. So that stated reason is not justifying precluding the rights of voters and incumbents under the 1st and 14th amendments.

Even under a general balancing test, the stated reason is not sufficient to justify imposing the burden precluding an incumbent from seeking re-election. In *Eu,* the Supreme Court recognized a lifetime term limit on the State Senators and Assembly only arose after the incumbent has served a significant period in office. (*Eu, supra,* 54 Cal.3d at pp. 517-18, 519.) The same cannot be said here. A supervisor will be serving only 4 years versus a Senator serving 8 years and Assembly Member serving 6 years before they are precluded from holding the same position. A one-term limit is not providing a supervisor sufficient time in the governing body position.

Additionally, although an electorate has no constitutional right to vote for a particular candidate [*Eu, supra,* 54 Cal.3d at pp. 518-19], the desire to ensure a candidate seeks to serve the public interest cannot justify then precluding a candidate or electing an incumbent he believes is serving the interest of the voters at least for one or two additional terms of office. And a reasonable remedy exists if the incumbent

seeking re-election is not performing competently: the electorate vote for the other candidate.

Based on the foregoing, Measure K imposing a lifetime one-term limit imposes a burden that does not reasonably justify the infringement on voters' and incumbents' 1st and 14th amendment rights. Therefore, the term limit provision is unconstitutional, invalid, and unenforceable.

3. Entire Measure K

To the entire measure, Petitioner Board makes two challenges.

First. The Board contends Measure K, in its entirety, impairs the Board's essential functions.

The initiative process cannot be utilized to impair or destroy "the efficacy of some other government power, the practical application of which is essential...." (*Community Health Ass'n v. Board of Supervisors* (1983) 146 Cal.App.3d 990, 993; *see also Geiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 839-40.)

The Board contends Measure K deprives the County of effective government by changing the full-time leader position to a part-time position. Measure K also usurps the budgetary control and compels the County to violate employment and pension laws in that the County has no legal capacity to adjust pension costs. The Board may be paid less than minimum wages. Also, the term limit provision will result in supervisors continuously being novices on complex issues of county governance.

The County's Chief Executive Officer and Strategic Projects Director attest that the job of a supervisor requires full-time work, 24-hours a day, 7-days a week, so they can be responsive to their constituents. The Board oversees the largest County in the continental U.S. with 20,000 square miles and 24 incorporated cities and towns. A supervisor attends board meetings and sits on boards of other public entities. The position is not part-time. (Hernandez Decl. at ¶¶1, 3-5; McBride Decl. at ¶¶1, 9-11.)

Next, the CEO attests a one-term limit supervisor will negatively affect the County's operation, ability to respond to the citizens, and deliver services. It will reasonably take a supervisor several years to develop a detailed understanding of how

the County functions, the budget works, etc., so a constant turnover of new supervisors will affect operations. The essential functions of the County are interfered with. (Hernandez at ¶¶7-8.)

The Strategic Projects Director notes Measure K listed several items to be included in the $5,000/month compensation, but it is not clear how it should be interpreted particularly with retirement, health benefits, and vehicle allowance. It is presumed retirement refers to the pension system and matching contributions savings plan. But the County's participation in the pension system is in lieu of Social Security whereby the pension is not truly a benefit but a requirement. Thus, the only retirement plan is the matching contribution savings plan. Additionally, the costs of the pension system are based on complex actuarial calculations, so if included in Board's compensation, the hourly rate of pay would be affected by the investment returns in the pension plan. So in a market downturn, a Board member's pay may be less than if served during a good market year even though total compensation is still $60,000/year. (McBride Decl. at ¶¶4-7.) McBride lastly indicates if a Board member insures him and his family with health and dental coverage and participates in the pension plan, he could be paid an hourly rate of less than $15/hour. (McBride Decl. at ¶8.)

Although the language on the compensation provision in Measure K may require interpretation, the Court is not being asked to do that in this proceeding. The question is whether the two provisions in Measure K impair or destroy the Board from performing their essential government power. Such is not demonstrated.

First, nothing in Measure K provides for the position to be part-time, although the language in Measure K references the proposed compensation is to compensate for the part-time services provided by the Board. (Exh. 2 [§1] to Sanders Decl.) The proponents of Measure K believe the Board works part-time for the County. Measure K does limit the compensation to $5,000/month or $60,000/year, inclusive of all benefits. Although the Board's compensation may be diminished, there is nothing in the measure precluding the Board from performing their essential job functions whether it takes them a 40-hour week or 20-hour week to do so. Rather, they will be performing their

job for less money. Even though it is implied the Board may be paid less than minimum wage after deduction of all benefits, such contention is not demonstrated. It is based on speculation.

Second, although the term limit precludes the Board from seeking re-election, it is not precluding a Board member from performing all essential jobs during his/her time in office. Although the competency of the supervisor may be in question if new and constant turnover occurs, it does not equate to the supervisor being unable to perform or precluded from performing the essential job functions. It may mean the new supervisors will need to lean on the assistance of the County employees even more, but that does not equate to the supervisors' inability to perform their essential job functions.

After considering all evidence, it is not demonstrated Measure K's salary reduction and one-term limit impairs or destroys the Board's ability to perform any essential duty.

Second. Petitioner Board argues Measure K violated the single-subject rule.

Under the California Constitution, the citizens have the power of the initiative. (Cal. Const., art. II, §§8, subd. (a) and 11, subd. (a), and art. XI, §3, sub. (b).) But the initiative may not embrace more than one subject, and if it does, it has no effect. (Cal. Const., art. II, §8, subd. (d).) Nevertheless, as the initiative power holds an important and favored status under the Constitution, the single-subject rule should not be interpreted to impose an unduly narrow or restrictive requirement on the initiative process accomplishing a comprehensive, broad-based reform in a particular area of public concern. (*Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1157 ["*Senate*"].)

The single-subject rule is not violated "if, despite its varied collateral effects, *all of [the initiative's] parts are 'reasonably germane'* to each other, and to the general purpose or object of the initiative." (*Eu, supra,* 54 Cal.3d at p. 512; *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 245 ["*Brosnahan*"].) Reasonably germane does not mean the provisions are in a functional relationship. (*Eu, supra,* 54 Cal.3d at p. 513.) All that

is necessary is the various provisions are reasonably related to a common theme or purpose. (*Ibid.*) Whether the various provisions are wise or sensible, or will effectively achieve the stated purpose, is not the court's concern when determining if the initiative violates the single-subject rule. (*Id.* at p. 514.)

Under the reasonably germane standard, the Supreme Court found Proposition 140 did not violate the single-subject rule even though it concerned term limits, budget limits, and pension limits, as the common purpose of the proposition was incumbency reform. (*Eu, supra,* 54 Cal.3d at pp. 512-14.) In *Brosnahan,* the Supreme Court found Proposition 8 that had several provisions changing the criminal justice system did not violate the single-subject rule as all were germane to the purpose of protecting the rights of victims and reforming the criminal justice system. (*Brosnahan, supra,* 32 Cal.3d at pp. 242, 247.) On the other hand, the Supreme Court found Proposition 24 violated the single-subject rule when one provision concerned transferring the reapportionment power from the Legislature and the other provisions concerned the Legislature's pay because no common theme or purpose existed between the provisions. (*Senate, supra,* 21 Cal.4th at pp. 1167-68.)

The Board argues the reduction of their compensation is not about incumbency reform but changing their position from full-time to part-time. Cutting a Board's pay is not necessary to reform the incumbency. While setting a term limit is about implementing incumbency reform. Thus, the two provisions are distinct with distinct goals.

The problem with the Board's argument is they are putting their spin behind the purpose of the two provisions in Measure K. As stated before, Measure K's proponents state the purpose or general theme of Measure K is to ensure obtaining people interested and committed to public service and precluding the influence of interest groups. (Exh. 9 to Sanders' Decl.) Under that stated purpose, it cannot be said the two provisions are distinct. They both are reasonably germane to ensuring the member of the Board is about public service versus being paid a high salary or becoming a career politician. Whether this court or the Board believes these two provisions will

achieve that goal is irrelevant. Measure K is similar to Proposition 140 that was found not to violate the single-subject rule. Therefore, the single-subject rule is not violated.

4. Measure K is not Severable

As implied above, if a measure violates the single-subject rule, then the entire measure cannot go into effect. (Cal. Const., art. II, §8, subd. (d); *Cal. Trial Lawyers Ass'n v. Eu* (1988) 200 Cal.App.3d 351, 362 ["Moreover, the language and context of article II, section 8, subdivision (d), precludes judicial surgery to cure single-subject violations."].) However, based on the analysis above, Measure K did not violate the single-subject constitutional provision.

Measure K contains a severability clause. (Exh. 2 [§4] to Sanders' Decl.) Although not conclusive, a severable clause normally will allow for sustaining a part of the enactment while severing the invalid part when mechanically severable. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 821 ["*Calfarm*"].) There are "three criteria for severability: the invalid provision must be grammatically, functionally, and volitionally separable." (*Id.* at pp. 821-22.)

Under the above criteria, the deemed unconstitutional term limit provision is grammatically and functionally separable from the compensation provision. The term limit provision is a distinct and separate provision within Measure K that can be removed without affecting the compensation provision's language. Next, its removal may preclude amending the County's charter to provide for one-term limits but its non-inclusion in the charter will not affect the implementation of the compensation provision.

However, Intervener Renner fails to demonstrate the two provisions are volitionally separable. Nothing is offered that the voters would have voted yes for Measure K if they knew the one-term limit provision would be invalid leading to the measure only covering the Board's compensation. Rather, the two provisions, although grammatically and functionally separate, are intertwined associated with the proponents' advocacy to the voters for Measure K's passage. Thus, it cannot be said

Measure K would pass if one provision were missing. And without establishing volitionally separable, severance cannot be obtained. Therefore, deny severance.

Because severance not applicable. GRANT Board's Writ to precluding the implementation of Measure K's provisions.

5. Any Enacted Provision is Prospective, not Retroactive

This section addresses the Board's arguments given in the alternative if one or both Measure K provisions were found constitutional. Although the compensation provision was found valid and constitutional, because of the lack of severance, it is also not determined to be implemented. Thus, arguably, the alternative arguments need not be addressed. However, the following is offered on the alternative arguments in any case.

On a measure to amend a charter, upon the electors voting in favor of the measure, it is deemed ratified. (Gov. Code, §23712.) But the measure does not become effective until it is accepted and filed with the Secretary of State. (Gov. Code, §23712.)

After voter ratification of a charter amendment measure, the chairperson and clerk of the governing board shall certify and authenticate the amendment, and the county election official shall attest to the same. (Gov. Code, §23713.) One copy of the amendment text is recorded within the county and the other copy is submitted to the Secretary of State. (Gov. Code, §23713.) The Secretary of State shall accept and file the amendment, and upon the acceptance and filing, the amendment becomes operative. (Gov. Code, §23714.)

Compensation Provision. Government Code section 1235 states, "The salary of any elected public office shall not be reduced during an election after any candidate for that particular office has filed the requisite forms declaring his or her candidacy for that particular office." Case law confirms the compensation for an elected official may not be decreased during his elected term of office but the compensation set may affect subsequent terms. (*Regan v. County of San Mateo* (1939) 14 Cal.2d 713, 716-19; *Olson v. Cory* (1980) 27 Cal.3d 537, 543 ["*Olson*"].) To alter a public official's

compensation during his elected term would unconstitutionally impair the contract clause.[8] (*Olson, supra,* 27 Cal.3d at p. 537-38.)

Based on the above law, Intervener agrees the compensation of Supervisors Rutherford and Hagman may not be decreased during their elected terms of office. However, Supervisors Paul Cook, Dawn Rowe, and Joe Baca, Jr.'s compensation can be subject to the $5,000/month provision of Measure K because they were newly elected with their incumbency taking effect after January 1, 2021 (versus the first Monday in December following an election [Charter at art. I, §2 (RJN, Exh. A)], and Measure K was enacted before that.

However, there are three problems with Intervener's positions. First, Government Code section 1235 references one cannot reduce an elected officials' salary during an election after the candidate filed the requisite forms declaring his candidacy. The statute does not refer to the date the elected official takes office. And Measure K was not enacted before Supervisors Cook, Rowe, and Baca declared their candidacies.

Second, the Constitution states the terms for elected officials provided by the Constitution, except members of the Legislature, commence on the Monday after January 1 following the election. (Cal. Const., art. II, §20.) Yet, it governs only elected officials provided by the Constitution. And case law holds "provided by the Constitution" refers to State officers, not municipal, county, or township officers. (*Barton v. Kalloch* (1880) 56 Cal. 95, 103-05; *In re Stuart* (1879) 53 Cal. 745, 748.) Thus, it cannot be said a county cannot set a different commencement date for its elected officials.

Third, per the Constitution, a charter county is permitted to create its own local governments, define its power, describe its boundaries, and prevent interference by the state government. (*Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864, 869.) But, of course, the charter county's power is subject to the matters embraced in the state constitution and statutes. (*Ibid.*) A charter county cannot act in excess of the

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[8] The U.S. Constitution at article I, section 10, clause 1, prohibits a state from making a law that impairs the obligation of contracts.

authority conferred upon it by the Constitution and general state laws. (*Id.* at p. 873.) Nothing is presented by Intervener that the County acted in excess of its authority by setting the date the Board's term commences as the first Monday in December after the election.

The *Olson* Supreme Court found the compensation of a person serving a term in public office is vested upon acceptance of the position. (*Olson, supra,* 27 Cal.3d at pp. 538-39 and fn. 3.) A person holding a public office has an undisputed right to his compensation. (*Id.* at p. 538.) The decision was predicated upon that of a judicial officer, like an elected official, is subject to a specified term in office of which the compensation provided could be reduced when the new term commenced. (*Id.* at p. 540; *Cal Fire Local 2881 v. California Public Employees' Retirement System* (2019) 6 Cal.5th 965, 993 ["*Olson* treated the statutory employment benefits available to a judge at the beginning of his or her term as, in effect, a contract for the length of the term, and its ruling was effective only for the duration of a judge's term. The decision anticipated that upon entering into a new term, judges would be subject to the statutory terms and conditions of employment then in effect."]. It was also predicated upon the fact a judge, like an elected official, enters an office with consideration of the salary benefits offered for that office. (*Olson, supra,* 27 Cal.3d at p. 539.)

Here, Supervisors Cook, Rowe, and Baca took office on December 7, 2020 [the first Monday in December after the November 2020 election]. Although Measure K was ratified by the time the supervisors took office, it was not operable because not approved and filed by the Secretary of State. But, more importantly, the supervisors sought office before Measure K was ratified, and the time they sought the supervisor position, they ran under the compensation package provided for in the County Charter. Thus, under Government Code section 1235, their compensation cannot be reduced by Measure K during their current term in office.

Therefore, if Measure K's compensation package is implemented, then it is prospective on application, i.e., it governs only supervisors elected after it becomes

operable. And in particular, it would not govern Supervisors Rutherford, Hagman, Cook, Row, and Baca under their current terms in office.

Term Limit Provision. Government Code section 25000, subdivision (b) states, in relevant part, "Any proposal to limit the number of terms a member of the board of supervisors may serve on the board of supervisors shall apply *prospectively only* and shall not become operative unless it is submitted to the electors of the county at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal." [Emphasis added.]

By the clear language of the statute, the imposition of a term limit may only apply prospectively. Similar to the above, Intervener concedes the term limits under Measure K would not apply currently to Supervisors Rutherford or Hagman, but will to newly elected Supervisors Cook, Rowe, and Baca. It applies to the latter three because Measure K would have been operable five days after certification of the election results, and they took office on the first Monday after January 1.

First, as addressed above, Intervener is incorrect on the date the Supervisor's term commences. Article II, section 20 of the California Constitution does not govern county elected officers. And the County charter expressly provides for when the Board term commences and nobody offers the court any constitutional or statutory provision that would render that provision invalid. So again, the term of Cook, Rowe, and Baca commenced on December 7, 2020.

Second, under general provisions, an initiative takes effect on the 5th day after the Secretary of State files the statement of the vote for the election that passed the initiative. (Cal. Const., art. II, §10, subd. (a).) But Measure K is not under general initiative procedures as it seeks to amend a county charter, which is permitted under article XI, section 3, subdivision (b) of the Constitution. When through an initiative, a charter is amended, the Government Code provides the steps addressing the charter amendment's ratification and effectiveness (*See supra,* Gov. Code §§23712, 23713, 23714.) The amendment becomes operable after it is provided to the Secretary of State who approves and files it. Because of this litigation that has not occurred. And

even if this litigation did not exist, Measure K's amendments would not have been operable until after the election, and the election of Cook, Rowe, and Baca was under the County's Charter that provided no one-term limit. To apply it to them would be applying it retroactively, which is contrary to Government Code section 25000, subdivision (b).

Therefore, if the term limit provision was constitutional and implemented, it may only be applied prospectively, i.e., it governs only supervisors elected after it becomes operable. And in particular, it does not govern Supervisors Rutherford, Hagman, Cook, Row, and Baca under their current terms in office.

DISPOSITION

(1) GRANT Petitioner Board of Supervisors of the County of San Bernardino's Writ Petition holding Measure K cannot be implemented because (a) the lifetime one-term limit provision violates the 1st and 14th amendments of the U.S. Constitution and (b) the compensation provision is not demonstrated volitionally separable from the unconstitutional/invalid one-term limit provision; and

(2) GRANT Intervener Renner's request for judicial notice.

Dated this 31 day of August, 2021

DONALD ALVAREZ
Judge of the Superior Court

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

SAN BERNARDINO DISTRICT, CIVIL DIVISION

TITLE OF CASE (ABBREVIATED): In the Matter of

BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO v. LYNNA MONELL, Clerk of the Board of Supervisors of the County of San Bernardino, et al

CASE NUMBER: CIVDS2025319

DECLARATION OF SERVICE BY MAIL

My business address is: San Bernardino Superior Court, 247 West Third Street, San Bernardino, California 92415.

I hereby declare that I am a citizen of the United States, over the age of 18, employed in the above-named county, and not a party to nor interested in this proceeding. On September 17, 2021, I deposited in the United States mail at San Bernardino, California, a sealed envelope (postage prepaid) which contained a true copy of the attached:

NAME OF DOCUMENT:

RULING ON PETITION FOR WRIT OF MANDATE

Name and Address of Persons Served:

THE SUTTON LAW FIRM, PC
22815 Ventura Blvd., #405
Los Angeles, CA 91364

Aaron D. Burden, Esq.
THE RED BRENNAN GROUP
P.O. Box 130370
Carlsbad, Ca 92013

Kenneth C. Hardy, Esq.
County of San Bernardino
385 North Arrowhead Ave
San Bernardino, CA 92415

Cory Briggs, Esq.
BRIGGS LAW CORPORATION
99 C Street, Ste 111
Upland, CA 91786

At the time of mailing this notice there was regular communication between the place of mailing and the place(s) to which this notice was addressed.

I declare under penalty of perjury the foregoing to be true and correct.

DATED: September 17, 2021

by Nicci Martinez
Nicci Martinez
Administrative Assistant II