

ATTACHMENT A

LETTER FROM  
ASSEMBLYMEMBER  
CHRIS HOLDEN TO  
STATE ATTORNEY  
GENERAL KAMALA  
HARRIS

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0041  
(916) 319-2041  
FAX (916) 319-2141

DISTRICT OFFICE  
600 NORTH ROSEMEAD BLVD., SUITE 117  
PASADENA, CA 91107  
(626) 351-1917  
FAX (626) 351-6176

# Assembly California Legislature



**CHRIS R. HOLDEN**  
ASSEMBLYMEMBER, FORTY-FIRST DISTRICT

**COMMITTEES**  
APPROPRIATIONS  
BUDGET  
BUSINESS AND PROFESSIONS  
JUDICIARY  
RULES  
JOINT COMMITTEE ON RULES  
**SUBCOMMITTEE**  
BUDGET SUBCOMMITTEE NO. 5 ON  
PUBLIC SAFETY

**SELECT COMMITTEES**  
CHAIR REGIONAL TRANSPORTATION AND  
INTERCONNECTIVITY SOLUTIONS  
SCIENCE, TECHNOLOGY, ENGINEERING  
AND MATH EDUCATION  
SMALL BUSINESS IN THE INLAND EMPIRE

**BOARD MEMBER**  
SANTA MONICA MOUNTAINS  
CONSERVANCY BOARD

June 6, 2016

Hon. Kamala Harris  
Attorney General, State of California  
c/o Opinion Unit, Department of Justice  
455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102

Dear Attorney General Harris,

I am writing today to request your written legal opinion, pursuant to California Government Code Section 12519, regarding a matter that has arisen as a result of recent legislative action. A recent court decision prompted the Legislature to amend the definition of "political subdivision" in the California Voting Rights Act while the Legislature simultaneously enacted a new law, California's Voter Participation Rights Act, containing the original definition in the Voting Rights Act. The discrepancy in the two laws is generating concerns with charter cities and may require legislation to resolve the issue. Before introducing legislation, I am requesting your legal opinion on the following questions:

- 1. Does the Voter Participation Rights Act directly apply to charter cities and local school districts, if both entities' district elections are governed by the charter of a city?**

As currently provided in California Election Code Section 14051(a), for the purposes of the Voter Participation Rights Act (Voter Participation Act), a "political subdivision" is defined as a "geographic area of representation created for the provision of government services, including, but not limited to a city, a school district, a community college district, or other district organized pursuant to state law." The definition explicitly exempted charter cities and was modeled after the then-existing definition of political subdivision in the California Voting Rights Act of 2001 (Voting Rights Act).

However, for the purposes of city-wide elections that failed to protect minority voters, a California appellate court held that all cities, including charters, were subject to the Voting Rights Act.<sup>1</sup> Following the *Jaruregui* decision, the Legislature subsequently amended the Voting Rights Act<sup>2</sup> to apply to charter cities and other entities subject to a local charter, but did not amend or modify the enacting legislation that created the Voter Participation Act. The analysis conducted

<sup>1</sup> *Jaruregui v. City of Palmdale* (2014) 226 Cal.App.4th, 801

<sup>2</sup> Assm. Com on Elections and Redistricting, Analysis of Asm. Bill 277 (2015-2016 Reg. Sess.) as introduced on February 11, 2015.

by the Assembly Committee Elections and Redistricting of Senate Bill 415 (Hueso, 2015), that enacted the Voter Participation Act, notes that the measure *may* apply to charter cities but the remainder of the legislative record is generally silent on the matter.<sup>3</sup>

**2. Could a municipal election held by a charter city on an otherwise valid but non-statewide election date, that produced low voter turnout, be considered a matter of “statewide concern” sufficient to negate local control and impose the Voter Participation Rights Act on a charter city ?**

Even if California charter cities are not explicitly subject to the Voter Participation Act, it is unclear whether a court may subsequently hold a city to that Act’s provisions. The Voting Rights Act was explicitly authorized to enhance federal protections that prevent the dilution or suppression of minority voting in California. Conversely, the Voter Participation Act was enacted to increase the “abysmal” level of voter participation in off-year elections, regardless of race or ethnicity.<sup>4</sup> Although the author stated that the primary rationale in favor of the measure was lessening the high costs that off-year, low-turnout elections impose on taxpayers, he additionally noted that off-year elections frequently produce an electorate that “does not look like the general public as a whole and [therefore] neither does the city council.”<sup>5</sup>

Federal voting rights law imposes a “totality of the circumstances”<sup>6</sup> evaluation in certain cases. A central question in a totality of the circumstances cases examines whether “voting practices or procedures...tend to enhance the opportunity for discrimination against [a] minority group.”<sup>7</sup> Given that the California Voting Rights Act strengthened a plaintiff’s ability to make district based claims, it is unclear if the new Voter Participation Rights Act creates a presumption that off-year municipal elections are inherently discriminatory. Could such an argument be used to enhance voting rights claims based on electoral processes?

Furthermore, California courts have look at the essence of local voting laws. In rejecting the Palmdale electoral districts, the *Jauregui* held that “rights of protected classes against dilution of their votes does not arise merely from a municipal concern...they arise from the essence of a democratic form of government.”<sup>8</sup> Moreover, California’s Supreme Court has held that “the integrity of the electoral process, at both the state and local level, is undoubtedly a statewide concern.”<sup>9</sup> In light of the importance California courts place on basic electoral protections, to what extent will the courts view the new Voter Participation Rights Act, not as a tool to boost turnout and lower costs but an instrument to lessen discrimination, thus making this law a matter of “state concern” sufficient to apply to charter cities?

<sup>3</sup> Assm. Com on Elections and Redistricting, Analysis of Sen. Bill 415 (2015-2016 Reg. Sess.) as amended on June 23, 2015, p4.

<sup>4</sup> *Id* at 3

<sup>5</sup> *Id.*

<sup>6</sup> *Thornburg v. Gingles* (1986) 478 U.S. 30, 47

<sup>7</sup> *Id.* at 45

<sup>8</sup> *Jaruregui v. City of Palmdale, supra*, 226 Cal.App 4<sup>th</sup> at 801.

<sup>9</sup> *Johnson v. Bradley* (1992) 4 Cal.4th 389, 397-411

The current state of municipal election law appears to have been erroneously thrown into limbo by two statutes enacted last year. As more local governments begin to examine future election dates it may become imperative for the legislature to act to clarify existing law. In order to ensure the clearest and most workable changes to existing law are enacted, if such changes are indeed necessary, I respectfully request your written legal opinion to the above questions. Should you need more clarity on the above issues, please do not hesitate to contact my office at 916-319-2041.

Sincerely,

A handwritten signature in black ink that reads "Chris Holden". The signature is written in a cursive, flowing style.

CHRIS R. HOLDEN  
Assembly Member, 41<sup>st</sup> District

CH:nl