

Lance H. Olson

Richard C. Mladich

Richard R. Rios

Lacey E. Keys

Bruce J. Hagel
of counsel

Diane M. Fishburn (Ret.)

Deborah B. Caplan
of counsel

Christopher W. Waddell

Betty Ann Downing

Emily A. Andrews

Erika M. Boyd

Kelly Liang

Varoon Modak

Northern California

555 Capitol Mall
Suite 400
Sacramento, CA
95814-4602

Tel: (916) 442-2952
Fax: (916) 442-1280

Southern California

3605 Long Beach Blvd
Suite 426
Long Beach, CA
90807-6010

Tel: (562) 427-2100
Fax: (562) 427-2237

July 20, 2018

VIA ELECTRONIC MAIL

The Honorable Kristin Gaspar, Chair, Board of Supervisors
The Honorable Greg Cox, Member, Board of Supervisors
The Honorable Bill Horn, Member, Board of Supervisors
The Honorable Dianne Jacob, Member, Board of Supervisors
The Honorable Ron Roberts, Member, Board of Supervisors
County of San Diego
1600 Pacific Highway
San Diego, CA 92101

**RE: Item 21 – Request to Order Initiative Charter Amendment to the
November 2018 Ballot and Raising Legal Objection to the Option to
Order an Impact Report**

Dear Chair Gaspar and Members of the Board:

I write on behalf of my clients, Kyra Greene, Paola Martinez-Montes, Iris Trammell, Bishop Cornelius Bowser, and Jeff Marston, who are the proponents of the proposed initiative charter amendment entitled the “Full Voter Participation Act of 2018.” This letter is to request that the Board submit the charter amendment to voters at the November 6, 2018 general election and to inform the Board that the law does not allow it to order an impact report pursuant to Elections Code sections 9111 and 9118, despite the staff report’s indication to the contrary.

Government Code section 23722 governs the process for ordering an initiative charter amendment to the ballot. Government Code section 23722 provides:

23722. Upon the presentation of a petition, or upon its own submission of a proposal to amend or repeal the charter, the governing body shall submit the amendment or amendments proposed . . . to the eligible registered voters of the county at a special election held on the next established election date not less than 88 days after the presentation of the petition . . .

As the above passage indicates, the governing body of a county is required to perform a ministerial duty in ordering an initiative charter amendment to the ballot when it receives notification of sufficiency of the petition. The statute does not provide the Board with any discretion to take an action other than ordering the measure to the ballot at the next election that is not less than 88 days from the date the certificate of sufficiency is presented to the Board.

The staff letter presented to the Board indicates that Elections Code sections 9111 and 9118 allow the county to order an impact report instead of ordering the measure to be voted on by County voters at the November 2018 election. However, the staff report is in error because Sections 9111 and 9118

allow the Board to order impact studies for initiative ordinances, not initiative charter amendments. Section 9118 reads:

9118. If the initiative petition is signed by voters not less in number than 10 percent of the entire vote cast in the county for all candidates for Governor at the last Gubernatorial election preceding the publication of the notice of intention to circulate an initiative petition the board of supervisors shall do one of the following:

- (a) Adopt the *ordinance*, without alteration, at the regular meeting in which the certification of the petition is presented, or within 10 days after it is presented.
- (b) Submit the *ordinance*, without alteration, to the voters pursuant to Section 1405.
- (c) Order a report pursuant to Section 9111 at the regular meeting at which the certification of the petition is presented. When the report is presented to the board of supervisors, the board shall either adopt the *ordinance* within 10 days or order an election pursuant to subdivision (b).

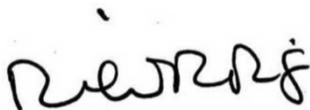
(Emphasis added.)

Not only does the plain language of the statute make it clear that Section 9118 applies to ordinances and not charter amendments, but this conclusion also makes common sense when considering the difference between initiative ordinances and charter amendments. Because a county has the option to adopt an initiative ordinance without alteration, an impact study may assist the Board in determining whether to adopt the ordinance or order it to the voters, especially since the Board may not have considered the issue previously. However, in the case of a proposed charter amendment, the county does not have the option to adopt the measure, so an impact study would not serve to assist any deliberative process.

Based on the foregoing, it is clear that County staff erred in suggesting that the Board has an option to order an impact report. The County is under a ministerial duty to order the initiative charter amendment to be voted on at the November 2018 election – it has no other legal options. If the County takes any action other than ordering the measure to the ballot, such action would suggest a bias against the measure. My client reserves the right to exercise any and all available legal options if the county decides not to comply with its statutory obligation to order the measure voted on at the November 2018 election.

Very truly yours,

OLSON HAGEL & FISHBURN LLP



RICHARD R. RIOS

cc: Mr. Thomas Montgomery, County Counsel
Mr. David Hall, Clerk of the Board of Supervisors