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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF LOS ANGELES

18 PICO NEIGHBORHOOD ASSOCIATION; and
19 MARIA LOYA,

20 Plaintiffs,

21 v.

22 CITY OF SANTA MONICA,

23 Defendant.

CASE NO. BC616804

**DEFENDANT CITY OF SANTA
MONICA'S RESPONSE TO PLAINTIFFS'
EX PARTE APPLICATION FOR
CLARIFICATION OF REMEDIES AND A
ONE-DAY EXTENSION OF TIME FOR
PLAINTIFFS TO SUBMIT THE
PROPOSED STATEMENT OF DECISION
AND PROPOSED JUDGMENT**

Complaint Filed: April 12, 2016
Trial Date: August 1, 2018
Hearing Date: January 2, 2019
Hearing Time: 8:30 AM

*Assigned to Judge Yvette Palazuelos
Dep't 28*

1 The Court's First Amended Tentative Decision dated December 12, 2018, provides, in relevant
2 part:

3 2. The Court enjoins and restrains Defendant from imposing, applying, hold-
4 ing, tabulating, and/or certifying any at-large elections, and/or results thereof,
5 for any positions on its City Council.

6 3. The Court commands and orders that from the date of entry of this judgment,
7 Defendant's elections for, and any seats on, the City Council shall be district-
8 based elections, as defined by the California Voting Rights Act, and in accord-
9 ance with the map attached hereto [of the Pico District (Ex. 162-1)].

10 Plaintiffs now seek *ex parte* "clarification" of the Amended Tentative Decision in two respects.¹

11 First, plaintiffs suggest that the Court inadvertently attached the wrong district map—Trial Exhibit 162,
12 which identifies plaintiffs' proposed "Pico Neighborhood District"—instead of Trial Exhibit 261,
13 which contains plaintiffs' proposed seven-district plan. (App. at 3.) Second, plaintiffs complain that
14 the Amended Tentative Decision "does not address the timing or sequence" of elections, instead allow-
15 ing the City to make those determinations in the first instance following the exhaustion of its appellate
16 rights. (*Ibid.*) Plaintiffs thus ask the Court to "clarify" when the first election must be held, and which
17 seats shall be elected first. (*Ibid.*)

18 Neither "clarification" is warranted. On the contrary, the Court's Amended Tentative Decision
19 is clear, consistent with the applicable provisions of the Elections Code governing a court-ordered
20 change to district-based elections, and in keeping with the recognition that the City should not be forced
21 to change its election system from what the voters have approved unless and until there is a final judg-
22 ment (with appellate rights exhausted) determining that such a change is legally required. The Court
23 should deny plaintiffs' *ex parte* application.

24 ¹ The Minute Order issued in conjunction with the Amended Tentative Decision directed plain-
25 tiffs' counsel to file a proposed statement of decision and proposed judgment by January 2, 2019.
26 Plaintiffs' *ex parte* application also seeks a one-day extension of the January 2, 2019 filing deadline.
27 While, for all the reasons set forth in the text, the City believes the Court's Amended Tentative Decision
28 requires no clarification, the City does not object to extending the deadline for filing of the proposed
statement of decision and proposed judgment to January 3, 2019. The City anticipates filing objections
to the proposed statement of decision and proposed judgment within the 15 days provided by California
Rules of Court, rule 3.1590, subdivision (g) ("Any party may, within 15 days after the proposed state-
ment of decision and judgment have been served, serve and file objections to the proposed statement
of decision or judgment.").

1 **1. Plaintiffs improperly seek reconsideration.** As an initial matter, plaintiffs had re-
2 requested in their remedies briefing that the Court “[a]dopt the seven-district plan presented at trial (Tr.
3 Ex. 261).” (Pls’ Opening Brief Regarding Remedies, p.1.) They also sought an order requiring “a
4 special election of all seven Santa Monica city council seats for April 16, 2019.” (*Ibid.*) The Court’s
5 Amended Tentative Decision rejected both of plaintiffs’ requests. Thus, plaintiffs’ *ex parte* application
6 for “clarification” is in reality an improper motion for reconsideration, and it should be denied on this
7 basis alone. (See Cal. Code Civ. Proc., § 1008, subd. (a) [reconsideration must be based on “new or
8 different facts, circumstances, or law”].)

9 **2. Plaintiffs continue to ignore Elections Code section 10010.** In any event, the Court’s
10 tentative decision not to order the City to adopt plaintiffs’ seven-district plan conforms to the Elections
11 Code’s requirement that, following “a court-imposed change from an at-large method of election to a
12 district-based election,” a political subdivision “shall” hold a series of public hearings concerning po-
13 tential district boundaries before presenting a proposal for judicial review. (Elec. Code, § 10010.) The
14 Court’s amended tentative requires the City to adopt the ostensibly remedial Pico district (Ex. 162),²
15 but with respect to the other six districts, leaves the City free to solicit public input, draw proposed
16 maps, solicit further public input, and then arrive at six other constitutionally permissible districts—
17 just as the Elections Code requires.

18 Plaintiffs now argue that Trial Exhibit 162 “was never proposed as a remedy by either side.”
19 (App. at 3.) In reality, the City’s closing brief on remedies stated: “Even if the Court orders the City
20 to adopt plaintiffs’ ‘Pico’ district [Ex. 162], plaintiffs have no legitimate reason to ask this Court to
21 impose the other six districts drawn by their expert in the few weeks between his deposition and trial . . .
22 rather than allowing the City to undertake an inclusive and democratic process that would ensure that
23 all City residents have an opportunity to be heard. In fact, California’s Elections Code requires such a
24 process.” (City’s Closing Brief on Remedies, at 1.)³

25 _____
26 ² The City continues to maintain that (a) no remedies are appropriate under the circumstances
27 here, and (b) once the Court orders a district-based remedy, the Elections Code requires that *all* districts
28 be created via the public process set forth in section 10010, such that it would be error to require the
City to adopt *any* of plaintiffs’ proposed districts.

³ Plaintiffs also contend that the Pico district reflected in Exhibit 162 was merely a “tool” used

1 3. **No clarification is needed as to the “timing or sequence” of elections.** The Amended
2 Tentative Decision also clearly enjoins the City from holding any further at-large elections for City
3 Council seats and specifies that “from the date of entry of this judgment” any election the City holds
4 for City Council seats must be a district-based election. That is, a judgment requiring a district-based
5 election would, once entered, apply to the next City Council election, currently scheduled to occur as
6 part of the next general election to be held in November 2020.⁴

7 Plaintiffs seek “clarification” because they do not believe the Court intended to allow the City
8 to determine the timing and sequence of district-based elections going forward. (App. at 3-4.) Among
9 other things, plaintiffs contend that the Court should specify “[w]hen” the first election will be held
10 and “[w]hich seats will be up for election at that time. (*Id.* at 4.) Although plaintiffs do not state it
11 expressly, they also appear to be suggesting that the Court also should order a special election to be
12 held before the next general election in November 2020. (*Ibid.*) There are at least three reasons not to
13 provide the “clarification” that plaintiffs now seek.

14 First, plaintiffs once again overlook the relevant provisions of the Elections Code, which allow
15 the City (the “governing body”), in the first instance, to determine the sequence of district elections in
16 a staggered system like Santa Monica’s, and which seats will be elected first. Section 10010, subdivi-
17 sion (b) provides: “In determining the final sequence of the district elections conducted in a political

18 _____
19 by David Ely to “gauge the likely effectiveness of a similar district.” (Appl. at 3.) But Mr. Ely testi-
20 fied that any differences between the Pico district reflected in Exhibit 162 and the Pico district in-
21 cluded as one of seven districts in Exhibit 261 were “minor,” and such “differences wouldn’t have
22 had any impact on that [remedial] analysis. It would have been exactly the same.” (Tr. 416:3-14; see
23 also *id.* at 301:23-28 [Mr. Ely testifying that in drawing the seven-district plan in Exhibit 261, “I
started with district one, which is very similar to the Pico Neighborhood district. In order to make it
easier to stay within the 10 percent population equality across all the districts, I added a few – I added
a few small areas into the district, but – but it’s just a very slight change to the district.”].)

24 ⁴ One of the current City Council members, Tony Vazquez, has announced his intention to step
25 down from his City Council seat on January 7, 2019, to assume his new elected position as a member
26 of the State Board of Equalization. Under Section 603 of the Santa Monica City Charter, the City
27 Council is granted authority to appoint a replacement to fill out the balance of his term, which would
28 expire as of the November 2020 general election. If the City Council does not appoint a replacement
within 30 days, the City Charter states that the Council “shall forthwith cause an election to be held to
fill such vacancy.” Should such an election be required, the earliest it could occur would be November
2019; if the Court’s tentative remains unchanged and is made part of the court’s judgment, in the ab-
sence of a stay pending appeal, this election would be subject to the Court’s order that it could be
conducted only as a district election.

1 subdivision in which members of the governing body will be elected at different times to provide for
2 staggered terms of office, *the governing body* shall give special consideration to the purposes of the
3 California Voting Rights Act of 2001, and it shall take into account the preferences expressed by mem-
4 bers of the districts.” (Italics added.)

5 Plaintiffs posit that compliance with the Elections Code—that is, allowing the City in the first
6 instance to solicit public input and then draw the remaining districts and determine the timing and
7 sequence of district-based elections going forward—would leave the remedial determination “unfet-
8 tered by any judicial review.” (App. at 3.) But no one has ever suggested that the Court would have
9 no further role in this process. On the contrary, plaintiffs have themselves recognized that once the
10 City follows the Elections Code’s requirements for drawing the remaining districts and determining
11 the timing and sequence of elections, the Court would need to approve the resulting remedial plan.
12 (See Pls’ Reply Brief Regarding Appropriate Remedies at p.3 [noting that if the Court allows the City
13 to draw the remaining districts in accordance with the Elections Code, “the parties would argue to this
14 Court whether that district map and election timing are appropriate; and then either side could appeal
15 the court’s decision on the selection of remedies.”].)

16 Second, as the City has noted repeatedly, any order requiring the City to hold a special election
17 before November 2020 would be mandatory in nature, and thus stayed upon the City’s taking of an
18 appeal. (See, e.g., *URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 884–885.)

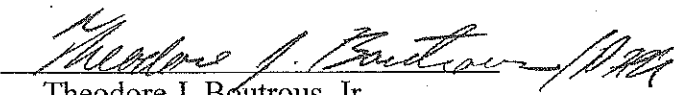
19 Third, requiring a City Council election before November 2020 could have other serious unin-
20 tended consequences. As Dr. Lichtman explained at trial, since 1984, the City has held its elections
21 “on cycle” in November in even-numbered years, to coincide with presidential and gubernatorial elec-
22 tions—previously, the City’s elections had been held “off cycle,” in April in odd-numbered years.
23 (Trial Tr. 3817:6–3818:10; see Ex. 1378-2.) This change to on-cycle elections was “[e]xtremely ben-
24 efiticial to minorities” because “[i]t is well established in the literature that elections that occur in odd
25 numbered years significantly dampen voter turnout. . . . [T]he biggest beneficiaries in this jump in
26 turnout are traditionally low turnout groups, notably Latinos and Asians. . . . So [holding on-cycle
27 elections in November in even-numbered years] generally makes municipal elections more participa-
28 tory and specifically helps minorities, particularly Asians and Latinos.” (Trial Tr. 3818:11-3819:3.)

1 Largely for these same reasons, the California Legislature enacted the Voter Participation
2 Rights Act, effective January 1, 2016, which prohibits off-cycle elections in jurisdictions that experi-
3 ence a significant decrease in voter turnout. Elections Code section 14052 provides that “a political
4 subdivision shall not hold an election *other than on a statewide election date* if holding an election on
5 a nonconcurrent date has previously resulted in a significant decrease in voter turnout.” (Italics added.)
6 And effective January 1, 2019, a “statewide election date” must be either in November or March of an
7 even-numbered year. (Cal. Elec. Code, § 1001.)

8 Accordingly, the Court should not “clarify” its First Amended Tentative Decision to mandate
9 adoption of plaintiffs’ seven-district map, to require a special election to be held before the next regu-
10 larly scheduled City Council election in November 2020, or to specify which seats will be up for elec-
11 tion first.

12
13 DATED: January 2, 2019

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

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15 By: 
16 Theodore J. Boutros, Jr.
17 Attorneys for Defendant, City of Santa Monica
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1 **PROOF OF SERVICE**

2 I, Daniel Adler, declare:

3 I am employed in the County of Los Angeles, State of California. My business address is 333
4 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.

5 On January 2, 2019, I served

6 **DEFENDANT CITY OF SANTA MONICA'S RESPONSE TO PLAINTIFFS' EX PARTE**
7 **APPLICATION FOR CLARIFICATION OF REMEDIES AND A ONE-DAY EXTENSION**
8 **OF TIME FOR PLAINTIFFS TO SUBMIT THE PROPOSED STATEMENT OF DECISION**
AND PROPOSED JUDGMENT

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

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18 **BY PERSONAL SERVICE**

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

21 Executed on January 2, 2019, in Los Angeles, California.

22
23 
24 Daniel Adler