No. B295935

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**
**SECOND APPELLATE DISTRICT**

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CITY OF SANTA MONICA,
*Appellant-Defendant,*
*v.*
PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA,
*Respondents-Plaintiffs,*

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# RESPONDENTS' RESPONSE TO APPELLANT'S MOTION FOR CALENDAR PREFERENCE

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APPEAL FROM THE SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES
THE HON. YVETTE M. PALAZUELOS, JUDGE PRESIDING
SUPERIOR COURT CASE NO. BC616804
DEPARTMENT 9, TELEPHONE: (213) 310-7009

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## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION.

As the Trial Court explained in its Judgment, Santa Monica residents have a right to a *lawfully*-elected city council, and therefore district elections should be held promptly:

> The current members of the Santa Monica City Council were elected through unlawful elections. The residents of the City of Santa Monica deserve to have a lawfully elected city council as soon as is practical. The residents of the City of Santa Monica are entitled to have a council that truly represents all members of the community. Latino residents of Santa Monica, like all other residents of Santa Monica, deserve to have their voices heard in the operation of their city. This can only be accomplished if all members of the city council are lawfully elected. To permit some members of the council to remain who obtained their office through an unlawful election may be a necessary and appropriate interim remedy but will not cure the clear violation of the CVRA and Equal Protection Clause. (Scolnick Decl. Ex. A [Judgment, at pp. 5-6].)

(Also see Shenkman Decl. Ex. A [Statement of Decision, ¶ 90 - "It is also imperative that once a violation of voting rights is found, remedies be implemented promptly, lest minority residents continue to be deprived of their fair representation"], citing *Williams v. City of Dallas* (N.D. Tex. 1990) 734 F.Supp. 1317, 1330, 1412 ["*In no way will this Court tell African-Americans and Hispanics that they must wait any longer for their voting rights in the City of Dallas.*"], italics in original).

Yet, until this appeal is decided, Appellant apparently will continue to stand in the proverbial schoolhouse door, preventing a lawful election to elect a city council that represents *all* residents – including the Latino residents whose voting rights have been denied by Appellant's at-large election system for decades. Therefore, Respondents share in Appellant's newfound desire for a prompt resolution of this appeal, and agree that "calendar preference" is warranted in this case.

However, Appellant's motion lacks any detail as to a schedule that will provide sufficient time for a prompt resolution of this appeal, and rebuffed Respondents' efforts to confer and propose a mutually agreeable schedule. (Shenkman Decl. ¶¶ 2-3, Ex. B). Appellant also waited more than two months before requesting calendar preference, no doubt using that time to craft its opening brief at its chosen pace.[1] A schedule that recognizes both the need to resolve this appeal promptly and the months that Appellant has already had to prepare its opening brief, should be set by the Court – ensuring a resolution of this appeal well in advance of the July 2020 date requested by Appellant.

[1] California Rule of Court 8.240 commands "[a] party seeking calendar preference must *promptly* serve and file a motion for preference." (emphasis added)

## II. THIS COURT HAS AUTHORITY TO GIVE CALENDAR PREFERENCE TO THIS APPEAL.

While this case does not fit squarely into any of the statutory reasons that calendar preference must be granted, the circumstances of this case and the interests of justice warrant this Court exercising its inherent authority to grant calendar preference so this case may be decided promptly.

Defendant argues that calendar preference is mandatory in this case pursuant to sections 35 and 44 of the Code of Civil Procedure. It is not. Rather, those sections require calendar preference for "election contests" (Code of Civ. Proc. § 35) and "contested election cases" (Code of Civ. Proc. § 44), among other types of cases clearly not applicable here. Though this appeal relates to Appellant's method of election, it is not an "election contest" or a "contested election case." Those terms have a special meaning, describing only cases in which an elector or candidate seeks to reverse the result of an election within a short time after the election on the grounds specified in sections 16100 and 16101 of the Elections Code. (See, generally, Elec. Code §§ 16000-16940)

Nonetheless, this Court has inherent authority to grant calendar preference, even though no statute requires it. (See *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1198–1200; Advisory Committee Note to Cal. R. Ct. 8.240). And, this Court can look to analogous statutes concerning calendar preference in deciding whether to exercise its inherent authority. (See *Warren v. Schecter* (1997) 57

Cal.App.4th 1189, 1198–1200 [relying on a statute governing calendar preference at the trial court level as persuasive authority in favor of the court of appeal exercising its inherent authority to grant calendar preference]; see also *Malibu Comm. For Incorporation v. Bd. Of Supervisors* (1990) 222 Cal. App. 3d 397, 400-01 [stating that the appellate court granted calendar preference because the case related to an election]).

Here, this court should exercise its inherent authority to grant calendar preference, but not for the reasons advanced by Appellant. Calendar preference is warranted here because until this appeal is decided, the residents of Santa Monica will be denied "a lawfully elected city council … that truly represents all members of the community," and the "Latino residents of Santa Monica" will continue to be deprived of "hav[ing] their voices heard in the operation of their city." (Scolnick Decl. Ex. A [Judgment, at pp. 5-6].). The "interests of justice" require that this most fundamental right in our democracy be vindicated promptly. (See Code of Civ. Proc. § 36 subd. (e); *Warren v. Schecter* (1997) 57 Cal.App.4th 1189, 1198–1200 [relying on section 36 of the Code of Civil Procedure to justify calendar preference in the appellate court even though that section speaks to calendar preference in the trial courts].)

In its motion, Appellant feigns an interest in protecting the voting rights of its residents, but nothing prevents Appellant from calling a lawful district election for November 2020, or any other time for that matter. Though at-large election

systems, like the one Appellant stubbornly clings to, have long been recognized to dilute minority voters' influence, district elections do not. (See *Thornburg v. Gingles* (1986) 478 U.S. 30, 47 [The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities]; see also *id*. at p. 48, n. 14 [at-large elections may also cause elected officials to "ignore [minority] interests without fear of political consequences"], citing *Rogers v. Lodge* (1982) 458 U.S. 613, 623; *White v. Regester* (1973) 412 U.S. 755, 769). Indeed, Appellant has never cited any case, and Respondents are not aware of any case, that has found a switch from at-large elections to district elections has resulted in vote dilution. For that reason, district elections are favored in California. (See Assembly Bill 277 (2015), [declaring that vote dilution by at-large elections is a matter of statewide concern]; Assembly Bill 2389 (2016), Senate Bill 493 (2015) and Assembly Bill 2220 (2016) [permitting special districts, cities with less than 100,000 population, and cities with more than 100,000 population, respectively, to convert from at-large elections to district-based elections without a vote of the electorate "in furtherance of the purposes of the California Voting Rights Act of 2001"].) In any event, Appellant has made clear that until this Court decides its appeal it will deny its constituents a lawful election, so this appeal should be decided promptly.

## III. THIS COURT SHOULD SET AN APPROPRIATE SCHEDULE.

Though Appellant asks this Court to grant calendar preference, Appellant does not propose any schedule for this Court's consideration. And, when Respondents suggested that counsel attempt to agree on a schedule to propose to this Court, that suggestion was rebuffed. (Shenkman Decl. ¶¶ 2-3, Ex. B).

Appellant's concern – that its appeal be decided by July 10, 2020 so as not to interfere with its next regularly-scheduled election – can be addressed with only minimal modification to the default schedule of the California Rule of Court 8.212. By setting a specific deadline now, not subject to extension, for Appellant to file its opening brief – perhaps June 1, 2019 – and then giving this case priority for oral argument once the parties' briefs are completed, would ensure that this appeal is decided well within the time requested by Appellant. That schedule would also provide ample time for each side to prepare their respective briefs (particularly in light of the fact that Appellant has already had several months to prepare its opening brief), and allow this Court plenty of time to consider the briefing and arguments both before and after the oral argument.

## IV. CONCLUSION

This Court should grant calendar preference for this appeal, and adopt a schedule that ensures a reasonably prompt resolution, while affording the parties appropriate time to make their arguments and the Court to consider those arguments. To that end, Respondents propose that this Court set a deadline (not

subject to later extension) of June 1, 2019 for Appellant to file its opening brief, and give this case priority for oral argument once the parties' briefs are completed.

DATED: May 1, 2019

Respectfully submitted

SHENKMAN & HUGHES

By:_____
Kevin Shenkman
Attorneys for Respondents

## PROOF OF SERVICE

I, Cheryl Cinnater, declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534. On May 2, 2019, I served the following documents:

**RESPONDENTS' RESPONSE TO APPELLANT'S MOTION FOR CALENDAR PREFERENCE**

*** ***See Attached Service List*** ***

[x] **BY MAIL as follows:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the 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 in affidavit.

[x ] **BY ELECTRONIC SERVICE: A true and correct copy of the above-titles documents were electronically served on the persons listed on the attached service list.**

[x] I am employed by R. Rex Parris, a member of the bar of this court, and the foregoing documents were printed on recycled paper.

Executed on May 2, 2019, at Lancaster, California.

_X_ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Cheryl Cinnater

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