

No. B295935

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION EIGHT**

CITY OF SANTA MONICA,

Appellant-Defendant,

v.

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA,

Respondents-Plaintiffs.

**APPELLANT CITY OF SANTA MONICA'S REPLY IN SUP-
PORT OF ITS MOTION FOR CALENDAR PREFERENCE**

Appeal from the Superior Court for the County of Los Angeles
The Hon. Yvette M. Palazuelos, Judge Presiding
Superior Court Case No. BC616804

Gov't Code, § 6103

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Notwithstanding the inflammatory and inappropriate rhetoric in Respondents' response to the City's motion, Respondents agree with the City that calendar preference is warranted. Therefore, the City offers only three brief points in support of its motion and to correct the record:

1. The City welcomes whatever schedule this Court deems appropriate in order to arrive at a decision by July 10, 2020. The City notes, however, that any briefing schedule would be contingent upon the Reporter's Transcript being completed and filed with the Court; the City cannot file its opening brief until after this happens. (Cal. Rules of Court, rule 8.212(a)(1).) The list of "Future Scheduled Actions" on the Court's electronic docket suggests that the "Record on appeal" may be due as soon as June 24, 2019. (Declaration of Kahn A. Scolnick ("Scolnick Decl."), ¶ 1.) But it is unclear whether the reporters will have finished preparing the transcript by that date, or whether they will require additional time.

In any event, once the Reporter's Transcript is filed, the Rules of Court provide that an appellant has 40 days to file its opening brief; the respondent then has 30 days to file its brief; and the appellant has 20 days to file its reply. (Cal. Rules of Court, rule 8.212(a)(1)–(3).) If it would assist this Court in reaching a decision by July 10, 2020, the City would agree to a briefing schedule that provides 40 days to file the Opening Brief (with no extensions) after the filing of the Reporter's Transcript; the Respondents' Brief would be due 40 days later (i.e., an additional ten days beyond the default 30-day period, but with no

extensions); and the Reply Brief would be due 30 days after that (i.e., an additional ten days beyond the default 20-day period, but with no extensions).

2. The City maintains that its current City Council is validly elected and that there is no evidence of vote dilution; Respondents disagree. But the City respectfully submits that an unopposed motion for calendar preference is not the appropriate vehicle for wading into the substance of the parties' various arguments on the merits. In other words, the purpose of the Motion is not to resolve the appeal before even briefing it, but simply to make it more likely that the City will be able to hold an election—whether the at-large election it wishes to hold, or the districted election that Respondents wish it to hold—in November 2020.

3. Finally, Respondents have misstated the record regarding the City's efforts to meet and confer in advance of filing this Motion. Although Respondents acknowledge that the City reached out to ask whether they would agree to jointly seek calendar preference, Respondents go on to state that "when Respondents suggested that counsel attempt to agree on a schedule to propose to this Court, that suggestion was rebuffed." (Response at p. 6.) Respondents' counsel's declaration also represents that the City's counsel did not even respond to their request to discuss a briefing schedule. (Shenkman Declaration, ¶¶ 2–3.)

This is what actually happened: The City sent an email on April 24 asking whether Respondents would agree to jointly seek

calendar preference; the following evening, Respondents' counsel wrote back, expressing confusion because they were "unclear on what exactly you are seeking. I have had experience 'expediting' an appeal, but not 'calendar preference,' and I surmise that the term 'calendar preference' can describe a variety of scheduling mechanisms to reach a decision more quickly." (Scolnick Decl., Ex. A.) Because Respondents' counsel misunderstood "calendar preference" to refer to a stipulated briefing schedule, they then stated, "perhaps we should discuss stipulating to a briefing schedule that will ensure a decision sufficiently in advance of the statewide general election in 2020." (*Ibid.*)

The next day (April 26), the City's counsel responded by: (a) describing the concept of "calendar preference" as used in the California Rules of Court, which can refer to preference in the setting of oral argument; (b) attaching a draft of the City's calendar-preference motion, so that Respondents could see precisely what relief the City would be seeking; and (c) explaining why "We can't set a briefing schedule yet," namely, "because we don't have the reporter's transcript" (Scolnick Decl., Ex. A.) After providing this information, the City's counsel asked Respondents again whether they would be opposing the motion. (*Ibid.*)

The City received no response to its April 26 email. (Scolnick Decl., ¶ 2.)

DATED: May 3, 2019

Respectfully Submitted,

GIBSON, DUNN & CRUTCHER LLP

By: Theodore Boutrous /TK

Theodore J. Boutrous, Jr.

Attorneys for Appellant-Defendant

City of Santa Monica

PROOF OF SERVICE

I, Daniel Adler, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 South Grand Avenue, Los Angeles, CA 90071-3197, in said County and State. On April 29, 2019, I served the following document(s):

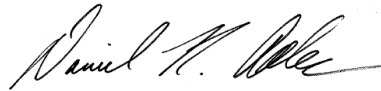
**APPELLANT CITY OF SANTA MONICA'S
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CALENDAR PREFERENCE**

on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 3, 2019, in Los Angeles, California.



Daniel Adler

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