DEPARTMENT 82 LAW AND MOTION RULINGS

Hon. Mary H. Strobel

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Case Number: 20STCP04019 **Hearing Date:** June 17, 2021 **Dept:** 82

Coalition of County Unions, et al.	Judge Mary Strobel
v.	Hearing: June 15, 2021
Los Angeles County Board of Supervisors, et al.	
20STCP04019	Tentative Decision on Petition for Writ of Mandate

Related to 20STCP02478 [lead case]

Petitioners Coalition of County Unions, Miguel A. Ortega, and Ron Hernandez ("Petitioners") petition for a writ of mandate prohibiting Respondents Los Angeles County Board of Supervisors ("Board"), Arlene Barerra in her official capacity as Los Angeles County Auditor ("Auditor"), and Fesia Davenport in her official capacity as Los Angeles County Chief Executive Officer ("CEO" or "Executive Officer") (collectively "Respondents") from enforcing or implementing the County Charter amendment enacted by voters as Measure J on November 3, 2020.

Measure J restricts the budgeting discretion of the current and any future elected Board of Supervisors by prohibiting them from using portions of the General Fund for "carceral" or law enforcement purposes, and requiring them to allocate those moneys for other designated programs. At the outset, the court notes that this case does not involve any evaluation of the policy choices embedded in Measure J. Nor does the court's resolution of this case prohibit in any way the current Board of Supervisor or any future Board, from adopting a budget wholly in line with Measure J's provisions. Rather, the only question presented is whether the ballot process can be used to take this budgeting choice out of the hands of the current and future elected boards. For the reasons discussed further below, the court concludes it cannot.

Judicial Notice

Petitioners' Request for Judicial Notice ¶¶ 1-5, Pet. 1-188 – Granted. (Evid. Code § 452(c), (h).)

Respondents' RJN Exhibits 1-2 – Granted. (Evid. Code § 452(b)-(c), (h).)

Background

On August 4, 2020, the Board passed an ordinance and resolution to place a proposed amendment to the Charter of the County of Los Angeles ("Measure J") on the November 3, 2020, General Election ballot. Measure J was approved by the voters and amended Section 11 of Article II of the County Charter. (See Joint Appendix ("JA") 190-191; Pet. ¶¶ 1-2; Ans. ¶¶ 1-2.)[1] The Charter Amendment becomes operative on July 1, 2021. (JA 190.)

Measure J requires that the Board, after a three-year phase-in period, "to allocate" and "[s]et aside a baseline minimum threshold of at least ten percent (10%) of the County's locally generated unrestricted revenues in the general fund (Net County Cost), as determined annually in the budget process or as otherwise set forth in the County Code or regulations, to be allocated on an annual basis... for the following primary purposes … Direct Community Investment … [and] Alternatives to Incarceration." This allocation must be made "in compliance with all laws and regulations." (JA 3-4.) Measure J does not define the terms "locally generated unrestricted revenues" or "Net County Cost."

Measure J requires Board, after obtaining the input from the public and County departments, to allocate the set-aside funds for the following primary purposes:

i. Direct Community Investment.

1. Community-based youth development programs.

2. Job training and jobs to low-income residents focusing on jobs that support the implementation of the "Alternatives to Incarceration" workgroup recommendations as presented to the County Board of Supervisors on March 10, 2020, especially construction jobs for the expansion of affordable and supportive housing, restorative care villages, and a decentralized system of care.

3. Access to capital for small minority-owned businesses, with a focus on Black-owned businesses.

4. Rent assistance, housing vouchers and accompanying supportive services to those at-risk of losing their housing, or without stable housing. 5. Capital funding for transitional housing, affordable housing, supportive housing, and restorative care villages with priority for shovel-ready projects.

ii. Alternatives to Incarceration.

1. Community-based restorative justice programs.

2. Pre-trial non-custody services and treatment.

3. Community-based health services, health promotion, counseling, wellness and prevention programs, and mental health and substance use disorder services.

4. Non-custodial diversion and reentry programs, including housing and services. (JA 3-4.)

Measure J also provides that "[t]he set aside shall not be used for any carceral system or law enforcement agencies, including the Los Angeles County Sheriff's Department, Los Angeles County District Attorney's Office, Los Angeles County Superior Courts, or Los Angeles County Probation Department, including any redistribution of funds through those entities...." (JA 4.)

"The unrestricted revenues that are set aside shall phase in over a three-year period, beginning July 1, 2021, and incrementally grow to the full set-aside by June 30, 2024, pursuant to the procedures codified in the County Budget Act in the Government Code." (JA 5.)

"[T]he Board of Supervisors may, by a four-fifths vote, reduce the set-aside in the event of a fiscal emergency, as declared by the Board of Supervisors, that threatens the County's ability to fund mandated programs." (JA 5.)

Prior to Measure J, the Los Angele County Charter made no reference to the County budget, budget appropriations, or Respondents' duties with respect to the County budget. (See JA 90-174)

Procedural History

On August 5, 2020, in related case 20STCP02478, Petitioners filed a verified petition for writ of mandate seeking to remove Measure J from the ballot on several different legal grounds. After briefing and a hearing, the court denied the petition. As relevant to the instant writ petition, the court ruled: "There are some differences between the facts in *Totten* and those presented here. For example, the Amendment here was proposed to the voters by the Board, and not by voter initiative; Los Angeles is a charter county, not a general law county; and Petitioners here challenge a proposed charter amendment, and not an ordinance. These distinctions may or may not be material. In any event, neither Petitioners nor Respondents adequately analyze these issues. The question of whether the Amendment can lawfully be adopted by the electorate is a significant one, requiring full briefing and unrushed deliberation. Petitioners have not met their burden in this briefing, to show that the Proposed Amendment is 'clearly' invalid justifying a departure from the general rule that the substantive validity of a ballot measure is better reviewed post-election." (8/28/20 Minute Order in 20STCP02478 at 20.)

On December 8, 2020, in 20STCP04019, Petitioners filed the instant petition for writ of mandate. Respondents answered on January 27, 2021.

On March 12, 2021, Petitioners filed their opening brief in support of the petition. The court has received Respondents' opposition, Petitioners' reply, and the parties' joint appendix.

Standard of Review

The writ petition is brought pursuant to CCP section 1085. There are two essential requirements to the issuance of an ordinary writ of mandate under Code of Civil Procedure section 1085: (1) a clear, present and ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "An action in ordinary mandamus is proper where … the claim is that an agency has failed to act as required by law." (Id. at 705.)

Petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154.) "'On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment.' …. Interpretation of a statute or regulation is a question of law subject to independent review." (*Christensen v. Lightbourne* (2017) 15 Cal.App.5th 1239, 1251.)

Analysis

Petitioners contend that Measure J conflicts with powers and duties related to county budgeting assigned to Respondents and seriously impairs Respondents' exercise of their essential government function of managing the County's financial affairs. For these reasons, Petitioners contend that voters had no power to adopt Measure J and that the charter amendment is invalid. (Opening Brief (OB) 6-15.) Respondents disagree. They contend that a county charter may address budgeting; Measure J only applies to "locally generated unrestricted revenues" and deals with matters of local, not statewide concern; and that Measure J is not preempted by state law and could be adopted by the voters. (Oppo. 9-19.)

Constitutional Authority of Charter Counties

Los Angeles County is a charter county. (See e.g. JA 90-174, 184-188.) "Since counties constitute merely political subdivisions of the state (Cal. Const., art. XI, § 1, subd. (a)…., they have independently only such legislative authority that has been expressly conferred by the Constitution and laws of the state." (*Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864, 870.)

"Therefore, a charter county has only those powers and can enact within its charter only those provisions authorized by the Constitution. These include those enumerated in article XI, section 4 [of the California Constitution]." (Id. at 870.)

Section 4 of Article XI states in relevant part:

County charters shall provide for: …

(d) The performance of functions required by statute.

…[¶¶]

(g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted by the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.

(h) Charter counties shall have all the powers that are provided by this Constitution or by statute for counties. (Cal. Const. Art. XI, Sec. 4.)

As noted by Petitioners, the powers of a charter county are not the same as those of a charter city. (See OB 6; Cal. Const. Art. XI, § 5.) "Whereas *charter county* 'home rule' authority is limited to matters concerning the structure and operation of local government, the version of 'home rule' afforded to a *charter city* is substantially more expansive." (*Dibb v. City. of San Diego* (1994) 8 Cal. 4th 1200, 1208.)

DeVita and Restrictions on the Electorate's Right to Initiative

In *DeVita v. County of Napa* (1995) 9 Cal.4th 763 (*DeVita*), our Supreme Court set forth the standard for determining when the electorate's right to initiative has been restricted by the state legislature. "[T]he local electorate's right to initiative and referendum is guaranteed by the California Constitution, article II, section 11, and is generally co-extensive with the legislative power of the local governing body. [Citations]…. '[The courts] will presume, absent a clear showing of the Legislature's intent to the contrary,

that legislative decisions of a city council or board of supervisors ... are subject to initiative and referendum.'" (*DeVita, supra,* 9 Cal.4th at 775-776.) "The presumption in favor of the right of initiative is rebuttable upon a definite indication that the Legislature, as part of the exercise of its power to preempt all local legislation in matters of statewide concern, has intended to restrict that right." (Id. at 776.)

At the outset, the court notes that Measure J was placed on the ballot by the Board, not by voter initiative. *DeVita* premised its analysis, in part, on the "duty of the courts to jealously guard this [initiative] right of the people," recognizing that "it has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right [to local initiative or referendum] be not improperly annulled." (Id. at 776, citations omitted). While it appears that the legal effect of Measure J, and any conflict with state law, is the same regardless of whether the measure was placed on the ballot by the Board or initiative, the policy to jealously guard the initiative power embedded in Article II section 11 does not appear to be implicated in the same way it was in *DeVita*. Nonetheless, DeVita remains an appropriate framework in which to analyze the Measure's conflict with state law. Petitioners themselves argue that "[t]he voters' Constitutional power to enact an ordinance under the Article II initiative power is the same as the voters' power to amend the County Charter under Article XI." (OB 9, fn. 4.)

In some cases, courts have held that "the initiative and referendum power could not be used in areas in which the local legislative body's discretion was largely preempted by statutory mandate." (*DeVita, supra,* 9 Cal.4th at 776; see e.g. *Simpson v. Hite* (1950) 36 Cal.2d 125 [initiative or referendum power cannot be used to interfere with board of supervisor's duty to provide suitable accommodations for courts].) In other cases, the Court held that "the Legislature did not intend to restrict local legislative authority but rather to delegate the exercise of that authority exclusively to the governing body, thereby precluding initiative and referendum." (*DeVita, supra,* 9 Cal.4th at 776, discussing *Committee of Seven Thousand v. Sup.Ct.* (1988) 45 Cal.3d 491, 505-511 [*COST*].)

"In ascertaining whether the Legislature intended to delegate authority exclusively to the local governing body, the 'paramount factors' are '(1) statutory language, with reference to 'legislative body' or 'governing body' deserving of a weak inference that the Legislature intended to restrict the initiative and referendum power, and reference to 'city council' and/or 'board of supervisors' deserving of a stronger one [citation]; (2) the question whether the subject at issue was a matter of 'statewide concern' or a 'municipal affair,' with the former indicating a greater probability of intent to bar initiative and referendum.' [Citation] [I]f doubts can [be] reasonably resolved in favor of the use of [the] reserve initiative power, courts will preserve it.'" (*Totten v. Board of Supervisors* (2006) 139 Cal.App.4th 826, 834 (*Totten*), discussing and quoting *DeVita, supra* at 776.)

Here, Petitioners contend that Measure J conflicts with authority delegated exclusively to the Board of Supervisors in the County Budget Act and other statutes. A similar issue was addressed in *Totten, supra*, in which the Court of Appeal considered the validity of an initiative ordinance establishing a minimum annual budget for a county's public safety agencies. The Court of Appeal held that "the electorate cannot, by initiative, in a general law county, enact an ordinance prescribing minimum future annual budgets

for county public safety agencies. Such an ordinance exceeds the electorate's initiative power and is constitutionally invalid." (*Totten, supra,* 139 Cal.App.4th at 830.)

Below, the court applies the *DeVita* standard to Measure J and the facts of this case. The *Totten* decision is also discussed in greater detail, *infra*.

Statutory Language Delegates Exclusive Authority over the County Budget to the Board

"The County Budget Act (Gov. Code § 29000 et seq.) codifies the procedures for preparing and managing county budgets." (*Gates v. Blakemore* (2019) 39 Cal.App.5th 32, 39.) The County Budget Act applies to charter counties such as Los Angeles, as well as to general law counties. (Ibid.; see also Gov. Code § 29002 and JA 90-174.)

In *Totten, supra*, the Court of Appeal concluded that "Sections 29000–29093 expressly delegate authority over the county budget to the board." (*Totten, supra,* 139 Cal.App.4th at 834.) The Court summarized the following provisions from the County Budget Act, which are also at issue here:

> "On or before June 10th of each year, as the board directs, each official or person in charge of any budget unit shall file with the auditor an itemized estimate of available financing, financing requirements, and any other matter required by the board." (§ 29040.) From the estimates the county auditor shall prepare a tabulation that "shall be submitted to the board...." (§§ 29060, 29062.) "Upon receipt of the tabulation the board shall consider it and ... shall make any revisions, reductions or additions therein that it deems advisable." (§ 29063.) "On or before July 20th of each year the board, by formal action, shall approve the tabulation with the revisions, additions and changes in conformity with its judgment and conclusions as to a proper financial program for the budget period, whereupon it shall constitute the proposed budget for the period to which it is to apply." (§ 29064, subd. (a).) On or before August 20 of each year, the "board" shall conduct a public hearing "at which meeting any member of the general public may appear and be heard regarding any item in the proposed budget or for the inclusion of additional items." (§ 29080.) In addition, at the meeting "[a]ny official whose estimates have been or are proposed to be revised, reduced, or increased, or who desires to change his or her estimates, shall be given the opportunity to be heard thereon." (*Ibid.*) "After the conclusion of the hearing, and not later than August 30 of each year, and after making any revisions of, deductions from, or increases or additions to, the proposed budget it deems advisable during or after the public hearing, the board shall by resolution adopt the budget as finally determined." (§ 29088, subd. (a).) (*Totten, supra* at 834-835.)

The *Totten* Court reasoned that "the Legislature's use of the term 'board' in sections 29000–29093 gives rise to a strong inference that the Legislature intended to preclude the electorate from exercising authority over the adoption of a county budget." (Id. at 835.) As Respondents concede (see Oppo. 17:24-25), *Totten's* statutory analysis of the County Budget Act applies here as well. As stated in *Totten*, "statutory language in sections 29000–29093 expressly delegates authority over the county budget to the board of supervisors." (*Totten, supra* at 840.)

However, as *Totten* notes, in determining whether Measure J could be enacted by initiative or by the voters, the court must consider other factors, including whether the subject at issue is a matter of statewide concern and whether Measure J would seriously impair the Board's exercise of essential government functions.

County Budgets for Law Enforcement Agencies Are a Statewide Concern

"The state's plenary power over matters of statewide concern is sufficient authorization for legislation barring local exercise of initiative and referendum as to matters which have been specifically and exclusively delegated to a local legislative body." (*COST, supra,* 45 Cal.3d at 511-512.)

In *Totten, supra,* the Court of Appeal concluded that "[c]ounty budgets for public safety agencies are of particular statewide concern." (*Totten, supra,* 139 Cal.App.4th at 836.) The Court reasoned as follows:

> County budgets for public safety agencies are of particular statewide concern. Such budgets involve the use of state funds provided pursuant to Proposition 172. Each county must establish a Public Safety Augmentation Fund in its treasury to receive the Proposition 172 funds. (§ 30055.) Section 30056, subdivision (e), provides: "The Legislature finds and declares that the allocation of the Public Safety Augmentation Fund is a matter of statewide concern and is not merely a municipal affair or a matter of local interest." Moreover, the people of the state have declared in the state constitution that "[p]ublic safety services are critically important to the security and well-being of the State's citizens and to the growth and revitalization of the State's economic base." (Cal. Const., art. XIII, § 35, subd. (a)(1)….
>
> Furthermore, since county budgets for public safety agencies constitute a major portion of county spending, such budgets are of statewide concern because they may affect a county's ability to adequately fund state-mandated programs unrelated to public safety. Counties are generally responsible for funding local programs mandated by state legislation enacted before

January 1, 1975. Pursuant to article XIII B, section 6 of the California Constitution, the state is required to reimburse the counties for any new governmental programs, or for higher levels of service under existing programs, that it imposes upon them by state legislation enacted after January 1, 1975. [Citation.]….[¶]

In adopting a budget, the board of supervisors must strike a balance between public safety needs and the county's obligation to fund state-mandated programs unrelated to public safety. In our view, it is a matter of statewide concern that a proper balance be struck to ensure adequate funding in both areas. (*Totten, supra,* 139 Cal.App.4th at 836-837.)

Similar to the initiative ordinance in *Totten*, Measure J constrains the Board's discretion related to funding of public safety agencies. Specifically, Measure J provides that "[t]he set aside shall not be used for any carceral system or law enforcement agencies, including the Los Angeles County Sheriff's Department, Los Angeles County District Attorney's Office, Los Angeles County Superior Courts, or Los Angeles County Probation Department, including any redistribution of funds through those entities...." (JA 4.)

Respondents seek to distinguish *Totten* on various grounds. (Oppo. 17-18.) Respondents contend that because Measure J only applies to "locally generated unrestricted revenues," it does not threaten County's funding of state-mandate obligations or its ability to manage its budget. (Ibid.)

As a general matter, however, Respondents do not dispute that county budgeting for public safety agencies is a matter of statewide concern. Further, the monetary restriction in Measure J is significant. By Respondents' own estimate based on the projected 2020-2021 county budget, Measure J could restrict Board from using approximately $300 million per year in discretionary county funds on public safety agencies and county superior courts. (JA 197.) Even if Measure J would not directly limit the Board's ability to budget for state-mandated programs, it could potentially have an indirect impact on County's ability to budget for state-mandated programs. It could also prevent Board from spending substantial discretionary funds on public safety, even if the Board otherwise deemed such expenditures necessary for public safety or welfare. *Totten* identifies various reasons why county budgets for public safety agencies are a statewide concern, including express statements in the California Constitution and the need for the board of supervisors to strike a balance between public safety needs and the county's obligation to fund state-mandated programs. Those concerns are also present in this case, even though Measure J only purports to restrict Board discretion with respect to "locally generated unrestricted revenues."

Los Angeles County Fiscal Management and Budgeting Procedure are Statewide Concerns

Petitioners also argue, more generally, that "the County Budget Act and Government Code section 26227 conclusively establish that Measure J conflicts with the budgetary authority vested exclusively in the [Board]." (OB 12.) Throughout the opening brief, Petitioners contend that these statutes show a statewide concern in fiscal management and budgeting procedure in Los Angeles County. (See OB 2-4, 10-12.)

As noted above, "counties constitute merely political subdivisions of the state (Cal. Const., art. XI, § 1, subd. (a)…." (*Younger v. Board of Supervisors* (1979) 93 Cal.App.3d 864, 870.) Accordingly, the state necessarily has an interest in county budgeting and fiscal management.

Relevant budget procedures from the County Budget Act are summarized above, in *Totten,* and in the declarations of Matthew McGloin, the county official responsible for managing the Budget and Operations Management Branch of the County's Chief Executive Office. (See JA 175-183, 189-198.) Pursuant to statute, the "board" is the entity that adopts the budget "after making any revisions of, deductions from, or increases or additions to, the recommended budget it deems advisable during or after the public hearing." (Gov. Code § 29088; see also Id. § 29064.) "[T]he term 'board' in sections 29000–29093 cannot be reasonably interpreted as including the electorate." (*Totten, supra,* 139 Cal.App.4th at 835.) "[T]he electorate cannot conduct a public hearing and, following the hearing, 'by resolution adopt' a final budget." (Ibid., citing § 29088.) While procedural in nature, the County Budget Act provides evidence that exclusive authority over budgeting was delegated to county boards of supervisors because of the statewide concern regarding county fiscal management and budgeting.

As Petitioners note, this statewide concern about county budgeting appears particularly acute for Los Angeles County. (OB 3.) Presumably because of its size and potential impact on the State Budget, Los Angeles County must submit its recommended/proposed budget to the Governor, the Legislature, the State Auditor, and the Legislative Analyst for review. (See Gov. Code §§ 30603, 30608.) Section 30603 provides: "The county shall annually submit its proposed budget to the Governor, the Legislature, and the State Auditor, including estimated actual expenditures and revenues for the current year, an analysis of the impact of the Governor's Budget for the next fiscal year, and any other pertinent information which may impact the county's fiscal situation for the next fiscal year." In opposition, Respondents did not address this statutory evidence of statewide concern. (See *Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is "equivalent to a concession"].)

The legislature has also expressly delegated authority to county boards of supervisors to appropriate and expend funds for social programs, similar to those at issue in Measure J. Government Code section 26227 provides in part:

> The board of supervisors of any county may appropriate and expend money from the general fund of the county to establish county programs or to fund other programs deemed by the board of supervisors to be necessary to meet the social needs of the population of the county, including but not limited to, the areas of health, law enforcement, public safety, rehabilitation, welfare, education, and legal services, and the needs of physically, mentally and financially handicapped persons and aged persons.

Notably, section 26227 expressly delegates authority to the "board of supervisors," as opposed to a legislative body or governing body. As discussed, use of the term "board of supervisors" supports a strong inference that the legislature intended to preclude exercise of statutory authority by the electorate. Section 26227, therefore, provides additional support for Petitioners' contention that there is a statewide concern in county fiscal management and budgeting, even with respect to social services similar to those described in Measure J. (See also *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1517 [noting Board's "budgeting authority" under section 26227].) Respondents also fail to address section 26227 in opposition.

Finally, case law supports that "[a]n essential function of a board of supervisors is the management of the financial affairs of county government, which involves the fixing of a budget." (*Greiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 840.) "The budgetary process entails a complex balancing of public needs in many and varied areas with the finite financial resources available for distribution among those demands. It involves interdependent political, social and economic judgments which cannot be left to individual officers acting in isolation; rather it is, and indeed must be, the responsibility of the legislative body to weigh those needs and set priorities for the utilization of the limited revenues available." (*Totten, supra,* 139 Cal.App.4th at 839, quoting *County of Butte v. Superior Court* (1985) 176 Cal.App.3d 693, 699, 222 Cal.Rptr. 429.)

There is a statewide concern in Los Angeles County's fiscal management and budgeting. The court considers below whether Measure J seriously impairs the exercise of essential government functions, including with respect to Los Angeles County fiscal management and budgeting.

Measure J Seriously Impairs the Exercise of Essential Government Functions

"The mere fact that county budgets for public safety agencies are of statewide concern does not mean that sections 29000–29093 were intended to preclude initiative action by the electorate. Courts are not 'to automatically infer that a statutory scheme restricts the power of initiative or referendum merely because some elements of statewide concern are present.' [Citation.] '[I]t is erroneous to assume that a statute or statutory scheme that both asserts certain state interests and defers in other respects to local decision making [sic] implies a legislative intent to bar the right of initiative. Rather, courts must inquire concretely into the nature of the state's regulatory interests to determine if they are fundamentally incompatible with the exercise of the right of initiative or referendum, or otherwise reveal a legislative intent to exclusively delegate authority to the local governing body.'" (*Totten, supra,* 139 Cal.App.4th at 838.)

Measure J Seriously Impairs County Budgeting for Law Enforcement Agencies

As noted, Measure J constrains the Board's discretion related to funding of public safety agencies. (JA 4.) This restriction is limited to the "set aside" required by Measure J, which is defined as a "baseline minimum threshold of at least ten percent (10%) of the County's locally generated unrestricted revenues in the general fund (Net County Cost), as determined annually in the budget process or as otherwise set forth in the County Code or regulations, to be allocated on an annual basis." (JA 3-4.)

Measure J does not define the terms "locally generated unrestricted revenues" or "Net County Cost." According to McGloin, locally generated revenues and Net County Cost (NCC) "are sometimes used interchangeably, but they are two separate components of the County's budget." (JA 193.) NCC is defined in County's yearly budget books as "the amount of operations financed by general purpose revenues, such as property taxes." (Ibid.) The term "locally generated revenue" is not defined in the law, but has been used in County budgeting parlance for over 20 years. McGloin declares that "it is commonly understood as meaning general purpose revenues or general taxes generated from local sources." (Ibid.)

According to McGloin, "the expenditure of locally generated revenues is generally under the control and discretion of the County's Board of Supervisors." (JA 194.) However, there are restrictions on locally generated revenues, including "legal settlements, contractual obligations, maintenance of efforts requirements, debt service payments and Board policies." (Ibid.) McGloin also represents that County "intend[s] to treat revenue/NCC needed for the implementation of programs required by State law or State mandate … as outside of the Measure J baseline." (JA 195.) Examples of state-restricted funds include "Prop 172" funding and trial court funding under the Lockyer-Isenberg Trial Court Funding Act of 1997. (JA 195-196.) "Determining the amount of 'restricted' revenue/NCC is not a simple process, and Measure J directs the Board and the Chief Executive Officer to make an annual assessment of that portion of locally generated revenues/NCC that are 'restricted.'" (JA 195.)

In the McGloin declaration, Respondents state that, in the 2020-2021 budget, County had total revenue of $38.234 billion and about $9.661 billion, or 25%, was "locally generated." (JA 194.) While the specific amount of "unrestricted" locally generated revenues is not presently known, Respondents estimate that this amount could be $3 billion in the projected 2020-2021 county budget. Thus, by this estimate, Measure J could restrict approximately $300 million (10%) from being used for "carceral" purposes or for public safety agencies, and require that expenditure for direct community investment and alternatives to incarceration as defined in the measure. (JA 197.)

Petitioners contend that, similar to the ordinance in *Totten*, Measure J impermissibly interferes with the Board's budgetary authority with respect to public safety agencies. (OB 11.) The court agrees. Measure J prohibits the Board from appropriating a significant portion of County discretionary funds to public safety agencies, now and in the future. As Petitioner notes, Board would have no discretion to direct the set-aside funds to public safety agencies even if the County saw a severe spike in criminal activity requiring more public safety funding or other changed circumstances that necessitated more public safety financial resources.

Respondents argue Measure J allows the Board to reduce the set-aside by a four-fifths vote in the event of a fiscal emergency that threatens the County's ability to fund mandated programs. (JA 5.) This clause does not mitigate the impact of Measure J on essential government functions. Board would still lack authority to appropriate the set-aside funds for public safety agencies if Board, in its discretion and by majority vote, found that conditions required additional public safety funding. Only a supermajority of the Board can *temporarily* suspend Measure J. Thus, this clause would not guarantee that Board could suspend Measure J if necessary to fund mandated programs.

Respondents seek to distinguish *Totten* on the grounds that the ordinance in that case "regulated the Ventura County Board of Supervisors' use of State funds provided under State law, i.e., 'Proposition 172'" and "the restriction on spending at issue at *Totten* was so great that it directly threatened other state-mandated services." (Oppo. 17-18.) Respondents contend that because Measure J only applies to "locally generated unrestricted revenues," it does not threaten County's funding of state-mandate obligations or its ability to manage its budget. (Ibid.)

While the facts in *Totten* are not identical, Respondents do not persuasively distinguish the Court of Appeal's reasoning in *Totten*. The ordinance at issue in *Totten* did regulate the use of state Proposition 172 funds, but it also regulated Ventura County's use of non-Proposition 172 funds, for which it made "general fund appropriations" for public safety. Proposition 172 provided supplemental funding for county public safety agencies. (See *Totten, supra*, 139 Cal.App.4th at 830-833.) The ordinance prohibited any reduction in base year funding from the County "general fund" and required an inflationary increase in such funding to come from the "general fund" of the County. (Id. at 832.)[2] The record also included a statement, from the county's chief administrative officer, that "Public safety departments are increasingly consuming more net county cost and experiencing continual ***General Fund budgetary growth***." (Ibid. [emphasis added].) The Court of Appeal did not conclude that the case implicated a statewide concern

solely because the county received Proposition 172 funding. The Court concluded, generally, that "county budgets for public safety agencies constitute a major portion of county spending" affecting the county's ability to adequately fund other mandated programs. (*Totten, supra,* 139 Cal.App.4th at 836.)

Respondents assert that Measure J was "designed to avoid interference with the County's funding of all mandatory obligations, including State-mandated obligations." (Oppo. 18.) Respondents point out that Measure J "was initiated by the County's Board of Supervisors, not in defiance of the Board." (Ibid.) Neither argument distinguishes *Totten* or changes this court's analysis under *DeVita*.

While the July 2020 Board initiated the vote, Measure J binds all future boards of supervisors. The impact is the same regardless of who initiated the vote. Thus, the fact that the Measure was initiated by the Board does not distinguish this case from the reasoning in *Totten*.

That Measure J only requires a set aside of "unrestricted" funds is not dispositive. The measure constrains Board from exercising discretion over a substantial percentage of discretionary funds that could be used for public safety agencies if deemed necessary by the Board. As noted above, Respondents admit that Measure J could restrict Board from using approximately $300 million per year in discretionary county funds on public safety agencies. (JA 197.) Even if Measure J would not directly limit the Board's ability to budget for state-mandated programs (which Respondents do not clearly show), it could have an indirect impact on County's ability to budget for state-mandated programs. [3]

Respondents do not show that *Totten* can be distinguished because Los Angeles is a charter county, not a general law county; or because Petitioners challenge a charter amendment, and not an ordinance. Neither factor was dispositive to *Totten*. The *DeVita* standard applies to charter and general law counties, and to charter amendments and ordinances.

While not identical to the facts here, *Totten* is analogous on several important facts and issues. For the reasons stated above, Respondents do not show that *Totten* can be meaningfully distinguished. Moreover, separate from *Totten,* the court's analysis here is based on its independent application of the legal standard set forth in *DeVita.*

Based on the foregoing, Measure J seriously impairs the exercise of essential government functions related to county budgeting for public safety needs. *Totten* generally supports this conclusion.

Measure J Seriously Impairs County's Fiscal Management Powers and Budgeting Procedures

Petitioners also contend that Measure J seriously impairs Respondents' exercise of the essential government function of managing the County's financial affairs. (OB 14-15.)

As discussed above, the County Budget Act and other statutes, including Government Code sections 30603 and 26227, provide statutory evidence that fiscal management and county budgeting are matters of statewide concern and have been exclusively delegated to the Board of Supervisors.

Case law also supports that "[a]n essential function of a board of supervisors is the management of the financial affairs of county government, which involves the fixing of a budget." (*Greiger v. Board of Supervisors* (1957) 48 Cal.2d 832, 840; *Totten, supra,* 139 Cal.App.4th at 839.) "[M]anaging a county government's financial affairs has been entrusted to elected representatives, such as a county board of supervisors, and [is] an essential function of the board." (*Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1331 [invalidating a county initiative ordinance because, *inter alia*, the ordinance impermissibly intruded into the board's management of financial affairs].)

Statements of County officials in this case further illustrate the impact Measure J, or similar initiatives, could have on the Board's management of financial affairs and budgeting. When Measure J was discussed by the Board in July 2020, former County Chief Executive Officer Sachi Hamai stated:

> [B]asic budgetary policy encourages maximum flexibility and discourages inflexibility. In this case, modifying the charter to require a fixed allocation of unrestricted locally generated revenues will tie the hands of the board. The effects will go unnoticed during good budget years, but will become readily apparent during economic downturns when maximum flexibility is the single most helpful tool to develop a sound budget. I need to point out that during this pandemic, we needed this flexibility to close fiscal year '19-'20 without any layoffs, and we continue to need the flexibility to cover our services…. The County provides significant public services, yet our independent legal ability to raise revenues is modest and limited by state law…. The County's growth prospects for revenue and our ability to manage expenses and maintain financial and budgetary flexibility assumes greater significance, particularly during periods of economic downturns. These are important factors considered by the bond rating agencies we meet with each year. Finally, budgeting this way establishes a perilous precedent for the County budgeting process. If we look back 15 years ago and the board utilized the ballot initiative process to set its priorities for

funding, I don't believe today's board would be supportive of it. Similarly, as we look out 15 years to the future, we don't know what's on the horizon. From my perspective, it is important to maintain the authority and flexibility over the budgetary process. (JA 20-22.)

In his declaration dated April 29, 2021, County budget official McGloin states that County's expenditure of non-locally generated revenues "is not generally subject to discretion of the Board … but mandated by State of Federal laws or requirements." (JA 194.) By contrast, the expenditure of locally generated revenues is generally under control and discretion of the Board. (Ibid.) These statements further suggest that Measure J will seriously impair the Board's exercise of essential government functions related to county fiscal management and budgeting.

The court need not decide if the electorate may ever impose restrictions, by charter amendment or ordinance, on a county board's authority over budgeting and financial affairs. When combined with the specific restrictions in Measure J related to public safety agencies, the more general restrictions on Board's authority over budgeting and financial affairs weigh for a conclusion that Measure J seriously impairs the exercise of essential government functions. (See *Citizens for Jobs and the Economy v. County of Orange* (2002) 94 Cal.App.4th 1311, 1331 ["Taken together, these and other factors indicate that Measure F impermissibly intrudes into Board prerogatives…."].) Notably, in opposition, Respondents do not address *Citizens for Jobs*, which, along with *Totten*, also supports the court's conclusion here.

Respondents contend that Measure J will not conflict with the procedures and deadlines set forth in the County Budget Act. (Oppo. 15-16.) Respondents state that "the County Budget Act does not provide any substantive restriction on which programs are prioritized in the County's budget." (Oppo. 16.) Respondents contend that Board will retain "broad discretion" over the budget. (Ibid.) While the County Budget Act is procedural in nature, it delegates authority over county budgeting exclusively to the board of supervisors. The issue in this case is not whether Measure J would prevent Board from following specific procedures in the County Budget Act, but whether Measure J can be enacted by initiative, despite the exclusive delegation of authority over budgeting matters to the Board. Moreover, as noted above, Respondents' own evidence shows that Measure J will meaningfully and substantively reduce Board discretion over County funds that are not already "restricted."

Respondents imply that Measure J is permissible because it only restricts 10% of the "locally generated unrestricted revenues" and an even smaller percentage of the total County revenues. Importantly, however, Respondents fail to address how the court could distinguish between a set-aside at 10% of "locally generated unrestricted revenues," compared to some higher or lower percentage. Respondents do not argue that the electorate could, by initiative, impose restrictions on Board authority over ***all*** "locally generated unrestricted revenues." If taken to such extreme, a charter amendment similar to Measure J – but restricting a greater percentage of unrestricted locally generated revenues -- could essentially eliminate the Board's discretionary county budgeting and spending decisions.

Respondents point out that "Measure J itself states that its allocation must be made 'in compliance with all laws and regulations.'" (Oppo. 16.) They also cite a similar provision in the County Budget Act. (See Gov. Code § 29003.) Respondents' argument seems to be that these provisions ensure that implementation of Measure J will not conflict with the County Budget Act and Board's oversight of County financial affairs. As Petitioners note, this argument is circular and presupposes that Measure J is lawful.

Respondents contend that "charter counties throughout California … have provisions in their charters that address budgeting and County expenditures." (Oppo. 9-10 and RJN at JA 204 and 207.) Respondents cite two examples, both of which appear to implement procedural requirements consistent with the County Budget Act. Respondents cite no county ordinance or charter provision, enacted by initiative or by the voters, that places a substantive restriction of the county board of supervisors' authority to control the financial affairs and budgeting of the county.

Relatedly, Respondents assert that "a county may, in its charter, do anything a general-law county is otherwise authorized to do under state statutory law, and that a county charter can address matters (like budgeting) in which counties are authorized to legislate by State statute." (Oppo. 6 and 9-10, citing Cal. Const. Art. XI, Sec. 4 and *Dibb v. City. of San Diego* (1994) 8 Cal. 4th 1200, 1208.) This argument, and the cited authorities, are not dipositive here. *Dibb* did not involve a charter amendment directly restricting the Board of Supervisor's budgeting authority. The court need not decide if a charter amendment may ever address budgeting or the types of budgeting provisions that could be included in a county charter. As Respondents acknowledge, this writ petition requires the court to decide, pursuant to the standard set forth in *DeVita* and applied in *Totten*, whether Measure J exceeds the power of the electorate as in conflict with state law. (Oppo. 10-18.) For the reasons stated above, the court concludes it does.

In asserting that Measure J deals with matters of local, not statewide concern, Respondents rely on *Johnson v. Bradley* (1992) 4 Cal.4th 389, 407. (Oppo. 13.) In *Johnson*, the Court upheld a charter amendment adopted by the voters of the City of Los Angeles, which, among other things, required the City to adopt an ordinance providing partial funding for local elections. The amendment provided that "City sources of revenue" would be the exclusive source of such funding. *Totten* distinguished *Johnson* as follows:

> The issue in *Johnson* was whether, despite a conflicting state statute, a charter city could amend its charter to provide funding exclusively from city revenues to finance city political campaigns. *Johnson* did not involve a general law county such as the County of Ventura. The conflicting statute—section 85300— did not seek to accomplish an objective of statewide concern. It had nothing to do with public safety services. Unlike the present case, there is no indication in *Johnson* that the charter amendment might impinge upon the city's ability to adequately fund state-mandated programs. In addition, there is no

indication in *Johnson* that the charter amendment would seriously impair the local governing body's ability to manage the city's financial affairs. (*Totten, supra,* 139 Cal.App.4th at 841-842.)

Respondents do not address this analysis from *Totten*.

While there is certainly broad language in *Johnson* supporting the proposition that a charter city's use of its own locally generated moneys is a municipal affair and not a matter or statewide concern, this court finds *Johnson* distinguishable. *Johnson* dealt with a conflict between a state law, and a voter-adopted amendment of a city charter. As previously discussed, there is a difference in the scope of home rule authority of charter cities and charter counties. The *Johnson* court concluded that the amendment was a "municipal affair under article XI, section 5, subdivision (a)" (Id.at 403-404), pertaining to the authority of charter cities, not charter counties.

Further, the subject matter of the local ordinance involved in *Johnson* was the election of local officials; not the discretion of a County Board of Supervisors to allocate local moneys for law enforcement purposes. While the *Johnson* court did not base its decision on whether the subject matter of the amendment by definition involved a "core" municipal affair, it did find that the subject matter clearly implicated a municipal affair. (Id. at 403-404.) *Totten* did not distinguish *Johnson* solely on the basis that the charter amendment might impact the city's ability to fund state-mandated programs. The *Totten* court also noted that in *Johnson* there was no indication that the charter amendment would seriously impair the local governing body's ability to manage the city's financial affairs.

Finally, the Charter amendment in Measure J goes beyond the amendment considered in *Johnson*. That amendment required partial funding of local elections. Here, Measure J not only requires the Board to allocate each year a percentage of unrestricted general funds revenues to specified programs, is also prohibits the Board from using those moneys for "carceral" or law enforcement purposes.

Based on the foregoing, Measure J exceeds the power of the electorate to enact by charter amendment, and is constitutionally invalid.

Does Measure J Unlawfully Bind Hands of Future Boards?

Petitioners also contend that Measure J unlawfully binds the hands of future boards by placing the current Board's budget priorities in the County charter. (OB 15.) While that statement is accurate as to the effect of Measure J, because the meausre is invalid for other reasons, the court declines to decide Petitioners' alternative argument. (See *Totten, supra,* 139 Cal.App.4th at 840, fn. 7 [declining to address similar argument]). Petitioners have not fully developed this challenge with discussion of relevant legal argument and case law.

Ripeness

Respondents contend that the case is not ripe because "the final County budget for 2021-2022 (let alone for the time when Measure J will be fully phased-in) has not been prepared yet" and "it remains uncertain how Measure J would affect ALADS— if at all." (Oppo 19, citing JA 192, 197.)

"The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions…. It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes. However, the ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy. On the other hand, the requirement should not prevent courts from resolving concrete disputes if the consequence of a deferred decision will be lingering uncertainty in the law, especially when there is widespread public interest in the answer to a particular legal question." (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.)

To be ripe, "[t]he controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. [Citation.] It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." (Id. at 170-171.)

Stated differently, "a controversy becomes 'ripe' once it reaches, 'but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.'" (*City of Santa Monica v. Stewart* (2005) 126 Cal.App.4th 43, 59.)

Here, if Measure J is unconstitutional, it was so on the date of its enactment. The constitutionality of Measure J can be decided largely from the language of the charter amendment.

Respondents point out that Measure J will be phased in over three years. McGloin expresses uncertainty with respect to County revenues in 2024 "or what the … set-aside amount will be when the phase-in period is complete." (JA 197.) However, as McGloin indicates, the County is implementing Measure J for the upcoming 2021-22 Budget Year. (JA 192-197.) County's implementation of Measure J suggests that any relevant facts have sufficiently congealed to permit an intelligent and useful decision to be made as to the validity of Measure J.

Respondents contend: "[T]he terms 'restricted' and 'unrestricted' in this budgetary context are not defined by federal or state law—leaving room for interpretation on the part of the County's Board of Supervisors and CEO's office in how to define the term. JA RESP 194. That interpretation has not been completed by the County's CEO, or adopted by the County's Board (a reason this Petition is not ripe, as discussed below)." (Oppo. 14, citing JA 195.) The court is not persuaded that the need for further defining of these terms by County officials makes the action unripe. McGloin has provided a discussion of these terms in his declarations and he has provided an estimate of locally generated revenues, both restricted and unrestricted, for 2020-2021. McGloin's declarations show that the action is sufficiently definite and concrete to be adjudicated.

The action is ripe.

Conclusion

The petition for writ of mandate is GRANTED. The court will issue a writ prohibiting Respondents from enforcing or implementing the County Charter amendment enacted by voters as Measure J on November 3, 2020.

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[1] The court cites to the parties' joint appendix as JA 1-207

[2] Specifically, the Court of Appeal cited Section 5 of the Ordinance, which provided: "That portion of a Public Safety Agency's Base Year Budget ***funded by General Fund Appropriations***, plus any associated inflationary costs, ***shall continue to be funded by***

General Fund appropriations. (Id. at 830 [emphasis added].)

[3] In *Johnson v. Bradley* (1992) 4 Cal.4th 389, the court rejected an argument that a charter amendment requiring funding of local elections was a matter of statewide concern based on potential indirect impacts to the city's ability to fund other programs. *Johnson* is distinguishable, as discussed *infra*.
