Exhibit A

April 1, 2021

Honorable Steven M. Glazer
Room 5108, State Capitol

CITY AND COUNTY REDISTRICTING: ADOPTION DATE - #2109439

Dear Senator Glazer:

The Elections Code requires a city council or a county board of supervisors in a jurisdiction with district-based elections to adopt boundaries for all city council and supervisorial districts by a specified date.[1] You have asked whether "adopt" in this context means the date the city council or board of supervisors passes a resolution or ordinance establishing district boundaries, or if it means the date the resolution or ordinance goes into effect.

1. Background

As a preliminary matter, division 21, chapters 6 and 7 of the Elections Code (hereafter chapters 6 and 7)[2] require cities and counties to apportion or reapportion district boundaries as follows:

"Following a [city or county's] decision to elect its [council or board] using district-based elections, or following each federal decennial census for a [city or county] whose [council or board] is already elected using district-based elections, the [council or board] shall...[3] *adopt* boundaries for all of the [council or supervisorial] districts of the [city or county] so that the [council or

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[1] Elec. Code, §§ 21500, 21501, 21601, 21602, 21621 & 21622. All further section code references are to the Elections Code unless otherwise specified.

[2] Chapter 6 (§ 21500 et seq.) applies to counties, and chapter 7 (§ 21600 et seq.) applies to general law and charter cities.

[3] Sections 21601 and 21621 also provide that general law and charter cities shall adopt the boundaries "by ordinance or resolution."

supervisorial] districts shall be substantially equal in population as required by the United States Constitution."[4]

Chapters 6 and 7 require city councils and boards of supervisors to adopt these district boundaries by a specified date that is either 205 or 174 days before the city or county's next regular election depending on the circumstances.[5] Before adopting the boundaries, the city council or board of supervisors is required to hold at least four public hearings that meet specified notice and community participation requirements.[6] In this context, you have asked whether the date upon which a city council or board of supervisors is required to adopt district boundaries before the next regular election is the date that the governing body passes a resolution or ordinance establishing the boundaries, or the date the resolution or ordinance goes into effect.[7]

2. Analysis

A court examining the meaning of "adopt" for purposes of chapters 6 and 7 would begin with examining the plain meaning of the term. If the meaning is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary.[8] In this regard, the Merriam-Webster Dictionary[9] defines "adopt" as "to accept formally and put into effect."[10] Whereas, Black's Law Dictionary defines "adoption" as "[a] deliberative assembly's act of agreeing to a motion or the text of a resolution, order, rule, or other paper or proposal, or of endorsing as its own statement the complete contents of a report."[11] Accordingly, the first definition specifically provides that "adopt" includes both

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[4] §§ 21500, 21601 & 21621, emphasis added.

[5] §§ 21501, 21602 & 21622.

[6] §§ 21507, 21507.1, 21508, 21607, 21607.1, 21608, 21627, 21627.1 & 21628.

[7] Generally, ordinances become effective 30 days after their final passage. (§§ 9141 & 9235; Gov. Code, §§ 25123 & 36937.) In contrast, resolutions imposing administrative acts not subject to referendum may become effective immediately upon passage of the resolution. (*Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765, 782.) However, a court has determined that a county's redistricting ordinance could not go into effect immediately because a "[c]hange in supervisorial district boundaries is a legislative function and thus subject to the referendum." (*Ortiz v. Board of Supervisors* (1980) 107 Cal.App.3d 866, 872 (hereafter *Ortiz*).)

[8] *Ennabe v. Manosa* (2014) 58 Cal.4th 697, 713.

[9] The dictionary is a proper source to determine the usual and ordinary meaning of words in a statute. (*Siskiyou County Farm Bureau v. Department of Fish & Wildlife* (2015) 237 Cal.App.4th 411, 433-434.)

[10] Merriam-Webster Online Dict., available at <https://www.merriam-webster.com/dictionary/adopt > (last visited March 3, 2021).

[11] *Adoption*, Black's Law Dict. (11th ed. 2019) 5. *Parliamentary law.*

formal acceptance and putting "into effect." In comparison, the second definition is more narrow and encompasses only the act of agreeing or endorsing without any mention of effectiveness. Therefore, the term "adopt" is ambiguous because it is susceptible of two reasonable interpretations as to whether the term encompasses an effectiveness element.[12] Because the meaning of "adopt" is ambiguous and the Legislature has not defined the term for purposes of chapters 6 and 7, a court may resort to the statutory scheme and other extrinsic evidence of the Legislature's intent regarding the meaning of the term.[13]

With respect to the statutory scheme, there are several provisions within the Elections Code that imply that "adopt" has a narrow meaning that is separate and distinct from the date upon which a law becomes effective. For instance, section 9144 provides that a county ordinance shall be suspended if "a petition protesting the *adoption* of an ordinance is submitted to the county elections official *before the effective date* of the ordinance."[14] Similarly, section 9237 provides that "[i]f a petition protesting the *adoption* of an ordinance" is submitted, "the *effective date* of the ordinance shall be suspended."[15]

In addition, statutory provisions within chapters 6 and 7 that impose public notice requirements imply a narrow interpretation of "adopt." For instance, city councils and boards of supervisors are required to issue the following public notices:

> "(c) Notwithstanding Section 54954.2 of the Government Code, the [council or board] shall publish the date, time, and location for any public hearing or workshop on the internet at least five days before the hearing or workshop. However, if there are fewer than 28 days until the deadline to adopt boundaries, the [council or board] may publish the agenda on the internet for at least three days before the hearing or workshop.

> "(d) (1) A draft map shall be published on the internet for at least seven days before being adopted as a final map by the [council or board] provided that, if there are fewer than 28 days until the deadline to adopt boundaries, the draft map may instead be published on the internet for at least three days."[16]

The purpose of these public notice requirements in chapters 6 and 7 is to give the public an opportunity to review and comment on district boundaries before the vote of the governing

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[12] A statutory provision is ambiguous if it is susceptible of two reasonable interpretations. (*People v. Dieck* (2009) 46 Cal.4th 934, 940.)

[13] If statutory language may reasonably be given more than one interpretation, courts may consider various extrinsic aids, including the purpose of the statute, the evils to be remedied, the legislative history, public policy, and the statutory scheme encompassing the statute. (*People v. Cornett* (2012) 53 Cal.4th 1261, 1265.)

[14] Emphasis added.

[15] Emphasis added.

[16] §§ 21508, 21608 & 21628.

body. If "adopt" is interpreted to mean the effective date of an ordinance or resolution, which generally occurs 30 days after passage,[17] then the timelines specified above for publishing hearing agendas and draft maps would be meaningless or impractical because they could occur after the council or board votes on the boundaries. In interpreting a statutory provision, the task is to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statutes' general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results.[18] Therefore, we think a court would favor an interpretation of "adopt" that means the date a council or board passes an ordinance or resolution establishing district boundaries, not the effective date, because such an interpretation would comport with the statutory scheme and purpose of chapters 6 and 7.

In addition to comporting with the statutory scheme and purpose of chapters 6 and 7, an interpretation of "adopt" that does not include an effective date would be consistent with statutory definitions of the term in other contexts. For instance, Health and Safety Code section 18906 provides that "adoption" or "adopt" means "the final act of a state agency that has the legislative authority and responsibility to take proposed building standards to a public hearing." Additionally, Government Code section 29001, subdivision (b) provides that an "adopted budget" means a budget "formally approved by the board of supervisors after the required public hearings and deliberations on the recommended budget." In our view, both of these definitions support the conclusion that a governing body adopts an item when it takes a final action to approve the item at a hearing.

With respect to the legislative history of chapters 6 and 7, we note that a committee analysis for Assembly Bill No. 849 (Stats. 2019, ch. 557 (hereafter AB 849)), which revised the criteria and processes used by local jurisdictions when adopting district boundaries, describes existing law as requiring "most local entities to hold at least one public hearing on the topic of adjusting district boundaries before *the hearing at which boundaries are adopted.*"[19] Another committee analysis for AB 849, in describing current law, states that "maps can be drafted then introduced and *adopted at the same meeting* without first being published and shared with the public."[20] Thus, the Legislature's description of the former redistricting process for local jurisdictions displays that it understands adoption to occur at a public meeting when the governing body votes on boundaries.

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[17] See §§ 9141 & 9235; Gov. Code, §§ 25123 & 36937; see also *Ortiz, supra,* 107 Cal.App.3d at p. 872.

[18] *Poole v. Orange County Fire Authority* (2015) 61 Cal.4th 1378, 1385.

[19] Assem. Com. on Elections and Redistricting, analysis of AB 849, April 10, 2019, p. 8, emphasis added.

[20] Sen. Com. on Elections and Constitutional Amendments, analysis of AB 849, June 18, 2019, p. 9, emphasis added.

Furthermore, the legislative intent of the most recent bill amending chapters 6 and 7, Assembly Bill No. 1276 (Stats. 2020, ch. 90 (hereafter AB 1276)), supports the conclusion that adoption occurs at the meeting when the governing body votes to establish the boundaries, not upon a later effective date. In this regard, a committee analysis for AB 1276 provides that the bill was enacted in response to "the delay in the release of census data in 2021 due to COVID-19," and "fixes timeline issues for redistricting caused by the elections calendar and the delayed data dissemination."[21] The analysis states the concern that without AB 1276, "it will be virtually impossible to provide the necessary public outreach required, develop draft maps, seek input, and ultimately adopt a map" before the statutory deadline.[22] If "adopt" for purposes of chapters 6 and 7 means effective date, then the process of adopting district boundaries would take even longer, which is contrary to the intent of AB 1276. Thus, both the legislative history and legislative intent of recent bills amending chapters 6 and 7 supports the conclusion that adoption of district boundaries occurs when a city council or board of supervisors passes a resolution or ordinance establishing district boundaries.

Lastly, language from case law also supports the interpretation that adoption occurs separately from an ordinance's effective date. In *Ortiz*, the court distinguished between a local redistricting ordinance's adoption date and effective date, stating that "[u]nless the redistricting ordinance were legally effective upon its adoption (which we have concluded was not the case), it could not apply . . . ."[23] Thus, in the local redistricting context, courts interpret adoption of an ordinance to occur separately from the ordinance's effective date, implying that a local redistricting ordinance may be adopted before it goes into effect. The Legislature is presumed to be aware of judicial interpretations of a statute, and if the Legislature amends or reenacts the statute without changing the interpretation placed on that statute by the courts, the Legislature is presumed to have been aware of, and acquiesced in, the courts' construction of that statute.[24] Because the Legislature never amended the statutory language to clearly state, or even imply, that the adoption deadlines specified in chapters 6 and 7 constitute the date that a resolution or ordinance establishing boundaries goes into effect, we think it unlikely that a court would interpret "adopt" in such a broad manner.

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[21] Sen. Com. on Elections and Constitutional Amendments, analysis of AB 1276, Aug. 4, 2020, p. 8.

[22] Sen. Com. on Elections and Constitutional Amendments, analysis of AB 1276, Aug. 4, 2020, p. 7.

[23] *Ortiz, supra,* 107 Cal.App.3d at p. 874. The ordinance in that case had to be legally effective upon its adoption date because that was the last date that complied with the requirement in former section 35006 (now 21506) that "a change in the boundaries of a supervisorial district shall not be made between the direct primary election and the general election."
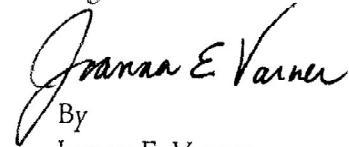
[24] *People v. Brown* (2016) 247 Cal.App.4th 1430, 1436.

3. Conclusion

Based on the foregoing, it is our opinion that "adopt" for purposes of the redistricting deadlines specified in division 21, chapters 6 and 7 of the Elections Code means the date a city council or board of supervisors passes a resolution or ordinance establishing district boundaries, not the date that the resolution or ordinance goes into effect.

Very truly yours,

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