



## OFFICE OF THE COUNTY COUNSEL

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**REVISED**

DONNA R. ZIEGLER  
COUNTY COUNSEL

Agenda # \_\_\_\_\_ November 14, 2023

November 9, 2023

Honorable Board of Supervisors  
County of Alameda  
1221 Oak Street, Suite 536  
Oakland, California 94612-4305

**SUBJECT:** ADOPT AN ORDINANCE AND RESOLUTION TO AMEND SECTION 62 OF THE COUNTY OF ALAMEDA CHARTER AND CALL A SPECIAL ELECTION TO BE CONSOLIDATED WITH THE MARCH 5, 2024, PRIMARY ELECTION, FOR THE PURPOSES OF SUBMITTING THE PROPOSED AMENDMENT TO THE VOTERS FOR APPROVAL

Dear Board Members:

**RECOMMENDATION:**

- A. Adopt an Ordinance calling for a special election to be consolidated with the statewide election to be held on March 5, 2024, for the purpose of submitting a measure to the voters of the County of Alameda ("County") on the question of whether the Charter of the County should be amended by replacing the language of County Charter Section 62, in its entirety, with the following: "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers."
- B. Adopt a resolution and order calling for and giving notice of a special election to be consolidated with the statewide election to be held on March 5, 2024, to amend County of Alameda Charter, Section 62, by replacing the language of County Charter Section 62, in its entirety, with the following: "California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers."

**SUMMARY:**

Section 23720 of the Government Code provides that the County Charter may be amended by a proposal submitted either by the governing body or by a petition signed by 10% of the qualified electorate within the County. The proposed ordinance and resolution would call for a special election to be held on March 5, 2024, consolidated with the

statewide Primary Election, for the purpose of submitting to the voters of the County the question of whether the County Charter should be amended.

**DISCUSSION:**

The County of Alameda is a charter county. Generally, a county's charter supersedes state law, and a county is bound to follow its charter where the two conflict. The voters of a charter county must authorize any amendment to a county charter. A Board of Supervisors lacks the authority to amend a charter absent voter approval. This action seeks to perfect amendments to Section 62 of the County of Alameda Charter by authorizing an election to obtain voter approval of proposed amendments, for the reasons explained in detail below.

Section 62 of the County's Charter prescribes the procedure to recall a County officer and applies to both "elective *and appointive*" officers. A thorough review of Section 62 of the Charter reveals that Section 62, for all intents and purposes, is out of date. It is out of alignment with the recall procedures found in state law and found in all other charter counties in the state. Additionally, the County of Alameda Charter allows for the removal of specified appointed County officers, unlike most other counties in California. And, significantly, due to the growth of the County over many decades, and the changes to election law, including changes to the manner in which elections are conducted, it is likely unfeasible to carry out a recall election in the manner outlined in the charter.

In order to provide the public and the Registrar of Voters with clear and achievable standards for conducting a recall, and to exclude specified appointed County officers from being subject to recall, it is recommended that your Board: 1) adopt an ordinance to amend the Charter by replacing the County's current recall procedures with the recall procedures prescribed in state law; 2) not include appointed County officers in the scope of officers who can be recalled using the State law procedures; and 3) call for the necessary special election to perfect the amendments. Amending Section 62 to adopt state law procedures for recalling county officers will bring clarity to all regarding the procedures, timing, and rules that will apply to recalls of County of Alameda officers. This change will codify a transparent recall process, and benefit the public generally, proponents of any recall, a target of a recall, and opponents of a recall, by substantially reducing the likelihood of costly litigation that could arise due to the current outdated standards.

**PROBLEMS WITH SECTION 62 OF THE CHARTER:**

**Unconstitutional Provisions.** Courts have held that *at least two* provisions of Section 62 are unconstitutional when applied to other types of elections. These rulings create uncertainty as to whether these provisions should, or can, be followed when conducting a recall election.

- Section 62 requires petition circulators to be registered voters of the County. The U.S. Supreme Court has held that a similar requirement for circulating initiative petitions was unconstitutional. State law requires only that a petition circulator be 18 years of age or older. The proposed amendment to follow state law would substantially lessen the risk that any recall election would be subject to legal challenge on the grounds that the procedures followed were unconstitutional.
- Section 62 requires that “no vote shall be counted for any candidate for said office unless the voter also voted on the question of the recall of the person sought to be recalled . . . .” This language was also held to be unconstitutional. In striking the language, the court allowed voters who skipped the recall question to vote on a candidate. Adopting state law eliminates the risk that the form of ballot prescribed by Section 62 would subject a recall election to legal challenge as unconstitutional. Under state law, the question of the recall is presented to the voters without any candidates appearing on the ballot. If a majority of voters vote for the recall, the official is recalled, and a vacancy is created. Candidates need not mount a campaign without knowing whether the official has been recalled.

**Missing Procedures.** Section 62 is silent on key procedures for a recall. A recall generally has three broad stages: (1) the time before circulating a petition; (2) the gathering and verification of the signatures; and (3) the recall election (if enough valid signatures are gathered). Section 62 is completely silent on the pre-circulation procedures.

- The pre-circulation procedures in state law provide important transparency measures as a practical matter. They provide notice to the public, identify the target of the recall, allow the target to answer the petition, give the elections official the opportunity to vet the form of the petition, and allow the public time to challenge the form and content of the petition. These steps and this level of transparency may serve to reduce the likelihood of post-election legal challenges. State law fills in these pieces that are missing from the Charter and provides consistent practices to follow.
- Section 62 has none of these pre-circulation procedures. It starts with a “petition demanding the election or appointment of a successor to the person sought to be recalled shall be filed with the County Clerk [the Registrar of Voters], which petition shall be signed by [the required number of electors].” In other words, Section 62 begins at the verification stage. There is no notice to the public or the target of the recall, no service of notice, no answer by the recall target, no vetting of the proposed petition by the elections official, no publication, and no prescribed opportunity or timeline to challenge the proposed petition. This means there are no

prescribed safeguards and checks and balances that may resolve defects in the process *before* an election has occurred.

- The proposed amendment to adopt state law ensures that the rules and procedures for all stages of the recall may be known to (1) the public, (2) proponents of any recall, (3) the target of any recall, and (4) opponents of a recall. State law increases transparency by ensuring all relevant stakeholders know that a recall effort is underway.

**Unfeasibility.** Section 62's recall procedures may not be feasible because election law has evolved over the many decades since Section 62 was adopted.

- Section 62 requires that nominees to replace a recalled official be placed on the same ballot as the recall and cites to "Section 1188 of the Political Code" to define the process for nominees to qualify for the ballot. But Section 1188 is a state law that no longer exists. This leaves a gap in the recall procedures and no direction for qualifying nominees. State law does not allow nominees for local offices to be placed on the same ballot as the recall election. Instead, if the recall passes, it creates a vacancy for that office. The vacancy may be filled by the rules governing the local jurisdiction. Adopting state law will provide procedural clarity, transparency for all, and close the gap.
- Section 62 specifies a turnaround time for the Registrar of Voters to verify petition signatures that is impractical and likely unattainable for a jurisdiction that, in the decades following Section 62's adoption, has grown to the size of Alameda County today—approximately 1.65 million people. Section 62 could lead to proponents of a recall gathering tens of thousands of signatures, possibly over 100,000, to qualify a recall for the ballot. But it only allows the elections official 10 days to verify sufficient signatures. The elections official is highly unlikely to verify the signatures needed within the 10-day deadline. The failure to verify signatures timely could lead to costly litigation. State law allows 30 days. Adopting state law's longer timeframe may avoid costly pre- or post-election litigation because it provides the Registrar of Voters more time to complete the verification process.
- Section 62 requires the election to take place within 35 to 40 days of the Board of Supervisors calling the election. As a practical matter, it is likely not possible to prepare, print, translate, and mail ballots to the over 900,000 registered voters of the County within 35-40 days, while at the same time hiring and training staff, and standing up vote centers for in person voting. The quick turnaround may also conflict with the timelines mandated by the Elections Code for such things as mailing and sending the voter information guide and overseas and military ballots, election requirements that the

Registrar of Voters currently follows. Adopting state law would provide the Registrar of Voters not less than 88 days and in certain instances as many as 180 days to conduct the election. Adopting the state law timelines provides a more reasonable and doable timeframe to ensure that any recall election could be executed within the timelines provided by law and substantially reduces the risk of litigation over unmet timelines.

- Adopting state law will automatically conform the recall procedures and timelines with those of the Elections Code (and of other counties, see below). Moreover, as the California Legislature updates and amends state law, those updates and amendments will automatically apply in Alameda County. In other words, by incorporating state law, any future changes will be applicable to County recalls, and reduce the potential for costly Charter amendment updates and reduce the risk of the Charter, again, falling out of date with the times and growth of the County.

**Other Charter Counties.** There are 14 charter counties in California. Three of these counties' charters do not include recall provisions, which means state law automatically governs recalls in those counties. The remainder refer to and incorporate state law to govern their recalls. The County of Alameda is the only charter county with recall provisions that completely deviate from (and are at odds with) the state law and current constitutional law. Adopting this amendment will align the County of Alameda with all other charter counties and non-charter counties in the state regarding the key steps for conducting a recall election.

**Other Counties.** State law does not include county appointive/appointed<sup>1</sup> officers in the scope of those who are subject to recall. They are eligible for recall in the County of Alameda solely because of Charter Section 62. Because the Board of Supervisors is able to remove County appointed officers without the need of a costly election, it is reasonable not to make those officers subject to recall. This would align with most if not all general law counties in California and most charter counties.

## **FINANCING:**

The net County cost for placing the measure on the ballot is not known at this time, and will be determined, in part, upon any future jurisdictional consolidation. No additional appropriations are required, and we anticipate funds will be available in the FY 2023-24 Approved Budget to cover the costs resulting from the recommendation.

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<sup>1</sup> We use the terms "appointive" and "appointed" interchangeably in reference to amending Charter Section 62, as we understand them to have the same meaning when using "appointed" in place of "appointive" in the proposed amendment to Section 62. The same applies to "elected" in place of "elective" in reference to any proposed amendment to Charter 62 in this Board letter and in the Board letters presented to the Board of Supervisors in October of 2023 regarding amending Section 62.)

**VISION 2026 GOAL:**

The proposed Charter amendment supports the goal of Accessible Infrastructure by updating applicable recall procedures to modern day standards. It eliminates decades old procedures that, 1) do not integrate well with the way elections are conducted today, and 2) that are a detriment to ensuring that lawful, competent, and timely recalls may be conducted.

**CONCLUSION:**

County of Alameda Charter Section 62 is out of date. Adopting the recommendations in *this letter* will allow a Charter amendment to be placed on the ballot that aligns the County's recall procedures with California state law procedures *and* no longer allow County of Alameda appointed officers to be recalled.

Very truly yours,



Donna R. Ziegler  
County Counsel

cc: County Administrator  
Registrar of Voters

ORDINANCE NO.

AN ORDINANCE CALLING A SPECIAL ELECTION TO BE HELD ON MARCH 5, 2024, THROUGHOUT THE COUNTY OF ALAMEDA FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF ALAMEDA COUNTY THE QUESTION OF WHETHER THE COUNTY OF ALAMEDA CHARTER SHOULD BE AMENDED AND DIRECTING THE CONSOLIDATION OF THE ELECTION WITH THE STATEWIDE ELECTION TO BE HELD ON THE SAME DAY

The Board of Supervisors of the County of Alameda ordains as follows:

**SECTION I – Call of the Election and Purpose**

A special election is hereby called, proclaimed, and ordered to be held on March 5, 2024, throughout the County of Alameda, for the purpose of voting upon a proposed amendment to the Charter of the County of Alameda as set forth in Section II. Said election is hereby consolidated with the State of California Primary Election to be held on said date throughout the State of California, said special election to be held in conjunction therewith insofar as the territory in which elections are to be held is the same, to wit, within the boundaries of the County of Alameda, State of California.

The election shall be held in all respects as though there were only one election in accordance with the provisions of section 10403 of the Elections Code of the State of California. The consolidated election will be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. When the results of said special election are ascertained, the Registrar of Voters of the County of Alameda (“Registrar of Voters”) is hereby authorized and directed to certify the same to the Board of Supervisors of the County of Alameda.

**SECTION II – Form of Measure**

The Registrar of Voters is hereby instructed to print on the sample ballots and on the official ballots for said election the measure to be voted upon in substantially the following form, to wit:

PROPOSED ALAMEDA COUNTY CHARTER AMENDMENT

CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with “California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers”?	YES
	NO

A copy of the full text of County of Alameda Measure \_\_\_\_ is attached hereto and incorporated herein.

**SECTION III**

This Ordinance shall take effect immediately upon its adoption in accordance with the provisions of Government Code section 25123(a) and 25124 and Elections Code 9141. Before the expiration of 15 days after its passage, it shall be published once with the names of the members voting for and against the same in, a newspaper of general circulation published in the County of Alameda.

The Clerk of the Board of Supervisors is ordered to file a copy of this ordinance with the County Registrar of Voters at least 88 days prior to the date of the election.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this \_\_\_\_ day of \_\_\_\_\_ 2023, by the following called vote:

AYES:

NOES:

EXCUSED:

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By 

Print Name RAY LARA



**Full text of County of Alameda Measure \_\_**

**MEASURE \_\_\_\_**

This Measure \_\_\_\_ will become effective only if submitted to the voters at the election held on March 5, 2024, and only after approval by a majority of the qualified voters voting in the election on the issue.

The Charter Amendment will take effect as provided for in sections 23713, 23714 and 23724 of the Government Code.

Section 62 of the Charter of the County of Alameda is amended to read, in its entirety, as follows:

**Section 62.**

California state law applicable to the recall of County officers shall govern the recall of County of Alameda elected officers.

RESOLUTION NO. R-2023-\_\_\_\_

A RESOLUTION AND ORDER OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, APPROVING AN ORDINANCE AND CALLING FOR AND GIVING NOTICE OF A SPECIAL ELECTION AND PLACING A MEASURE ON THE BALLOT TO BE SUBMITTED TO THE QUALIFIED ELECTORS OF ALAMEDA COUNTY TO AMEND COUNTY CHARTER SECTION 62 GOVERNING RECALL OF COUNTY OFFICERS; AND CONSOLIDATING THE ELECTION WITH OTHER ELECTIONS ON MARCH 5, 2024; FIXING THE DATE AND MANNER OF THE ELECTION AND THE PROCEDURE FOR VOTING THEREIN

**WHEREAS**, the County of Alameda ("County") is a charter county;

**WHEREAS**, California State Constitution, Article XI, Section 4, paragraph (c) allows a county charter to provide for the election and removal of elected and appointed County officers;

**WHEREAS**, Section 62 of the County Charter governs the recall of County officers;

**WHEREAS**, certain provisions of Section 62 of the County Charter are outdated, reference state law provisions that are no longer in effect, have been declared unconstitutional in other contexts, are silent on several key procedures for recall as outlined in state law, and may not be feasible to execute;

**WHEREAS**, other charter counties throughout the state have adopted state law to apply to the recall of their county officers;

**WHEREAS**, the Board of Supervisors ("Board") cannot change or amend the County Charter without voter approval;

**WHEREAS**, the Board has determined that it is in the County's best interest to adopt state law to govern the recall of County elected officers and to no longer subject appointed officers to recall;

**WHEREAS**, adopting state law will provide greater transparency regarding applicable recall procedures for the public generally, proponents of any recall, opponents of any recall, and any target of a recall;

**WHEREAS**, adopting state law will align the County's recall procedures with the other counties in California and create achievable standards for conducting recalls;

**NOW, THEREFORE, THIS BOARD OF SUPERVISORS HEREBY RESOLVES AND ORDERS AS FOLLOWS:**

**Section 1.** The Board hereby finds and determines that the foregoing recitals are true and correct.

**Section 2. Call of the Election and Purpose.** A special election shall be held and the same is hereby called and ordered to be held throughout the County on the 5th day of March 2024, for the purpose of submitting to the voters of the County by ordinance the question of whether Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers shall be amended to adopt state law for the recall of County elected officers as provided in the attached ordinance, Attachment A (hereinafter "Ordinance").

**Section 3. Ordinance.** The attached Ordinance calling for the election to amend Section 62 of the County Charter is incorporated herein by reference.

**Section 4. Ballot Measure.** The Board orders that the measure to amend the County Charter by ordinance shall appear on the ballot substantially as follows:

**BALLOT QUESTION: CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY.** Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with “California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers”?

Yes \_\_\_ No \_\_\_

**Section 5. Consolidation.** The Board hereby submits the ballot question and the measure to the qualified electors of the County at the Election in the form set forth above. The special election called by this resolution shall be consolidated with the other elections conducted by the Registrar of Voters to be held in the County on March 5, 2024, and the ordinance amending the County Charter shall be placed on the same ballot as that provided for the primary election. The Consolidated Election shall be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. The votes received and canvassed, and the results ascertained and determined all in the same manner as the statewide election to be held on that date and in conformity with the election laws of the State of California. Only qualified electors of the County may vote on the measure.

**Section 6. Election Procedure.** All qualified voters residing in the County shall be permitted to vote in the election and in all particulars not recited in this resolution, the elections shall be held as nearly as practicable in conformity with the Elections Code of the State of California. The votes cast for and against the measure shall be separately counted and if the measure receives a majority of the votes cast by the qualified electors voting on the measure, the measure amending the County Charter shall be effective pursuant to sections 23713, 23714 and 23724 of the Government Code. Should another proposed measure with conflicting provisions appear on the same ballot, and each proposed measure receives a majority of votes, the proposed measure with the highest number of affirmative votes shall prevail, in conformity with section 9123 of the Elections Code.

**Section 7. Authority.** This resolution is adopted pursuant to sections 10403 and 12001 of the Elections Code and section 25201 of the Government Code. The Clerk of the Board of Supervisors is ordered to file a copy of this resolution with the Registrar of Voters at least eighty-eight (88) days prior to the day of the election. The Registrar of Voters is authorized, instructed, and directed to prepare any documents and take any additional actions that may be necessary in order to properly and lawfully conduct the election.

**Section 8.** The Clerk of the Board is directed to file a certified copy of this Resolution with the Registrar of Voters and the Registrar of Voters is authorized and directed to take all steps necessary to place the Ordinance on the ballot and to cause the Ordinance to be printed in the sample ballot. A copy of the Ordinance shall be made available to any voter upon request.

**Section 9. Proclamation.** Pursuant to section 12001 of the Elections Code, the Board hereby PROCLAIMS that a special Countywide election shall be held on Tuesday, March 5, 2024, to vote upon the Charter Amendment described in the Ordinance.

**Section 10.** This Resolution and Order relating to an election shall take effect immediately.

The foregoing Resolution and Order was passed and adopted by the Board of Supervisors of Alameda County, State of California on the \_\_\_ day of \_\_\_\_\_, 2023 by the following vote:

AYES:

NOES:

EXCUSED:

ABSTAINED:

\_\_\_\_\_  
President of the Board of Supervisors  
County of Alameda, State of California

ATTEST:

ANIKA CAMPBELL-BELTON, Clerk  
of the Board of Supervisors, County of Alameda

By: \_\_\_\_\_

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By:   
\_\_\_\_\_  
Raymond Lara  
Senior Deputy County Counsel

## EXHIBIT A

### ORDINANCE NO.

AN ORDINANCE CALLING A SPECIAL ELECTION TO BE HELD ON MARCH 5, 2024, THROUGHOUT THE COUNTY OF ALAMEDA FOR THE PURPOSE OF SUBMITTING TO THE VOTERS OF ALAMEDA COUNTY THE QUESTION OF WHETHER THE COUNTY OF ALAMEDA CHARTER SHOULD BE AMENDED AND DIRECTING THE CONSOLIDATION OF THE ELECTION WITH THE STATEWIDE ELECTION TO BE HELD ON THE SAME DAY

The Board of Supervisors of the County of Alameda ordains as follows:

#### **SECTION I – Call of the Election and Purpose**

A special election is hereby called, proclaimed, and ordered to be held on March 5, 2024, throughout the County of Alameda, for the purpose of voting upon a proposed amendment to the Charter of the County of Alameda as set forth in Section II. Said election is hereby consolidated with the State of California Primary Election to be held on said date throughout the State of California, said special election to be held in conjunction therewith insofar as the territory in which elections are to be held is the same, to wit, within the boundaries of the County of Alameda, State of California.

The election shall be held in all respects as though there were only one election in accordance with the provisions of section 10403 of the Elections Code of the State of California. The consolidated election will be held and conducted in the manner prescribed in section 10418 of the Elections Code of the State of California. When the results of said special election are ascertained, the Registrar of Voters of the County of Alameda (“Registrar of Voters”) is hereby authorized and directed to certify the same to the Board of Supervisors of the County of Alameda.

#### **SECTION II – Form of Measure**

The Registrar of Voters is hereby instructed to print on the sample ballots and on the official ballots for said election the measure to be voted upon in substantially the following form, to wit:

PROPOSED ALAMEDA COUNTY CHARTER AMENDMENT

CHARTER AMENDMENT – ADOPTING STATE LAW RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY. Shall Section 62 of the County of Alameda Charter governing the recall of elective and appointive County officers be amended by replacing the current language, in its entirety, with “California state law applicable to the recall of county officers shall govern the recall of County of Alameda elected officers”?	YES
	NO

A copy of the full text of County of Alameda Measure \_\_\_\_ is attached hereto and incorporated herein.

**SECTION III**

This Ordinance shall take effect immediately upon its adoption in accordance with the provisions of Government Code section 25123(a) and 25124 and Elections Code 9141. Before the expiration of 15 days after its passage, it shall be published once with the names of the members voting for and against the same in, a newspaper of general circulation published in the County of Alameda.

The Clerk of the Board of Supervisors is ordered to file a copy of this ordinance with the County Registrar of Voters at least 88 days prior to the date of the election.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on this \_\_\_\_ day of \_\_\_\_\_ 2023, by the following called vote:

AYES:

NOES:

EXCUSED:

**Full text of County of Alameda Measure \_\_**

**MEASURE \_\_\_\_\_**

This Measure \_\_\_ will become effective only if submitted to the voters at the election held on March 5, 2024, and only after approval by a majority of the qualified voters voting in the election on the issue.

The Charter Amendment will take effect as provided for in sections 23713, 23714 and 23724 of the Government Code.

Section 62 of the Charter of the County of Alameda is amended to read, in its entirety, as follows:

Section 62.

California state law applicable to the recall of County officers shall govern the recall of County of Alameda elected officers.

BOS 11/14/23 Agenda  
Items 18 and 19

**Campbell-Belton, Anika, CBS**

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**From:** Jason Bezis <jason@bezislaw.com>  
**Sent:** Monday, November 13, 2023 12:42 AM  
**To:** Campbell-Belton, Anika, CBS; Clerk of the Board; BOS District 4; Haubert, David, Supv BOS Dist 1; Márquez, Elisa, BOS Dist2; Tam, Lena, Supv BOS Dist 3; Carson, Keith, Supv BOS Dist 5  
**Cc:** Ziegler, Donna, County Counsel; Weddle, Andrea L., County Counsel; Lara, Raymond S., County Counsel  
**Subject:** [Alameda County Board of Supervisors Regular Meeting - November 14, 2023] Public Comment Letter on Item Nos. 18 and 19 - County Charter Amendment (Recall)  
**Attachments:** ACTA-Second Letter to Alameda County BOS re Recall Charter Amendment-Nov 13 2023.pdf

To the Clerk of the Board of Supervisors:

This office represents the Alameda County Taxpayers' Association (ACTA). ACTA hereby submits the attached correspondence (PDF format) as public comment on Item Nos. 18 and 19 on the Board of Supervisors' November 14, 2023 regular meeting agenda (County Charter Amendments – Section 62 – Recall).

As the correspondence contains a litigation threat, ACTA has taken the liberty of including the County Counsel's office on this communication.

Respectfully submitted,  
Jason Bezis  
Law Offices of Jason A. Bezis  
Attorney for Alameda County Taxpayers' Association  
(925) 708-7073

**\*\* This email was sent from an external source. If you do not know the sender, do not click on links or attachments. \*\***

cc: BOS, CAO, CBS, CC



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Handwritten text at the bottom right, possibly a signature or date.

## Law Offices of Jason A. Bezis

3661-B Mosswood Drive Lafayette, CA 94549-3509  
(925) 708-7073 Jason@BезisLaw.com

VIA E-MAIL ONLY

November 13, 2023

Alameda County Board of Supervisors  
c/o President Nate Miley and Clerk of the Board Anika Campbell-Belton  
County Administration Building  
1221 Oak Street, Suite 536  
Oakland, CA 94612  
[anika.campbell-belton@acgov.org](mailto:anika.campbell-belton@acgov.org); [cbs@acgov.org](mailto:cbs@acgov.org); [nate.miley@acgov.org](mailto:nate.miley@acgov.org);  
[david.haubert@acgov.org](mailto:david.haubert@acgov.org); [elisa.marquez@acgov.org](mailto:elisa.marquez@acgov.org); [lena.tam@acgov.org](mailto:lena.tam@acgov.org);  
[keith.carson@acgov.org](mailto:keith.carson@acgov.org)

Re: Alameda County Board of Supervisors October 31, 2023 Meeting  
Items Nos. 18 and 19: Opposition to Proposed Amendments of County  
Charter Section 62 (Recall)

To President Miley and the Board of Supervisors:

This office represents the Alameda County Taxpayers' Association (ACTA). As stated in the letter dated October 31, ACTA is opposed to the proposed Alameda County Charter amendment that would repeal and replace Section 62 (Recall), as it is currently drafted. ACTA is pleased that your Board is taking another look at its November 14 meeting in Item Nos. 18 and 19 at the faulty language, but ACTA disagrees with both of the proposed amendments.

These County Charter amendments are a power grab by the Board of Supervisors masquerading as "modernization of recall procedures." As a threshold matter, ACTA emphasizes that the People of Alameda County have an express constitutional right to have their own recall provisions, a power that they have exercised for the past 97 years. California Constitution, art. II, § 19 states in full:

The Legislature shall provide for recall of local officers.  
This section does not affect counties and cities whose  
charters provide for recall.

The fifteen elected drafters of the original 1926 County Charter (freeholders elected by Alameda County voters at a special election on August 31, 1926) included recall provisions that ensured "home rule" and "local control." A few

days before the November 1926 County Charter approval election, the Alameda County Charter Campaign Committee assured voters in an October 31, 1926 *Oakland Tribune* item: "The charter provides for the recall of any county officers, elected or appointed, by the voters." (page 18; see: <https://cdnc.ucr.edu/?a=d&d=OT19261031.1.18&srpos=23&e=-----192-en--20-OT-21--txt-txIN----->) Your Board is discarding all (100 percent) of those "local control" recall provisions, both substantive and procedural, without careful, deliberative, and impartial analysis.

Furthermore, your County Administrator, County Counsel, County Registrar of Voters and other "appointive" officers advising your Board are not impartial; they have vested interests in repealing the existing County Charter recall provisions because the proposed County Charter amendments would repeal the People's power to recall them from their "appointive" public offices.<sup>1</sup>

Your Board should engage external counsel to provide impartial legal advice about these proposed Charter amendments. That impartial legal advice should be shared with the general public.

#### County's "Frequently Asked Questions" (FAQ's) Document Is Inaccurate.

ACTA had difficulty locating the County's document dated November 9, 2023 titled "PROPOSED AMENDMENT TO COUNTY CHARTER PROVISIONS REGARDING RECALL OF COUNTY OFFICERS FREQUENTLY ASKED QUESTIONS" (FAQ's). The FAQ's are not included or referred to in the November 14, 2023 Board of Supervisors meeting agenda packet. ACTA's concerns about the FAQ's document are not limited to following discussion.

The FAQ's, in part, assert the following:

7. Would the proposed amendment to Section 62 of the County Charter change which County officers can be recalled? Can appointed County officers be recalled now?

The amendment to the County Charter proposed at the October 24 and 31, 2023, meetings of the Board of

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<sup>1</sup> The "officers of a County" under State general law include an "administrative officer" and "[s]uch other officers as are provided by law." (Government Code § 24000.)

Supervisors would not change which County officers can be recalled. Section 62 of the County Charter currently allows for recall of both "appointive" and "elective" officers. Section 15 of the Charter defines the "elective" officers. Section 17 of the Charter defines the "appointive" officers. If an appointive officer is recalled, the position becomes vacant and is not filled by an election.

State law allows for the recall only of elective officers. But, under the October 24 and 31, 2023, proposed amendment to Section 62 of the County Charter, the Charter would mandate that State law procedures for the recall of county officers would apply to both "County of Alameda elected and appointed officers." The change from "appointive" to "appointed" and "elective" to "elected" would have no legal effect. The change is intended only to make the text of the County Charter more accessible to modern readers. It is intended that if the Charter is amended as recommended, officials holding elective offices, as set forth in Section 15 of Charter, will remain subject to recall whether they were seated in the office by election or by appointment. The intent is also that officials seated in appointive positions as defined in Section 17 of the Charter will remain subject to recall, and the amendment establishes that the State law recall procedures will be applicable and govern the conduct of such a recall.

ACTA does not understand the County Counsel's contention in the FAQ's No. 7: "The change from "appointive" to "appointed" and "elective" to "elected" would have no legal effect." In reply, ACTA emphasizes that there are differences between the words "elected," "elective," "appointed" and "appointive," especially in the contexts of county offices and in recall law, that your County Counsel fails to recognize and/or explain. There are important distinctions between: (1) "elective" offices versus "appointive" offices and (2) persons "appointed" to "elective" offices. Government Code § 24009(b) states in part:

Except for those officers named in subdivision (b) of Section 1 of Article XI of the California Constitution, any county office that is required to be elective may become an appointive office pursuant to this subdivision. In order to

change an office from elective to appointive, ... Any county office changed from elective to appointive in accordance with this subdivision may be changed back from appointive to elective in the same manner. (Emphasis added.)

Compare the wording in the proposed amendment of Charter Section 62 (“elected and appointed officers”) with the wording used in Sections 15, 16, 17 of the County Charter (“elective county officers” and “appointive County officers”). Such distinction (“elective” vs. “elected” and “appointive” vs. “appointed”) is not about being “accessible to modern readers.” The use of the terms “elective” and “appointive” is to be consistent with California law and other portions of the Alameda County Charter.

The final sentence of FAQ’s answer no. 7 is unbelievable:

The intent is also that officials seated in appointive positions as defined in Section 17 of the Charter will remain subject to recall, and the amendment establishes that the State law recall procedures will be applicable and govern the conduct of such a recall ...

To ensure that “intent” is made crystal clear, a statement could be added expressly to the text of the revised Charter Section 62. Possible language could be:

Officials seated in appointive positions as defined in Section 17 of this Charter shall remain subject to recall. State law recall procedures shall be applicable and govern the conduct of such a recall, to the greatest extent practicable.

Nevertheless, the fundamental problem with the County Counsel’s analysis in the FAQ’s is that “State law recall procedures” do not cover “appointive” offices. The State recall statutes are codified at Elections Code § 11000 et seq. Note carefully Elections Code § 11007, which states in full, “For the purposes of this division, a “local officer” is an elective officer of a city, county, school district, community college district, or special district, or a judge of a trial court.” (Emphasis added.) Section 11002 reinforces that “elective officer” distinction.

Moreover, the proposed County Charter amendments would repeal all existing Section 62 language that concerns “appointive” officers, including:

In case the County Clerk is the officer sought to be recalled, the duties in this Section provided to be performed by him, shall be performed by some other person designated by said Board of Supervisors for this purpose. ...

If the incumbent of an appointive office be recalled at such election, his successor shall be appointed immediately after the canvassing of the vote.

Before any petition can be filed under this Section for the recall of any person in the classified service of the County, there shall be presented to and passed upon by the Civil Service Commission, a complaint in writing giving the grounds for and asking the removal of such person. Such complaint must be considered and be finally acted upon by the Commission within twenty days after such filing.

The failure of Elections Code § 11000 et seq. to provide for recall of “appointive” officeholders plus the repeal of all language in County Charter Section 62 concerning “appointive” officers effectively terminates the authority for the People of Alameda County to recall “appointive” officers. Therefore, the County Counsel’s answer to “Frequently Asked Questions” no. 7 is false and/or misleading.

The Board of Supervisors’ Pattern or Practice of Distinguishing Between “Elected” and “Appointed” County Officers.

Your County Counsel has opined that appointees to elective County offices are treated differently than persons “elected” to those offices. On January 21, 2022, your County Counsel wrote to ACTA:

[T]he California Supreme Court has recognized that “ordinarily ‘elect’ refers to a determination made by voters,” as opposed to an appointment. (*Barrett v. Hite* (1964) 61 Cal.2d 103, 105-106. Although courts have found that ‘elect’ may include appointments in some limited circumstances, there is nothing in the County Charter, the County Administrative Code, or in the Government Code

that suggests these provisions were intended to use anything other than this ordinary meaning of the term election. (County Counsel's Letter to ACTA dated January 21, 2022, p. 1; a copy is appended to this letter.)

The Board of Supervisors used this legal reasoning to justify your appointment of David Kyle Brown, a domiciliary of Contra Costa County, to the vacant District 3 Board seat on November 16, 2021. The Board of Supervisors re-affirmed that legal reasoning during the District 2 vacancy appointment process earlier this year. Your County Counsel and Board concluded at the March 21, 2023 meeting that applicant Ariana P. Casanova satisfied the "legal requirements" for the office of Alameda County Board of Supervisor for District 2 as an "appointed" supervisor even though she did not satisfy the prior residency qualification for an "elected" District 2 supervisor as of the date of her application for appointment to fill the vacancy.

Based on that legal reasoning (which ACTA believes to be faulty and inconsistent with 111 years of California legal precedents and a 1964 California Attorney General Opinion, as ACTA argued in *People v. David Kyle Brown*, Alameda County Superior Court Case No. 22CV015533), the new proposal (Item No. 19) would make it impossible to recall County officials appointed to elective office. For example, an appointed County District Attorney or appointed County Supervisor to fill the remainder of a term theoretically could not be recalled during the term of appointment. The Board of Supervisors could attempt to dissuade recall campaigns, for example, by signaling that it would appoint a chief deputy of the targeted elective officer to fill any vacancy created by a successful recall campaign. So the People of Alameda County could recall an "elected" official and the replacement appointed by the Board of Supervisors would be immune from recall until the next election simply because the Board-"appointed" replacement was not "elected."

The same predicament would occur with an "appointed" replacement for an "elected" officeholder who resigns, retires, or dies mid-term. Your Board could appoint a replacement that 99.9 percent of the electorate loathes, yet the electorate would be powerless to recall the replacement.

ACTA doubts that the People of Alameda County would knowingly give up such power.

County Counsel's Memoranda Are Erroneous Concerning Recall Provisions in Other California Charter Counties, Including San Francisco.

Your County Counsel's "Recommendation" memoranda to your Board dated October 17, 2023 and November 9, 2023 contained incorrect and/or misleading material in the following paragraph:

**Other Charter Counties.** There are 14 charter counties in California. Three of these counties' charters do not include recall provisions, which means state law automatically governs recalls in those counties. The remainder refer to and incorporate state law to govern their recalls. The County of Alameda is the only charter county with recall provisions that completely deviate from (and are at odds with) the state law and current constitutional law. Adopting this amendment will align the County of Alameda with all other charter counties and non-charter counties in the state regarding the key steps for conducting a recall election. (Page 5.)

Your County Counsel's assertion is not accurate. Both proposed Charter amendments (Item Nos. 18 and 19) would eliminate the ability of the People of Alameda County to recall appointive County offices, such as the County Administrator, County Director of Public Works, County Counsel, and Registrar of Voters. The San Francisco City and County Charter also provides for the recall of senior, un-elected bureaucrats and other appointees. See San Francisco Charter, Section 14.103(a):

An elected official of the City and County, the City Administrator, the Controller, or any member of the Airports Commission the Board of Education, the governing board of the Community College District, the Ethics Commission or the Public Utilities Commission may be recalled by the voters as provided by this Charter and by the laws of the State of California, except that no recall petitions shall be initiated with respect to any officer who has held office for less than six months.

Note that "the City Administrator, the Controller" are subject to recall in San Francisco. Both offices are appointed by the San Francisco Mayor and not elected by the People. But the People retain the power to recall them.



Members of the San Francisco Airports Commission, Ethics Commission, and Public Utilities Commission are appointed, but the People of the City and County of San Francisco retain the power to recall those appointive officeholders. So the power of the People to recall un-elected officers under the current Alameda County Charter Section 62 is not unprecedented or unusual. Yet your County Counsel's "Recommendations" memoranda completely ignore the San Francisco Charter.

Furthermore, the El Dorado, Placer, Sacramento, San Francisco, San Mateo, and Santa Clara county charters deviate from state law by requiring that an elected officeholder hold that office for six months before being subject to recall. (El Dorado County Charter § 102; Placer County Charter § 607; Sacramento County Charter § 74; San Francisco City and County Charter § 14.103; San Mateo County Charter § 102; Santa Clara County Charter § 103.) In contrast, California general law permits a recall against county officeholders only if he or she has "held office during his current term for more than 90 days." (Elections Code § 11007.) So at least six charter counties deviate from state recall law.

Alameda County Counsel Has a Conflict of Interest; Your Board Must Engage External Legal Counsel.

ACTA again calls upon your Board to seek external legal advice concerning these Charter amendments. Your County Counsel herself is subject to recall under the existing Charter Section 62, read in conjunction with Section 17. The proposed Charter amendments would eliminate the People's recall power over the County Counsel. Your County Counsel has failed to disclose her personal and/or official interest in removing the People's power to recall her through these proposed amendments. If your Board places a Charter amendment on the ballot that eliminates the power to recall the County Counsel, then the County Counsel ethically cannot prepare an Impartial Analysis under Elections Code § 9160. The People deserve to learn right now whether or not the County Counsel would decline to prepare the Impartial Analysis and who would prepare it instead.

Your Board should engage external counsel to provide impartial legal advice about these proposed Charter amendments. That impartial legal advice should be shared with the general public.

Your Misleading and/or Prejudicial Ballot Label/Ballot Question Does Not Comport With the Standards of Elections Code §§ 9190 and/or 13119.

ACTA again raises concerns about the legal adequacy of the proposed ballot labels/ballot questions with the standards of Elections Code §§ 9190 and 13119, including the standards articulated in *Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417 and *McDonough v. Superior Court* (2012) 204 Cal.App.4th 1169. The proposed title "CHARTER AMENDMENT – ADOPTING STATE RECALL PROCEDURES FOR USE IN ALAMEDA COUNTY" is misleading because it fails to disclose that the Charter amendment also is a substantive amendment that would repeal the authority for the People of Alameda County to recall "appointive" County officers. That omission would create prejudice in favor of the measure. Moreover, the County Counsel very likely prepared that title and summary, yet the County Counsel is among the offices affected by the proposed Charter amendment. Therefore, this title/summary/ballot question is not impartial. ACTA notes that both the *Huntington Beach* and *McDonough* courts sided with the challengers and ordered re-writing of the ballot measure titles.

In the past, ACTA has litigated the compliance of ballot questions with Elections Code §§ 9190 and 13119. (See, e.g., *Crawley et al. v. Dupuis et al.*, Alameda County Superior Court Case No. RG20070680, concerning the November 2020 Measure W sales tax increase ballot question.) ACTA is prepared to do so again with this County Charter amendment. Your Board should deem this communication to be a pre-litigation demand. Through this demand, ACTA is attempting to settle the litigation prior to filing the lawsuit, consistent with *Vasquez v. State of California* (2008) 45 Cal.4th 243, 253-254.

Respectfully submitted,

LAW OFFICES OF JASON A. BEZIS

/s/ *Jason A. Bezis*

JASON A. BEZIS, Attorney for Alameda County Taxpayers' Association

cc: Office of the Alameda County Counsel: Donna Ziegler, Andrea Weddle and Raymond Lara (transmitted by e-mail)

Attachment: County Counsel Donna Ziegler's letter to ACTA dated January 21, 2022 concerning the Board of Supervisors' appointment of David Kyle Brown on November 16, 2021



## OFFICE OF THE COUNTY COUNSEL

1221 Oak Street, Suite 450, Oakland, California 94612-4296  
Telephone (510) 272-6700 Facsimile (510) 272-5020

DONNA R. ZIEGLER  
COUNTY COUNSEL

January 21, 2022

### Via Electronic Mail and U.S. Mail

Jason A. Bezis, Esq.  
Attorney for Alameda County Taxpayers' Association  
Law Offices of Jason A. Bezis  
3661 Mosswood Drive, Suite B  
Lafayette, California 94549  
jason@bezislaw.com

**RE: Response to Correspondence Challenging Appointment of Supervisor Brown**

Dear Mr. Bezis:

This responds to several letters and email communications from you and your client, Alameda County Taxpayers' Association ("ACTA"), alleging various legal defects in the November 16, 2021, appointment of Supervisor Dave Brown to the County of Alameda Board of Supervisors ("the Board") and requesting the Board take some remedial action. The County takes any such allegations seriously. The County has carefully considered each of the issues you and ACTA have raised and concluded that Supervisor Brown was eligible for appointment and that there was no legal defect in the appointment process. As a result, the County declines your requests to call a special meeting to reconsider the appointment to the Third District Supervisorial seat.

Supervisor Brown was eligible for appointment to the Board and properly holds the seat. Section 8 of the Alameda County Charter, which provides for the power of the Board to fill vacancies on the Board through appointment, does not prescribe any residency time requirement prior to appointment. You have not offered any Charter provision in support of your claim but instead, you have referred to Alameda County Administrative Code § 2.04.020, which on its face applies to a residency period "preceding [an] election" and does not apply to appointments. Likewise, Government Code § 25041 establishes a voting registration requirement "for at least 30 days immediately preceding the deadline for filing nomination documents for the office of supervisor" which clearly is addressing elections but does not establish a similar 30-day period for appointments.

Importantly, the California Supreme Court has recognized that "ordinarily 'elect' refers to a determination made by voters," as opposed to an appointment. (*Barrett v. Hite* (1964) 61 Cal.2d 103, 105–106.) Although courts have found that "elect" may include appointments in some limited circumstances, there is nothing in the County Charter, the County Administrative Code, or the Government Code that suggests these provisions were intended to use anything other than this ordinary meaning of the term election. Even if there were any ambiguity—which there is not—ambiguities over eligibility criteria "are to be resolved in favor of eligibility to office." (*Carter v. Commission on Qualifications of Judicial Appointments* (1939) 14 Cal.2d 179, 182.) Accordingly, Supervisor Brown met the applicable eligibility criteria by residing and registering as a voter in the Third District by the time he was sworn into office on November 16, 2021.

Jason A. Bezis, Esq.  
January 21, 2022  
Page 2


You have also alleged the appointment was in violation of the Ralph M. Brown Act ("the Brown Act") due to allegations of insufficient notice and your ambiguous claim of a seriatim meeting. Agenda Item 58.B for the November 16, 2021, regular meeting of the Board of Supervisors gave notice that the Board could take action to "Fill the District 3 vacancy by appointment". All that is required of an agenda item is that it provide a "brief general description" of each item to be considered, which generally "need not exceed twenty words." (Gov't Code, § 54954.2, subd. (a)(1); see also *San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637, 645 [Brown Act notice provision satisfied where agenda item gives notice of essential nature of what will be considered].) The agenda item described exactly the action the Board ended up taking at the November 16, 2021 meeting—it filled the District 3 vacancy by appointing Supervisor Brown to the seat. Next, although you have alleged the Board conducted a seriatim meeting, you have provided no evidence that supports such. (See *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1514 [affirming summary judgment against plaintiff alleging seriatim meetings granted, in part, on basis that there was no evidence of improper deliberations].) The notice provided by the Board was proper and you have not provided evidence of any improper seriatim meeting, thus, the County declines to take any "curative" or "corrective" action.

Next, you have alleged a violation of the Maddy Act (Government Code §§ 54970 et seq.). However, the Maddy Act applies to "any board, commission, or committee for which the legislative body has the appointing power." (Gov't Code, § 54974.) By its own terms, the Maddy Act does not apply to a vacancy on the Board that may be specially filled by an appointment or election which is at play here. (See 68 Ops.Cal.Atty.Gen. 122 (1985) [Section 54974 not triggered when City Council fills an unscheduled vacancy on the City Council by appointment].)

Finally, you have requested that the Board call a special meeting pursuant to Government Code § 25022 because Supervisor Brown has "committed 'official misconduct'". However, challenges to a Supervisor's right or title to hold office are resolved exclusively through a quo warranto action, not through a special meeting pursuant to Section 25022. (See *Hallinan v. Mellon* (1963) 218 Cal.App.2d 342 [quo warranto was exclusive remedy for trying title of appointed police commissioner based on eligibility criteria]; *Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1051 and fn. 11 [quo warranto is available remedy to challenge appointment based on alleged Brown Act violation]; *Cooper v. Leslie Salt Co.* (1969) 70 Cal.2d 627, 632–633 [quo warranto is the exclusive remedy where it is available].) Accordingly, a special meeting would not be appropriate even if there were some valid basis for challenging Supervisor Brown's appointment.

The County is confident that this resolves all the allegations you have raised in your prior communications regarding Supervisor Brown's appointment.

Very truly yours,

  
DONNA R. ZIEGLER  
County Counsel



**From:** [Campbell-Belton, Anika, CBS](#)  
**To:** [Perkins, Cheryl, CAO](#); [French, Nancy, CBS](#); [Bailey, Rhonda, CBS](#)  
**Subject:** Re: Alignment with State is NOT a concern  
**Date:** Tuesday, November 14, 2023 2:51:25 PM

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Please make sure this is attached to the County Counsel item.

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**From:** Jackie Cota <jackiecota@proton.me>  
**Sent:** Tuesday, November 14, 2023 1:40:52 PM  
**To:** Haubert, David, Supv BOS Dist 1 <David.Haubert@acgov.org>; Tam, Lena, Supv BOS Dist 3 <Lena.Tam@acgov.org>; Márquez, Elisa, BOS Dist2 <Elisa.Marquez@acgov.org>; Clerk of the Board <cbs@acgov.org>; Carson, Keith, Supv BOS Dist 5 <kcarson@acgov.org>; BOS District 4 <bosdist4@acgov.org>  
**Cc:** Gerald Pechenuk <cities12345678@gmail.com>; Mindy P <mindypech@gmail.com>; Hunter Cobb <huntercobb3@gmail.com>; Patricia Beebe <pbeebe@protonmail.com>; Mark Zulim <strongdefender25@protonmail.com>  
**Subject:** Alignment with State is NOT a concern

WRONG! We the people are not accepting your "CONCERN" That we are out of alignment with other counties. There are 14 Charter Counties in CA. The San Francisco City and County Charter also provides for the recall of senior, un-elected bureaucrats, and other appointees. Furthermore, the El Dorado, Placer, Sacramento, San Francisco, San Mateo, and Santa Clara county charters deviate from state law when it comes to recall. **So at least six charter counties deviate from state recall law. The claim we are alone on an island and different from ALL other counties is false. THE COUNTY COUNSEL MISLEAD YOU INTO THINKING WE ARE THE ONLY COUNTY THAT DEVIATE FROM STATE LAW THIS IS FALSE. YOU CAN'T TRUST COUNTY COUNSEL ANSWERS. AGAIN, THERE IS NO REASON TO RUSH THIS EFFORT WITHOUT PROPER SCRUTINY.**

Furthermore your FAQ are not accurate and are misleading because they are wrong

Best regards,  
Jackie Cota  
925.699.9165  
[EITACCA](#) - The Election Integrity Team of Alameda County CA  
Our mission is to ensure Lawful, Accurate, Honest, Transparent and Timely Elections are conducted by Alameda County, California.

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