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CITY AND COUNTY OF SAN FRANCISCO; and,
9 JOHN ARNTZ, in his official capacity as Director of Elections
for the City and County of San Francisco

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

13 James V. Lacy; Michael Denny; United States
14 Justice Foundation; and California Public
Policy Foundation,

15 Plaintiffs and Petitioners,

16 vs.

17 City and County of San Francisco; John Arntz,
18 in his official capacity as Director of Elections
for the City and County of San Francisco;
19 DOES 1 through 25, inclusive,

20 and,

21 All Persons Interested in the Matter of San
22 Francisco Ordinance No. 206-21, which allows
noncitizen voting in elections for the San
23 Francisco Unified School District Board of
Trustees,

24 Defendants and Respondents.

Case No. CPF-22-517714

**SAN FRANCISCO'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PLAINTIFFS' MOTION
FOR ISSUANCE OF A WRIT**

Hearing Date: July 28, 2022
Hearing Judge: Hon. Richard B. Ulmer
Time: 9:30 a.m.
Place: Dept. 302

Date Action Filed: March 14, 2022
Trial Date: Not set.

Attached Documents:

- Request for Judicial Notice
- Arntz Declaration
- Hayduk Declaration
- Lim Declaration
- Ng Declaration
- Shin Declaration
- Proof of Service

TABLE OF CONTENTS

1

2 TABLE OF AUTHORITIES3

3 INTRODUCTION6

4 BACKGROUND7

5 ARGUMENT8

6 I. California’s Constitution Authorizes Charter Cities to Allow Noncitizen

7 Participation in School Board Elections.8

8 A. Today’s Version of Art. II, § 2 Allows the Legislature and Charter Cities

9 to Expand Voter Qualifications.8

10 B. Art. IX, § 16 Expressly Authorizes Charter Cities to Provide for the

11 Manner in which School Board Members are Elected or Appointed.11

12 1. The Manner of Appointing School Board Members Includes

13 Appointment Contingent on the Outcome of a Local Election in

14 Which San Francisco Defines the Electors.....12

15 2. The Manner of Electing School Board Members May Include

16 Expanding the Definition of Electors.13

17 II. Because San Francisco’s Program Fully Protects Election Integrity and Voting

18 Rights, San Francisco’s Home Rule Power Overrides Any Contrary State Law. .15

19 A. San Francisco’s Program Implicates a Municipal Affair Because It

20 Advances Local Interests.16

21 B. San Francisco’s Program Fully Protects Election Integrity and Voting

22 Rights.19

23 CONCLUSION.....20

24

25

26

27

28

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Arapajolu v. McMenamin
(1952) 113 Cal.App.2d 82411

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(1892) 139 Ill. 62214

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(2014) 228 Cal.App.4th 75611

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2	<i>Wheeler v. Herbert</i>	
3	(1907) 152 Cal. 224	6, 12, 13
4		
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6	U.S. Const.	
	Amend. XXVI.....	10
7	Cal. Const	
	Art. II, § 2	6, 8, 9, 11, 15
8	Art IX, § 16.....	6
	Art IX § 16(a)	12, 14, 19
9	Art. XI, § 5(b)	12, 19
10	Art. XIII A	11
	Art. XIII C.....	11
11		
12	State Statutes & Codes	
13	Cal. Educ. Code	
	§ 5301	15
14	§ 5390	15
15	Cal. Elec. Code	
	§ 321(a).....	16
16	§ 331	16
	§ 2000(a).....	15
17	§ 2101	16
	§ 2106	16
18	§ 2300	16
	§ 7209	16
19	§ 16100	16
20	§ 18100	16
	§ 18500	16
21	§ 18561	16
22		
23	San Francisco Statutes, Codes & Ordinances	
24	S.F. Board of Supervisors Ordinances	
	No. 128-18	7
25	No. 206-21	8, 17
26	S.F. Charter	
	§ 13.111(a).....	7
27	§ 13.111(a)(2)	7
28		

1
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14
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1 prohibit local laws further expanding the electorate. But even if this Court were to perceive a conflict
2 between San Francisco’s charter and state law, then San Francisco’s home rule authority over this
3 municipal affair would prevail. San Francisco’s noncitizen voting program fully ensures election
4 integrity and individuals’ right to vote in the contests in which they are entitled to vote. Just as the
5 Supreme Court upheld Los Angeles’s charter city authority to use city funds to conduct publicly
6 financed local elections in the face of a state-wide statutory prohibition (see *Johnson v. Bradley* (1992)
7 4 Cal.4th 389), San Francisco’s charter city authority allows it to “to follow a different path with its
8 own money” (*id.* at p. 407), and include noncitizen parents in School Board elections.

9 For these reasons, set forth more fully below, the Court should deny petitioners’ motion for
10 writ.

11 BACKGROUND

12 In November 2016, San Francisco voters approved Proposition N, authorizing noncitizen
13 parents, guardians and caretakers to vote in San Francisco School Board elections. (Arntz Decl., ¶ 4 &
14 Exh. A.) Proposition N amended San Francisco’s Charter to allow a noncitizen to vote in School
15 Board elections if he or she is (1) a resident of San Francisco, (2) legal voting age, (3) the parent,
16 guardian, or caregiver of a child under 19 years old residing in San Francisco, and (4) not in prison or
17 on parole for a felony conviction. (S.F. Charter § 13.111(a).)

18 Proposition N also provided that the noncitizen voting program would expire by December 31,
19 2022, or after three School Board elections that allowed noncitizen voting. (S.F. Charter §
20 13.111(a)(2).) Proposition N further empowered the Board to reauthorize the program. (*Ibid.*)

21 In May 2018, San Francisco’s Board of Supervisors adopted Ordinance 128-18, which directed
22 the Department of Elections to establish a noncitizen voting program for School Board elections.
23 (Arntz Decl., ¶ 5 & Exh B.) San Francisco has since then conducted four School Board elections in
24 which noncitizens voted: on November 6, 2018; November 5, 2019, November 3, 2020, and the
25 February 15, 2022 recall election. (*Id.*, ¶ 16.)

26 San Francisco’s procedures for noncitizen voting encourage noncitizens to participate in
27 School Board elections, while ensuring noncitizens do not receive ballots for or vote in other contests
28 for which they are not eligible. Noncitizens must register for each election and re-verify their

1 continued eligibility. The Department of Elections maintains separate voting rolls, ensuring
2 noncitizen voters receive a ballot only for the School Board contests, and cross-checks the two voting
3 rolls to ensure no one is registered twice. The Department processes and counts completed noncitizen
4 ballots separately. (Arntz Decl., ¶¶ 8-15 & Exhs. D-F.)

5 On November 2, 2021, the San Francisco Board of Supervisors adopted Ordinance 206-21.
6 This ordinance extended the noncitizen right to vote beyond 2022 without expiration. Mayor Breed
7 signed the ordinance November 12, 2022, and the ordinance became effective 30 days later, on
8 December 12, 2021. (Arntz Decl., ¶ 6 & Exh. C.)

9 ARGUMENT

10 **I. California’s Constitution Authorizes Charter Cities to Allow Noncitizen Participation in 11 School Board Elections.**

12 Article II, section 2 of California’s Constitution provides: “A United States citizen 18 years of
13 age and resident in this State may vote.” (Cal. Const., Art II § 2.) Nothing in the Constitution’s plain
14 language conflicts with San Francisco’s program, because those persons identified in Article II,
15 section 2 “may vote” in all San Francisco elections, including School Board elections. Without
16 detracting from the voting rights of those persons identified in Article II, section 2, San Francisco
17 provides, in addition, that noncitizen parents may *also* vote solely in local School Board elections.

18 One hundred and twenty-four years ago, in 1898, California’s Supreme Court held the
19 predecessor of Article II, section 2 defined both a floor and a ceiling for voter qualifications,
20 foreclosing the legislature from expanding the pool of persons eligible to vote. “The legislature can no
21 more extend the right of suffrage to persons not included in the constitutional provision than it can
22 deprive persons there included of the right.” (*Spier v. Baker* (1898) 120 Cal 370, 376.) For two
23 separate reasons, however, *Spier* does not control this case. First, since 1898, California has amended
24 Article II twelve times, and today’s Article II, section 2 is unrecognizable next to the constitutional
25 language that *Spier* interpreted. Second, *Spier* addressed only the power of California’s legislature
26 and did not consider the home rule authority the Constitution expressly confers on charter cities.

27 **A. Today’s Version of Art. II, § 2 Allows the Legislature and Charter Cities to 28 Expand Voter Qualifications.**

In 1898, California’s Constitution provided:

1 Every native male citizen of the United States, every male person who shall
2 have acquired the rights of citizenship under or by virtue of the treaty of
3 Queretaro, and every male naturalized citizen thereof, who shall have become
4 such ninety days prior to any election, of the age of twenty-one years, who shall
5 have been resident of the state one year next preceding the election, and of the
6 county in which he claims his vote ninety days, and in the election precinct
7 thirty days, shall be entitled to vote at all elections which are now or may
8 hereafter be authorized by law; *provided*, no native of China, no idiot, no insane
9 person, no person convicted of any infamous crime, no person hereafter
10 convicted of the embezzlement or misappropriation of public money, and no
11 person who shall not be able to read the Constitution in the English language
12 and write his name, shall ever exercise the privileges of an elector in this State;
13 *provided*, that the provisions of this amendment relative to an educational
14 qualification shall not apply to any person prevented by a physical disability
15 from complying with its requisitions, nor to any person who now has the right to
16 vote, nor to any person who shall be sixty years of age and upwards at the time
17 this amendment shall take effect.

18 (RJN, Exh. A, emphasis in original.) In 1898, the Constitution specified elaborate requirements as to
19 age, gender, citizenship, alienage, residency, literacy, mental competency, and criminal justice history.
20 The 1898 Constitution declared 21-year-old male citizens who satisfy the specified residency
21 requirements “shall be entitled to vote.” In the same sentence, the 1898 Constitution then declared
22 Chinese nationals, “idiots,” insane persons,” certain felons, and people who failed an English literacy
23 test “shall [n]ever exercise the privileges of an elector in this State.” (*Ibid.*)

24 By contrast, Article II, section 2 now provides, in full: “A United States citizen 18 years of age
25 and resident in this State may vote.” In *Spier*, the Court held the mandatory “shall,” conferring
26 “entitle[ment] to vote,” accompanied by express categorical exclusions, defined both a floor and a
27 ceiling for voter qualifications. By eliminating the express categorical exclusions that existed in 1898
28 and by adopting the permissive “may,” the constitutional drafters have since removed the ceiling that
Spier found in the 1898 constitutional voter qualifications.

29 The first post-*Spier* amendment to Article II occurred in 1911, when California extended
30 voting rights to women. (RJN, Exh. B.) Subsequent amendments in 1922, 1924, 1926, 1928, 1930,
31 1948, 1950, and June 1972 adjusted residency requirements and provided for absentee voting and
32 voting by mail. (RJN, Exhs. C-J.)¹ Each of these adjustments to voter qualifications required state-
33 wide voter approval. As the sponsors of the 1924 amendment explained, loosening the residency

34 ¹ In addition, the 1926 amendment replaced the language excluding Chinese nationals with:
35 “no alien ineligible to citizenship ... shall ever exercise the privileges of an elector in this state.”
36 (RJN, Exh. E.)

1 requirement could only be accomplished through constitutional amendment, not legislation. “[T]he
2 supreme court has held ... there was no authority for such a law.” (RJN, Exh. D.)

3 However, in November 1972, voters restructured and streamlined Article II, delegating to the
4 legislature all the details for voting qualifications that had, until that time, resided in the Constitution.
5 (RJN, Exh. K.) As the Legislative Counsel explained to voters, the Twenty-sixth Amendment to the
6 U.S. Constitution had reduced the voting age to 18 years, the California Supreme Court had
7 invalidated Article II’s residency requirements, and federal voting rights legislation had invalidated the
8 English literacy requirement. (*Ibid.*) Accordingly, “[t]his measure would delete the existing
9 qualifications for voting and add provisions which specify that any United States citizen 18 years of
10 age and resident (as defined by the Legislature) in this state may vote,” and directed the Legislature to
11 enact legislation defining residency requirements and prohibiting those who are incompetent or
12 convicted of certain felonies from voting. (*Ibid.*)

13 When it interpreted the 1898 version of the Constitution to prohibit the Legislature from
14 expanding the definition of eligible voters, the Supreme Court relied on the doctrine: “Expressio unius
15 est exclusio alterius.” (*Spier*, 120 Cal. 370 at p. 376.) Subsequent Supreme Court authority explains
16 the limited circumstances when the “Expressio unius” doctrine properly applies to constitutional
17 interpretation. “This argument [to invoke Expressio unius] overlooks the fact that our Constitution is
18 not a grant of power but rather a limitation or restriction upon the powers of the Legislature (Citations)
19 and ‘that we do not look to the Constitution to determine whether the Legislature is authorized to do
20 an act, but only to see if it is prohibited.’” (*Dean v. Kuchel* (1951) 37 Cal.2d 97, 100, quoting *Collins*
21 *v. Riley* (1944) 24 Cal.2d 912, 915 and *Fitts v. Superior Court* (1936) 6 Cal.2d 230, 234.) “‘If there is
22 any doubt as to the Legislature’s power to act in any given case, the doubt should be resolved in favor
23 of the Legislature’s action.’” (*Dean*, 37 Cal.2d at p. 100, quoting *Collins*, 24 Cal.2d at p. 915.)
24 Therefore, “the express enumeration of legislative powers is not an exclusion of others not named
25 unless accompanied by negative terms.” (*Dean*, 37 Cal.2d at p. 100, citing cases, emphasis supplied.)

26 The November 1972 amendments to Article II eliminated all the “negative terms” in Article II
27 that had existed in 1898 when the Supreme Court decided *Spier*. Specifically, the November 1972
28 amendments eliminated the express constitutional prohibition against noncitizen voting. (See RJN,

1 Exh. K (finally repealing “no alien ineligible to citizenship ... shall ever exercise the privileges of an
2 elector in this State.”) The November 1972 amendments expressly conferred on the legislature
3 authority to define voter qualifications that had previously resided directly in the Constitution. One of
4 the purposes of the November 1972 streamlining of Article II was to eliminate the need in the future
5 for repeated constitutional amendments fine-tuning voter qualifications, such as those that occurred in
6 1911, 1922, 1924, 1926, 1928, 1930, 1948, 1950, and June 1972. The November 1972 amendments to
7 Article II render *Spier*’s invocation of “*Expressio unius*” anachronistic and no longer appropriate.²

8 Petitioners rely on *Arapajolu v. McMenemy* (1952) 113 Cal.App.2d 824, 831, and *San Diego*
9 *v. Shapiro* (2014) 228 Cal.App.4th 756, for the proposition voters must meet “the basic constitutional
10 requirement.” (Ps’ MPA, at p. 9.) In *Arapajolu*, the court held soldiers and families who lived at Fort
11 Ord and other military installations in Monterey County were county residents and therefore entitled to
12 register to vote in Monterey County. (*Arapajolu*, 113 Cal.App.2d at p. 830.) In *Shapiro*, the court
13 held a local election imposing a special convention tax violated Proposition 13 and Proposition 218.
14 San Diego allowed owners of hotel properties to vote on the special tax measure, whereas Propositions
15 13 and 218 required two-thirds of registered voters to approve any special tax. Because San Diego
16 failed to present the measure to all registered voters, the measure violated Articles XIII A and XIII C
17 of the Constitution, as well as San Diego’s city charter. (*Shapiro*, 228 Cal.App.4th at p. 761.)

18 Petitioners further rely on *Bourland v. Hildreth* (1864) 26 Cal. 161, and *Padilla v. Allison*
19 (1974) 38 Cal.App.3d 784. (See Ps’ MPA, at p. 10.) *Bourland*, decided during the U.S. Civil War,
20 held the Constitution does not disenfranchise soldiers while they are serving the Country. *Padilla*
21 merely recognized noncitizens lack an equal protection right to demand voting rights. None of these
22 cases supports petitioners’ assertion that charter cities lack authority to extend the franchise.

23 **B. Art. IX, § 16 Expressly Authorizes Charter Cities to Provide for the Manner in**
24 **which School Board Members are Elected or Appointed.**

25 As explained above, the November 1972 amendments to Article II removed any preexisting
26 constraint on legislative expansion of the electorate to include noncitizens. But even if Article II,
27 section 2 continues to constrain the legislature’s power, as *Spier* held long ago, it would not constrain

28 ² San Francisco intends to preserve the argument that *Spier* was wrongly decided.

1 charter cities’ ability to expand the electorate for local School Board elections, because the
2 Constitution also expressly confers on charter cities the authority to establish the “manner” for
3 “elect[ing] or appoint[ing]” local School Board officials. Article IX, section 16(a) provides:

4 *It shall be competent, in all charters framed under the authority given by*
5 *Section 5 of Article XI, to provide, in addition to those provisions allowable by*
6 *this Constitution, and by the laws of the State for the manner in which, the times*
7 *at which, and the terms for which the members of boards of education shall be*
8 *elected or appointed, for their qualifications, compensation and removal, and*
9 *for the number which shall constitute any one of such boards.*

10 (Cal. Const., Art IX § 16(a) (emphasis supplied).)³ The express constitutional authority for a charter
11 city like San Francisco to establish the “manner” for “elect[ing] or appoint[ing]” local School Board
12 officials includes the authority to allow noncitizen parents to participate in those elections.

13 **1. The Manner of Appointing School Board Members Includes Appointment**
14 **Contingent on the Outcome of a Local Election in Which San Francisco**
15 **Defines the Electors.**

16 In *Wheeler v. Herbert* (1907) 152 Cal. 224, the Supreme Court upheld an election to redraw the
17 county line demarcating Fresno County and Kings County. For this special election, the legislature
18 had redefined voter qualifications, departing from the constitutional definition of persons “entitled to
19 vote.” Electors who had resided in the affected territory for 90 days were allowed to vote in this
20 special election. (*Id.* at p. 227.) The special election, therefore, disqualified electors who had resided
21 in the county for 90 days but had moved into the affected territory only 30-90 days before the election.
22 (Compare RJN, Exh. A.)

23 ³ Article IX, section 16(a), which applies specifically to School Board elections, reinforces
24 Article XI, section 5(b), which applies more broadly to all local elections in charter cities. Article XI,
25 section 5(b), provides:

26 *It shall be competent in all city charters to provide, in addition to those*
27 *provisions allowable by this Constitution, and by the laws of the State for: (1)*
28 *the constitution, regulation, and government of the city police force (2)*
29 *subgovernment in all or part of a city (3) conduct of city elections and (4)*
30 *plenary authority is hereby granted, subject only to the restrictions of this*
31 *article, to provide therein or by amendment thereto, the manner in which, the*
32 *method by which, the times at which, and the terms for which the several*
33 *municipal officers and employees whose compensation is paid by the city shall*
34 *be elected or appointed, and for their removal, and for their compensation, and*
35 *for the number of deputies, clerks and other employees that each shall have, and*
36 *for the compensation, method of appointment, qualifications, tenure of office*
37 *and removal of such deputies, clerks and other employees.*

38 (Cal. Const., Art. XI, sec. 5(b) (emphasis supplied).)

1 Because the legislature had authority to redraw the county lines directly through legislation, *a*
2 *fortiori*, the legislature had authority to condition the new county lines on a future event, which could
3 be an election with a newly defined electorate. “That it is competent for the legislature to pass a law
4 which shall be executed only in the event that a majority of a certain class of persons shall declare in
5 favor of it is a principle too well settled to require discussion.” (*Id.* at p. 234.) “The legislature, if it
6 saw fit, might have provided that the question of the taking effect of the change [in the boundary line
7 between Fresno and Kings Counties] should be submitted to the vote of the taxpayers or of the heads
8 of the families in the territory, or to any other arbitrarily selected body of persons, and the act would
9 have been valid.” (*Id.* at p. 232.) In *Wheeler*, the Supreme Court explicitly recognized a special
10 election to adjust county lines in which noncitizens (i.e., taxpayers or heads of family) voted would be
11 valid.

12 Just as the legislature had the authority to redraw county lines directly through legislation,
13 Article IX section 16 confers on charter cities the authority to “elect[] or appoint[]” local School
14 Board members. Since charter cities have the constitutional authority to “appoint” School Board
15 members, these charter cities may, under *Wheeler*, define a contingent event that would make the
16 “appointment” effective. And that event may be an election in which San Francisco redefines voter
17 qualifications. “The fact that the [contingent event defined by the legislature is an election] to be
18 conducted in the same manner as ordinary elections has no bearing on the [legislature’s authority to
19 specify a contingent event].” (*Wheeler*, 152 Cal. at p. 232.)

20 **2. The Manner of Electing School Board Members May Include Expanding**
21 **the Definition of Electors.**

22 If for any reason the Court determines *Wheeler* does not control, then San Francisco still
23 properly exercised its charter city authority under Article IX, section 16(a) to provide for the “manner”
24 of School Board elections. In *Johnson v. Bradley* (1992) 4 Cal.4th 389, the Supreme Court recognized
25 charter city authority over the “manner” of local elections is not limited to local election “procedures,”
26 but also includes “the integrity of the political or electoral process itself.” (*Id.* at p. 403.)

27 *People v. Elkus* (1922) 59 Cal.App. 396, on which petitioners rely (see Ps’ MPA, at pp. 18-20),
28 is not to the contrary. The *Elkus* decision invalidated Sacramento’s ranked choice voting procedure

1 for at-large city council members, because the procedure deprived electors of their right to vote for a
2 candidate for each office. “[T]he people have not ‘expressed with irresistible clearness’ an intention to
3 infringe and overthrow the fundamental right guaranteed by the constitution to every qualified elector
4 of voting at all elections.” (*Elkus*, 59 Cal.App. at p. 405.)

5 Petitioners’ quotations from *Elkus* do not reflect *Elkus*’s holdings; petitioners quote from two
6 earlier out-of-state cases, *People v. English* (1892) 139 Ill. 622, and *Coffin v. Bd. of Elect. Comrs.*
7 (1893) 97 Mich. 188. (See Ps’ MPA, at pp. 18, 20.) The court observed, among the out-of-state
8 authorities it reviewed, “none of them go to the extent of holding that the municipality can prescribe
9 the qualifications of voters or abridge the constitutional right of qualified electors to vote.” (*Elkus*, 59
10 Cal.App. at p. 405.)

11 *Elkus*, of course, interpreted the constitution as it existed in 1922, and it scrutinized a
12 restriction on voting rights, not an expansion. The California Supreme Court in *Johnson*, 70 years
13 later, repudiated the notion that the “manner of elections” is limited to “usual, ordinary, or necessary
14 details” of the election (see Ps’ MPA, at p. 18). Rather, *Johnson* recognized charter cities’ authority
15 over the “manner” of local elections included the authority to establish local substantive regulations
16 addressing the integrity of the political or electoral process. (*Johnson*, 4 Cal.4th at p. 403.) In
17 *Johnson*, the Supreme Court approved Los Angeles’s program for public financing of local elections,
18 in the face of state legislation expressly prohibiting publicly financed elections. The Court upheld Los
19 Angeles’s decision “to follow a different path with its own money.” (*Id.* at p. 407.)

20 *Elkus* cannot control, because that case dealt with a restriction on voting rights, because it
21 interpreted a century-old version of the constitution, and because the Supreme Court in *Johnson*
22 adopted a broader interpretation of the “manner” of elections.⁴

23
24 ⁴ *Libertarian Party v. Eu* (1980) 28 Cal.3d 535, on which petitioners rely (see P’s MPA, at pp.
25 18-19), though more recent than *Elkus*, is even further afield. The Court explained state laws
26 substantially regulating “the time, place, and manner of elections, the registration of voters, and the
27 qualification of candidates” are subject to a “compelling state interest” test if they restrict voting
28 rights, but most such regulations would satisfy the test. (*Id.* at pp. 542-543.) *Eu* does not support
petitioners’ assertion that the “manner” of appointing or electing School Board members in Article IX,
section 16(a) excludes the authority to establish voter qualifications for School Board elections. San
Francisco’s program expands voting rights. *Eu*’s “compelling state interest” test, therefore does not
apply here.

1 **II. Because San Francisco’s Program Fully Protects Election Integrity and Voting Rights,**
2 **San Francisco’s Home Rule Power Overrides Any Contrary State Law.**

3 California’s Elections Code provides: “Every person who qualifies under Section 2 of Article
4 II of the California Constitution and who [has registered to vote] may vote at any election held within
5 the territory within which he or she resides and the election is held.” (Cal. Elec. Code § 2000(a).) The
6 Education Code incorporates the Election Code’s voter qualifications. (Cal. Educ. Code § 5390.)
7 Furthermore, the Education Code expressly recognizes charter cities’ authority to exercise their home
8 rule power over school board elections. (*Id.* § 5301.)

9 If a local measure is in actual conflict with a state law, and the subject of the state law is a
10 matter of statewide concern, and the state statute is not overbroad, the conflicting local law must cede
11 to the state law. (*California Fed. Savs. & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 17
12 (“*CalFed*”).) When the local measure under review “implicates a ‘municipal affair’ and poses a
13 genuine conflict with state law, the question of statewide concern is the bedrock inquiry through which
14 the conflict between state and local interests is adjusted. If the subject of the statute fails to qualify as
15 one of statewide concern, then the conflicting charter city measure is a ‘municipal affair’ and ‘beyond
16 the reach of legislative enactment.’ ... If, however, the court is persuaded that the subject of the state
17 statute is one of statewide concern and that the statute is reasonably related to its resolution, then the
18 conflicting charter city measure ceases to be a ‘municipal affair’ pro tanto and the Legislature is not
19 prohibited ... from addressing the statewide dimension by its own tailored enactments.” (*Ibid.*)

20 As a threshold matter in the *CalFed* home-rule analysis, there is no genuine conflict between
21 San Francisco’s program and the Elections Code or the Education Code. The Supreme Court has
22 admonished lower courts to interpret local measures and state statutes “carefully” to avoid actual
23 conflicts wherever possible.

24 To the extent difficult choices between competing claims of municipal and state
25 governments can be forestalled in this sensitive area of constitutional law, they
26 ought to be; courts can avoid making such unnecessary choices by carefully
27 insuring that the purported conflict is in fact a genuine one, unresolvable short
28 of choosing between one enactment and the other.

(*CalFed*, 54 Cal.3d at pp. 16-17.) Like Article II, section 2 of the Constitution, the Elections Code and
the Education Code identify individuals who “may” vote, and nothing in San Francisco’s elections,

1 including School Board elections, prevents those individuals from voting. Neither the Elections Code
2 nor the Education Code affirmatively forbids municipalities from enlarging the electorate. San
3 Francisco’s local measure inviting noncitizen parents to participate in local School Board elections
4 therefore does not directly conflict with the Elections Code or the Education Code.⁵ In the absence of
5 a direct and actual conflict, the *CalFed* analysis is complete, and San Francisco’s program comfortably
6 coexists with state law. (E.g., *CIM Urban Reit 211 Main St. (SF), LP v. City & County of San*
7 *Francisco* (2022) 75 Cal.App.5th 939, 960, *rev. denied* (June 1, 2022).)

8 If nevertheless this Court identifies an actual conflict with the Elections Code or the Education
9 Code, then San Francisco’s noncitizen voting program still survives, because allowing noncitizen
10 parents to participate in local school board elections implicates a municipal affair. The program
11 furthers San Francisco’s municipal interests in equity, inclusion, and quality education, while also
12 protecting election integrity and individuals’ right to vote.

13 **A. San Francisco’s Program Implicates a Municipal Affair Because It Advances**
14 **Local Interests.**

15 Noncitizen voting in local School Board elections strengthens families, schools, and the entire
16 community. San Francisco’s program promotes inclusion and integration. Engaging these parents in
17 their children’s schools improves the educational experience for all students, not only the children of
18 immigrants.

19 San Francisco voters approved Proposition N in 2016, authorizing noncitizen voting in local
20 school board elections, to enfranchise the immigrant parents of one-third of SFUSD students. The
21 voter information pamphlet explained that extending voting rights to these parents would promote
22 their involvement in their children’s education, “raising educational achievement, especially in low-
23 performing schools.” (Arntz Decl., Exh. A, at p. 142.) “Children do better in school when their
24 parents are involved in their education, this ultimately results in more successful schools.” (*Id.* at p.
25 143.) “Allowing everyone to participate in School Board elections is equitable and good for SF.

26 ⁵ Petitioners rely on Sections 321(a), 2300, 2101, 7209, 331, 16100, 18100, 18500, 18561, and
27 2106 of the Elections Code. (See Ps’ MPA, at pp. 10, 15-16.) These provisions specify who has a
28 statutorily protected right to vote in state-wide elections, or are entirely silent on substantive voter
qualifications. None of the state-wide statutes affirmatively prohibit noncitizen voting.

1 When all stakeholders are able to participate in making decisions that affect their daily lives,
2 democracy is better served, and everyone benefits.” (*Ibid.*)

3 San Francisco’s Board of Supervisors passed Ordinance 206-21 in November 2021 to continue
4 the City’s noncitizen voting program. The Board made legislative findings supporting the program.
5 The Board found “[n]oncitizen parents contribute greatly to the School District.” (Arntz Decl., Exh.
6 C, at p. 2.) The Board found “parent involvement in their children’s education is critical for students’
7 lifelong achievements and success.... [S]tudents whose parents are involved in their schooling are
8 more likely to attend school regularly, have better social emotional skills, and obtain higher grades.”
9 (*Ibid.*) Moreover, “[c]ontinuation of noncitizen voting in School Board elections is necessary to allow
10 many unheard voices to come forward.” (*Ibid.*)

11 Parents describe how the opportunity to vote in School Board elections has helped their
12 children, and strengthened their families and community. Hwaji Shin is a permanent resident with a
13 child attending elementary school in San Francisco. (Shin Decl., ¶¶ 3, 5.) After voting in a San
14 Francisco school board election, Ms. Shin “bec[a]me more civically engaged in [her] son’s school
15 community and started to learn how his school operates.” Voting gave her “more confidence to speak
16 up at PTA meetings.” “For the first time in my life, I felt like I was a full member of the school
17 community whose voice matters.” (*Id.* ¶¶ 8-11.)

18 Amos Lim is a permanent resident with a child who first attended San Francisco public schools
19 in 2011 and will begin high school this fall. (Lim Decl., ¶¶ 3-4.) Mr. Lim has voted in San Francisco
20 School Board elections because he “believe[s] in civic participation and want[s] to exercise [his] voice
21 in [his] daughter’s education.” He also wanted to teach his daughter that “voting is an important right”
22 that must be exercised when granted. (*Id.* ¶ 6.) Since he began voting in San Francisco’s School
23 Board elections, Mr. Lim has become more involved in his daughter’s school community.
24 “Specifically, [he] volunteered and assumed leadership roles in [his] daughter’s elementary school’s
25 PTA as a Treasurer and Fundraising Chair.” (*Id.* ¶ 7.)

26 Yanling Deng is a permanent resident with a young child who attends a subsidized preschool
27 program in San Francisco. (Ng Decl., Exh. B (Deng Decl.) ¶¶ 3, 5.) Ms. Deng voted in the February
28 2022 School Board recall election “because [she] wanted to advocate for immigrant children and

1 families, especially Asian immigrant parents. [She] felt that the school district was not listening to
2 low-income, limited English proficient immigrant families and parents, though this group needs more
3 support from the school district.” (*Id.*, ¶ 8.) Since voting in February 2022, Ms. Deng “ha[s] learned
4 even more about the school district’s policies and procedures. [She] ha[s] also continued to advocate
5 for immigrant families and children by sharing what [she] ha[s] learned with others in [her]
6 community.” (*Id.*, ¶ 9.)

7 Academic research confirms the societal benefits of noncitizen voting in School Board
8 elections. New York City allowed noncitizens to vote in School Board elections from 1969 until it
9 eliminated School Boards in 2002. (*Id.* ¶ 17.) Noncitizen voting in New York School Board elections
10 led to “more ethnically diverse representatives in school districts, increased school funding, school
11 improvements and better student outcomes.” (*Id.* ¶ 18.) Specifically, School Board members elected
12 by the noncitizen Dominican community in Washington Heights “successfully advocated for the
13 construction of new schools, reduction in class sizes, and increased support for afterschool programs.”
14 (*Ibid.*) Likewise, “[n]oncitizen voting in Chicago is correlated with more equitable allocation of
15 resources and improved education outcomes for the children of these new voters.” (*Id.* ¶ 19.)

16 One-third of San Francisco’s public school students have noncitizen immigrant parents.
17 (Hayduk Decl., ¶¶ 10, 12.) The School Board makes decisions significantly impacting these students.
18 (*Id.* ¶ 11.) “Continuing San Francisco’s program for noncitizen voting in School Board elections
19 would continue to encourage Board members to address the unique needs and challenges of families
20 with noncitizen parents.” (Hayduk Decl., § 22.) “Noncitizen voting programs encourage new voters
21 to increase their involvement in their children’s affairs.... Parental involvement contributes to
22 improved student achievement, better school attendance, and reduced dropout rates.” (*Id.* ¶ 23.)
23 Because obtaining citizenship can often take longer than the thirteen years from kindergarten through
24 high school (*id.* ¶¶ 24-25), requiring parents to wait until they have been granted citizenship defeats
25 the goals of equity, inclusion, and parental involvement. “Noncitizen voting can be a powerful tool to
26 promote immigrant integration into American society.” (*Id.* ¶ 26.) The wide-ranging and profound
27 positive impacts of San Francisco’s noncitizen voting program on immigrant families specifically and
28

1 the San Francisco community as a whole establish the program’s status as a municipal affair under
2 *CalFed*.

3 **B. San Francisco’s Program Fully Protects Election Integrity and Voting Rights.**

4 Local elections implicate state-wide concerns in election integrity and individuals’ right to
5 vote. (E.g., *Johnson*, 4 Cal.4th at p. 409; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781,
6 798-801.) San Francisco’s program affirmatively advances both election integrity and voting rights.
7 San Francisco’s charter authorizes noncitizens to vote only in school board elections. San Francisco’s
8 election procedures, with separate voter rolls, separate ballots, and separate physical locations for
9 qualified noncitizens to cast their ballots (see Arntz Decl., ¶¶ 8-16), ensure the integrity of both the
10 local school board elections and all other contests. Likewise, San Francisco’s election procedures
11 protect each individual’s right to vote in the contests that person is eligible to vote in. Accordingly, to
12 the extent the Election Code or the Education Code prohibit noncitizens from voting in San
13 Francisco’s school board elections, they are not narrowly drawn to advance legitimate statewide
14 concerns, and San Francisco’s charter authority over the manner of appointing or electing school board
15 members must prevail.

16 In *Johnson*, the Supreme Court reached the same conclusion when it upheld a Los Angeles
17 Ordinance that used City funds to provide partial public financing of local elections. The Court upheld
18 Los Angeles’s local public financing measure because, under *CalFed*, the local measure was a
19 municipal affair, and because the statewide prohibition against public financing was not narrowly
20 tailored to protect the legitimate state-wide concern in election integrity. (*Johnson*, 4 Cal.4th at 410-
21 411.)

22 Petitioners identify three supposed state-wide concerns: (1) education; (2) establishing voter
23 qualifications; and (3) restricting voting to citizens. (P’s MPA, at pp. 16-17.) None of these
24 undermines San Francisco’s home-rule authority to maintain its noncitizen voting program.

25 1. Because Article IX, section 16(a), and Article XI, section 5(b) expressly identify the manner
26 of electing or appointing School Board members as a proper subject for city charter authority and a
27 municipal affair, the general rule that “education” is a statewide concern has no application here. (See
28 Ps’ MPA, at pp. 14-15, 16 and cited cases.)

