

CAPITOL OFFICE
1021 O STREET
SUITE 6710
SACRAMENTO, CA 95814
(916) 651-4037

DISTRICT OFFICE
2151 MICHELSON DRIVE
SUITE 258
IRVINE, CA 92612
(949) 223-5472

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August 1, 2023

Mayor Tony Strickland
Council Member Rhonda Bolton
Council Member Dan Kalmick
Council Member Natalie Moser

Mayor Pro Tem Gracy Van Der Mark
Council Member Pat Burns
Council Member Casey McKeon

Huntington Beach City Hall
2000 Main Street
Huntington Beach, CA 92648
City.Council@surfcity-hb.org
Via electronic mail

Re: Charter Amendment 702 and Voter Suppression

Dear Mayor Strickland, Mayor Pro Tem Van Der Mark and Councilmembers,

I write to you to express my deep concerns about your City Council Charter Review Ad Hoc Committee's recommended Charter Amendment Section 702,¹ which will be discussed at tonight's City Council meeting. While your Charter Review Ad Hoc Committee has not provided much detail on this proposed Charter Amendment—a lack of transparency which itself raises great concern—what is described raises great concern that this proposed change, either on its face or as implemented, would greatly impede the rights of voters in Huntington Beach to vote in municipal, state, and federal elections.

Specifically, Section 702 is described as follows:

Remove exclusive reliance on State Elections Code for all aspects of elections; add that for Municipal Elections, the City will maintain local control over voter ID provisions for resident verification; require/provide at least 12 polling locations/facilities throughout

¹ "Charter Review Ad Hoc Committee Proposals," Huntington Beach City Council Charter Review Ad Hoc Committee Attachment 1, July 26, 2023, available at <https://huntingtonbeach.legistar.com/View.ashx?M=F&ID=12187416&GUID=CA42FA63-5901-442D-AEA0-AADF06CB3AED>

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the City for in-person voting; and provide that the City will require/provide for monitoring ballot drop boxes.²

As you know, while it is well recognized that charter cities in California have broad authority over local matters,³ this municipal authority is limited and must be consistent with the Constitution and general laws of both the state of California and the United States.⁴ Charter cities have presumptive authority over the “manner” or “conduct” in which municipal elections are carried out, but this authority is limited when a matter of “statewide concern” is implicated.⁵

Again, it is unclear what the proposed charter amendment would do, since the item does not yet have specific language. However, public statements made by Huntington Beach Mayor Tony Strickland on this proposal give us some idea of what is being proposed, and it is alarming. In an interview with the Voice of OC, Mayor Strickland says that new rules are necessary to help strengthen faith in the integrity of local elections, noting that “Our democracy does not work if people do not have faith in the election results... Anytime you can put safeguards in I think it’s important to do so people have faith in our election outcomes.”⁶ Mayor Strickland further states that the intention of the as-yet unreleased Charter Amendment would be, among other things, to require voter identification to be presented for all in-person voting, saying, “You’d have to show an ID when you show up to vote in the polls.”⁷

² *Ibid.*

³ See Article IX, Section 7 of the California Constitution, which grants a city broad discretionary authority to “make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws.” See also *State Building & Construction Trades Council of California v. City of Vista*, 54 Cal. 4th 547, 555 (2012) (“Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs”).

⁴ See California Government Code § 37100 (“The legislative body [of a city] may pass ordinances not in conflict with the Constitution and laws of the State [of California] or United States.” See also *Carlin v. City of Palm Springs*, 14 Cal.App.3d 706, 711 (1971) (Municipalities have broad powers, “providing the power is exercised within the confines of the city and is not in conflict with the state’s general laws”) (citing *People v. Taylor*, 33 Cal.App.2d.Supp. 760, 761 (1956)).

⁵ See *Johnson v. Bradley*, 4 Ca. 4th 389, 399 (1992) (citing *California Fed. Savings & Loan Assn. v. City of Los Angeles*, 54 Cal. 3d 1, 17 (1991)).

⁶ Noah Biesiada, *Surf City to Consider Requiring Voter ID and Ballot Box Monitoring*, VOICE OF OC, July 31, 2023, available at <https://voiceofoc.org/2023/07/surf-city-to-consider-requiring-voter-id-and-ballot-box-monitoring/>

⁷ *Ibid.*

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To state the obvious, there has been no compelling evidence of widespread election fraud, and I am not aware of any claims that California elections, especially local elections, have experienced any issues that would lead to voters questioning their integrity. While former President Donald Trump and some of his extremist MAGA allies have alleged that there was widespread voter fraud in the 2020 election, these claims have been entirely unsubstantiated, and numerous Trump lawyers have faced sanctions for their role in filing lawsuits based on these false and wholly unmerited claims.⁸ It has become increasingly evident that Donald Trump made these claims in a desperate play to try to illegitimately overturn election results he knew to be valid.⁹ But these false claims of election fraud have had dire and violent consequences, including but not limited to the January 6 attacks on the U.S. Capitol.

Section 702—which would implement new (if as yet unspecified) voter identification requirements and also allow for ballot box monitoring—raises a number of major concerns, which I hope you will address.

- Why is this measure needed? What credible evidence has there been that Huntington Beach municipal elections have recently, or ever, experienced fraud or other election integrity issues? After all, the 2022 elections seated the City Councilmembers and Mayor who are apparently behind this Charter Amendment, electing Mayor Strickland as well as Councilmembers Pat Burns, Casey McKeon and Gracey Van Der Mark.
- What guardrails would be in place to ensure that ballot box “monitoring” does not lead to voter intimidation or racial profiling? Given that similar measures to allow ballot monitoring have led to deliberately intimidating behavior, including “questioning voters, brandishing weapons, taking pictures of people voting and following or chasing voters who are attempting to drop off their ballots,”¹⁰ how can you assure voters and the state

⁸ See, e.g., Pete Williams and Dartunorro Clark, *Federal Judge Sanctions Trump Attorneys For Spreading False Election Fraud Claims*, NBC NEWS, Aug. 25, 2021, available at <https://www.nbcnews.com/politics/politics-news/federal-judge-sanctions-trump-attorneys-spreading-false-election-fraud-claims-n1277664>

⁹ See Ashley Parker, *January 6 Hearing Shows Trump Knew He Lost—Even While Claiming Otherwise*, THE WASHINGTON POST, Oct. 14, 2022, available at <https://www.washingtonpost.com/national-security/2022/10/14/trump-knew-he-lost-jan-6/>

¹⁰ See Ben Giles, *Monitors at Arizona Ballot Drop Boxes Draw Complaints of Voter Intimidation*, NPR, Oct. 26, 2022 (quoting then-Arizona Secretary of State Katie Hobbs), available at <https://www.npr.org/2022/10/26/1131474648/arizona-ballot-drop-boxes-mules-voter-intimidation>

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legislature that ballot monitoring in Huntington Beach would not lead to similar infringements on the state and federal constitutional rights of HB voters?

- What impact will this have on voters who seek to vote in state and federal elections? To the extent that federal and state elections voting are typically held at the same ballot boxes as municipal elections, any imposition of ballot box monitoring or voter ID requirements will invariably impact those seeking to vote in federal and state elections, in contravention of federal and state law. Moreover, even if such requirements are purely limited to municipal elections, how would you address the state and federal concern that this would lead to a "chilling effect" on those seeking to vote?

While I am unable to attend your meeting tonight in person, I look forward to hearing the discussion. I know you all agree with me that free and fair elections are the cornerstone of our democracy, and I hope you are able to address these concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "DM", with a long horizontal flourish extending to the right.

Dave Min
State Senator (SD-37)

Cc: Attorney General Rob Bonta
Secretary of State Shirley Weber
State Senate Elections and Constitutional Amendments Committee Chair Steven Glazer
State Senate Judiciary Committee Chair Tom Umberg
Assembly Elections Committee Chair Gail Pellerin
Assembly Judiciary Committee Chair Brian Maienschein