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Gov. Code, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION; and MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA,

Defendant.

CASE NO. BC616804

DEFENDANT CITY OF SANTA MONICA'S OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION TO ADVANCE HEARING DATE ON MOTION TO RE-ISSUE JUDGMENT

Date: June 27, 2024
Time: 8:30 a.m.
Dept: 16
Judge: Hon. Steve Cochran

Complaint Filed: April 12, 2016

The Court should deny plaintiffs' ex parte application to advance the hearing date on their motion to "reissue the judgment." There is no reason to hear plaintiffs' motion any sooner than the first available hearing date, September 18. And in seeking ex parte relief, plaintiffs paint an incredibly distorted picture of this case, both procedurally and substantively. This Court will soon have ample opportunity to consider the fundamental question raised in this litigation: whether Santa Monica's longstanding election system dilutes the voting power of Latino voters in violation of the California Voting Rights Act (CVRA). Alongside this opposition, the City is filing its own motion (set for hearing on September 20) that lays out some of the key background and offers the City's proposal for how the litigation should proceed after six years of traveling up and down California's court system. For now, however, the City offers the following three points to explain why the Court should not advance the September 18 hearing on plaintiffs' motion.

1. The Court should not accept plaintiffs' invitation to rush to issue any new judgment, let alone a new judgment in plaintiffs' favor.

From plaintiffs' application (and their underlying motion), one might think this is a simple case—that the California Supreme Court has already directed that judgment be entered in plaintiffs' favor, and that all this Court needs to do now is rubber-stamp the judgment entered five years ago after making a few tweaks. (App. at p. 1 [arguing that all the findings in the 2019 statement of decision "remain valid and undisturbed"]; *id.* at p. 2 [suggesting that the California Supreme Court "recognized" that the judgment could be reissued on remand].) That is not remotely accurate. As the following (brief) procedural history will illustrate, this is a novel, complicated, and deeply important case that needs to be thoroughly reexamined in light of the guidance from the Court of Appeal and Supreme Court. That is why the City filed its own motion explaining the case's background, identifying the issues to be resolved, and proposing a process for doing so.

This is one of the few CVRA cases to go to trial. Judge Palazuelos issued a judgment in plaintiffs' favor in 2019—both on their CVRA claim and on their claim, under the Equal Protection Clause, that the City adopted and maintained its current election system for discriminatory reasons. (Scolnick Decl., Ex. A.) On the heels of that judgment, plaintiffs filed a motion seeking upwards of $22 million in fees and costs. (*Id.*, Ex. B at p. 21.)

In 2020, the Court of Appeal unanimously reversed the trial court's judgment on both claims. It held that plaintiffs offered no valid proof of vote dilution under the CVRA, and that plaintiffs' theories of intentional discrimination (which the trial court adopted in a statement of decision that plaintiffs wrote) were "so utterly discredited . . . as to dictate judgment for the City." (Scolnick Decl., Ex. B at p. 47.) The Court of Appeal directed the trial court to enter judgment for the City. (*Id.* at p. 50.)

Plaintiffs petitioned for review of the entire Court of Appeal decision. The Supreme Court granted the petition, but only "to determine what constitutes dilution of a protected class's ability to elect candidates of its choice or to influence the outcome of an election within the meaning of the CVRA." (*Pico Neighborhood Assn. v. City of Santa Monica* (2023) 15 Cal.5th 292, 310.) The Supreme Court also ordered the Court of Appeal's decision depublished (*ibid.*), but it remains the law of the case with respect to plaintiffs' equal-protection claim.

Last year, the Supreme Court issued an opinion that rejected the main theory argued by plaintiffs and adopted by Judge Palazuelos in the statement of decision—that "dilution" isn't an element of the CVRA at all. (*Pico Neighborhood Assn. v. City of Santa Monica* (2023) 15 Cal.5th 292, 314-315.) The Supreme Court also rejected the City's position on how "dilution" should be proved. (*Id.* at pp. 318-319.) Instead, the Supreme Court adopted a new legal standard meant to answer the question whether a CVRA plaintiff can "demonstrate that some lawful alternative method of election would improve the protected class's overall ability to elect its preferred candidates." (*Id.* at p. 322.) In the wake of the Supreme Court's opinion, plaintiffs in CVRA cases must now prove not only "what percentage of the vote would be required to win," but also that the relevant minority group would have a "net gain" in voting power under some other election system. (*Id.* at pp. 320, 322.) In other words, "[t]he dilution element also ensures the protected class is not made worse off" in an alternate system. (*Id.* at p. 322.)

The Supreme Court "express[ed] no view on the ultimate question of whether the City's at-large voting system is consistent with the CVRA" and remanded to the Court of Appeal to decide "whether, under the correct legal standard, plaintiffs have established that at-large elections dilute their

ability to elect their preferred candidates," as well as "whether plaintiffs have demonstrated the existence of racially polarized voting" and "any of the other unresolved issues in the City's appeal." (15 Cal.5th at pp. 324-325.) On remand, the Court of Appeal called for supplemental briefing, noting that the Supreme Court did not "reinstate the trial court's judgment" and instead only "identified the proper way to analyze" the CVRA. (Scolnick Decl. Ex. C.) The Court of Appeal "invite[d] the parties to include in their briefing whether it would be appropriate to remand the case to the trial court" to perform the analysis necessary to decide whether the City's current election system dilutes Latino voting strength. (*Id.* at p. 2.) Plaintiffs vigorously opposed remand, arguing that the Court of Appeal should simply reinstate the judgment in their favor on the CVRA claim based on the existing record.

After extensive briefing, the Court of Appeal in early February issued an order remanding the case to this Court "for further proceedings consistent with the Supreme Court's guidance." (Scolnick Decl., Ex. D at p. 2.) The Court of Appeal reiterated that the Supreme Court did not "reinstate the trial court's judgment on the [CVRA]" claim. (*Id.* at p. 1.) The remittitur issued on April 15, 2024. *(Id.*, Ex. E.)

In short, the only thing that's certain about this lawsuit is that half of plaintiffs' case is dead and buried, and no appellate court has expressed any view on the vitality of the other half under the new standard set out by the Supreme Court. And for all plaintiffs' confidence about how this case should go from here, with the ministerial entry of judgment, they also acknowledge that it might need to "drag on, potentially for years, in this Court with another weeks-long trial before" another inevitable appeal. (App. at p. 4.) That uncertainty is exactly what the City hopes to resolve through its motion addressing the shape of further proceedings on remand.

2. Resolution of plaintiffs' motion will have zero effect on how Santa Monica residents elect their City Councilmembers in November 2024.

Plaintiffs contend there is an urgent need to resolve this case before the November 2024 election and that it would be too late if their motion were heard on September 18. (App. at p. 2.) But plaintiffs are again omitting the most important details about this case's history. The reality is that even if this Court were to issue plaintiffs' proposed judgment in July or August of this year—ordering the City to scrap its well-functioning, 78-year-old election system in favor of a district-based system that Santa

Monica voters have twice rejected at the polls—that hypothetical judgment would be automatically stayed on appeal. Because any such judgment in plaintiffs' favor would have no impact on the November 2024 election, there is no urgent need to decide plaintiffs' motion before September 18.

This is not mere speculation or exaggeration: The parties went through this exact same exercise in 2019. The judgment that Judge Palazuelos entered in 2019 is materially identical to the one plaintiffs are now asking this Court to issue. Among other things, paragraph 9 of that 2019 judgment (like paragraph 7 of the new judgment plaintiffs now propose) ordered the City to oust its duly elected Councilmembers from office. (Scolnick Decl., Ex. F at p. 8.) The City promptly appealed and asked the trial court to confirm that the judgment operated as a mandatory injunction that was automatically stayed on appeal. (*Id.* at pp. 18-19.) The trial court denied the City's request. (*Id.* at pp. 19-20.) So the City petitioned for a writ of supersedeas from the Court of Appeal. (*Id.* at p. 35.) The Court of Appeal quickly granted the City's petition, confirming that the trial court's judgment was stayed pending appeal because the provision requiring the City to boot every member off the Council amounted to a mandatory injunction. (*Id.*, Ex. G.)

Accordingly, there is no need to advance the hearing date on plaintiffs' motion from September 18 to July 24, because even if the Court agrees with plaintiffs and enters their proposed judgment promptly in July or August, the resulting judgment would be automatically stayed on appeal and would not impact the November 2024 election. The City explained as much to plaintiffs over email but never received a response (Scolnick Decl., Ex. H); plaintiffs went ahead with this needless ex parte anyway.

3. Any "urgency" is of plaintiffs' own making.

This is an important case with a lengthy history, there is a lot left to decide, and there is no legitimate reason to rush to a resolution. And as for plaintiffs' purported desire to move quickly, their own conduct tells a different story. The Court of Appeal issued its remand order in early February, and the remittitur issued on April 15. Yet plaintiffs did not do anything until *late last night*—Tuesday, June 25, at 10:22 pm—to approach the City about the next steps for the case on remand. If plaintiffs actually wanted to move things along more quickly, they could have filed their motion *months ago* and then sought to advance the hearing date. Or at least they could have reached out to the City at some point

between February and late yesterday night to engage in a dialogue about how the case might proceed on remand, and how quickly things might happen. Plaintiffs did none of those things.

Instead, they revealed for the first time in their application that back in April they reserved a July 24 hearing date in Department 9. (Shenkman Decl., ¶ 3.) But why didn't they file their motion then? Curiously, plaintiffs also never informed the City about the July 24 hearing date; they were evidently planning to file their motion on the last possible date to give the City the least possible time to oppose. Now, if anything, plaintiffs appear to be disappointed that they've lost the element of surprise, but that is obviously not a basis for advancing the September hearing date.

* * *

For all these reasons, the Court should not allow plaintiffs to jump the line by advancing the hearing date on their motion from September 18 to July 24. This is an extremely important and closely watched case that merits significant judicial attention, and there is no emergency warranting hearing plaintiffs' motion any sooner than September 18. The City has filed its own motion with its own views on the appropriate way to resolve the case. That motion is set to be heard on September 20. The only relief that makes any sense is to hear the parties' competing motions on the same day in September (either September 18 or September 20).

DATED: June 26, 2024

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

By: /s/ Theodore J. Boutrous, Jr.
Theodore J. Boutrous, Jr.
Attorneys for Defendant
City of Santa Monica

PROOF OF SERVICE

I, Daniel R. Adler, declare:

I am employed in the County of Los Angeles, State of California. My business address is 333 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On June 26, 2024, I served

DEFENDANT CITY OF SANTA MONICA'S OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION TO ADVANCE HEARING DATE ON MOTION TO RE-ISSUE JUDGMENT

on the interested parties in this action by causing the service delivery of the above document as follows:

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☑ **BY MAIL**: I caused a true copy to be placed in a sealed envelope addressed as indicated above, on the above-mentioned date. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☑ **BY ELECTRONIC SERVICE**: I also caused the documents to be emailed to the persons at the electronic service addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 26, 2024.

Daniel R. Adler