BELL, McANDREWS & HILTACHK, LLP
ATTORNEYS AND COUNSELORS AT LAW

455 CAPITOL MALL, SUITE 600
SACRAMENTO, CA 95814

(916) 442-7757
FAX (916) 442-7759

April 16, 2026

Honorable Terra Lawson-Remer
Chair, Board of Supervisors
County of San Diego
Terra.Lawson-Remer@sdcounty.ca.gov

RE: Proposed Charter Amendment

Dear Supervisor Lawson-Remer:

This firm represents the California District Attorneys Association ("CDAA") an organization that represents over 3500 prosecutors including all 58 elected district attorneys. CDAA has learned that you have proposed a charter amendment and have requested your fellow Board members to place it on the November 3, 2026 ballot. One provision of your proposal is unlawful and may result in the whole proposal being kept off the ballot. We bring this to your attention now so that you can modify the content to preserve the proposal legality.

The provision at issue is described in your memorandum dated April 21, 2026 as follows:

> …establishing a Charter framework that would apply the same three four-year limit to other Countywide elected offices if enabling legislation is ever enacted in the future by the State of California.

Obviously, you are aware that the voters have no current legal authority to impose term limits by Charter amendment or by ordinance on countywide elected officers, like the Sheriff and District Attorney. That issue has been clearly resolved by our Supreme Court in *Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864. As your memorandum indicates, imposition of term limits on the Sheriff or District Attorney would require either state legislation or a constitutional amendment of the county charter provision.

Your proposed charter amendment seeks to impose terms limits on the Sheriff and District Attorney *if* the Legislature or voters take one of these actions in the future. Unfortunately, the voters of San Diego county have no legal power to adopt such a conditional provision and thus, a court would be authorized to remove the whole proposed charter amendment from the ballot.

Your proposed measure also appears misleading as it clearly seeks to expand the term limits of current board members, including yourself, by linking board member term limits to other county officials not subject to term limits.

The voters power to propose and enact legislation, including charter provisions, is provided for by the California Constitution and implemented by State law. But that power is limited to the enactment of "legislation." There are numerous cases in which the courts have removed measures from the ballot because the voters had no power to enact the non-legislative measure in the first

instance. Indeed, your proposal is very much like the measure removed from the ballot in *AFL v. Eu*, (1984) 36 Cal. 3d 687. There, the California Supreme Court removed a measure from the ballot that would have required the state Legislature to ask Congress to pass a national balanced budget amendment to the United State Constitution. The Court held:

> The initiative power is the power to adopt 'statutes' -- to enact laws -- but the crucial provisions of the balanced budget initiative do **not** adopt a *statute* or enact a law. They adopt, and mandate the Legislature to adopt, a *resolution* which does **not** change California law and constitutes only one step in a process which might eventually amend the federal Constitution. Such a resolution is **not** an exercise of **legislative** power reserved to the people under the California Constitution.
>
> Real party in interest argues that we should 'let the people's voice be heard.' Even if the initiative is invalid, he implies, the election will give the voters the opportunity to express their views on the desirability of a balanced budget, and the legislators may respond to the outcome of the election. This argument misunderstands the purpose of the initiative in California. It is **not** a public opinion poll. It is a method of enacting legislation, and if the proposed measure does **not** enact legislation, or if it seeks to compel **legislative** action which the electorate has no power to compel, it should **not** be on the ballot.

(*AFL v. Eu*, *supra*, at 694-695). Many other preelection cases have reached the same conclusion and result. (See, *Widders v. Furchtenicht* (2008) 167 Cal.App.4th 769 and *City of San Diego v. Dunkl* (2001) 86 Cal.App.4th 384.)

The reason for this rule is best shown by way of example in this very situation. Assume the voters approve the charter amendment proposed in November of 2026, but the Legislature does not act on county officer term limits for 40 more years. Your proposal would then impose term limits on those officers in 2066, without the voters of that era having had any opportunity to consider the wisdom of doing so at that time.

If the Legislature or the voters of California ever act to authorize term limits on countywide officers, the voters in San Diego can consider the wisdom of doing so at that time, either by ordinance or charter amendment, proposed by the people or by the Board. Your attempt to do so now jeopardizes the legality of your entire proposal. We urge you to reconsider inclusion of the clearly unlawful provision.

Sincerely,

Thomas W. Hiltachk

CC:
Paloma Aguirre
Joel Anderson
Monica Montgomery Steppe
Jim Desmond
David Smith, County Counsel
Kelly Martinez, Sheriff
Summer Stephan, District Attorney
Dan Dow
Greg Totten