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Gov. Code, § 6103

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Superior Court of California
County of Los Angeles

APR 15 2018

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**

19 PICO NEIGHBORHOOD ASSOCIATION and
20 MARIA LOYA,

21 Plaintiffs,

22 v.

23 CITY OF SANTA MONICA,

24 Defendant.

CASE NO. BC616804

**CITY OF SANTA MONICA'S REQUEST
FOR STATEMENT OF DECISION (CODE
CIV. PROC. § 632; CAL. RULES OF
COURT, RULE 3.1590(d))**

Complaint Filed: April 12, 2016

Trial Date: August 1, 2018

Assigned to Judge Yvette Palazuelos

Dep't 28

1 Defendant City of Santa Monica (“City”) submits the following request for a statement of
2 decision under Code of Civil Procedure section 632 and California Rule of Court 3.1590,
3 subdivision (d).

4 **Request for Statement of Decision**

5 Trial in this case began on August 1, 2018. The presentation of evidence was completed on
6 September 11, 2018, and post-trial briefing was completed on October 25, 2018. On November 8,
7 2018, the Court issued a tentative decision, a copy of which is attached as Exhibit A. With respect to
8 the merits, the Court’s tentative decision states in full as follows: “On the first and second causes of
9 action, in favor of Plaintiffs Pico Neighborhood Association and Maria Loya and against Defendant
10 City of Santa Monica.” The City hereby requests that the Court issue “a statement of decision
11 explaining the factual and legal bas[es] for its decision as to each of the principal controverted issues
12 at trial.” (Code Civ. Proc., § 632). The principal controverted issues at trial were the following:

- 13 1. What are the elements of a claim under the California Voting Rights Act (CVRA)?
- 14 2. What must a CVRA plaintiff prove in order to show racially polarized voting? Must
15 such a plaintiff satisfy the second and third preconditions from *Thornburg v. Gingles*
16 (1986) 478 U.S. 30, 51, namely: (2) “the minority group must be able to show that it is
17 politically cohesive,” and (3) “the minority must be able to demonstrate that the white
18 majority votes sufficiently as a bloc to enable it—in the absence of special
19 circumstances, such as the minority candidate running unopposed [citation]—usually to
20 defeat the minority’s preferred candidate”?
- 21 3. Which City Council elections did the Court consider? What is the Court’s rationale for
22 considering those elections and not others?
- 23 4. Did the Court give some City Council elections more weight than others? If so, which
24 elections, and why?
- 25 5. How did the Court determine which candidates were preferred by the voters of the
26 relevant minority group (here, Latinos)?

- 1 a. Must a candidate be Latino in order to be preferred by Latino voters, or is it the
2 status of the candidate as the chosen representative of Latino voters, rather than
3 the race of the candidate, that is relevant?
- 4 b. If the race of the candidate does matter, which candidates did the Court find to
5 be Latino for purposes of the CVRA? On what basis did the Court draw its
6 conclusions concerning candidates' race and ethnicity? Did it take into account
7 voter perceptions of candidates' race and ethnicity?
- 8 c. Can Latino voters, who may cast up to three or four votes in a single election,
9 prefer more than one candidate? If not, why not?
- 10 d. In each relevant election, how does the Court differentiate between candidates
11 preferred by Latino voters and those not preferred by Latino voters?
- 12 i. Is the first step in identifying whether a candidate is Latino-preferred to
13 determine which candidates would have won had Latinos been the only
14 voters? If not, why not?
- 15 ii. If the Court differentiates Latino-preferred candidates from non-Latino-
16 preferred candidates by determining that some candidates received
17 "significantly higher" Latino voter support than others, how does it
18 define "significantly higher"? For example, did Josefina Aranda receive
19 "significantly higher" support from Latino voters in 2002 than Kevin
20 McKeown?
- 21 iii. Can a candidate be Latino-preferred if fewer than 50 percent of Latino
22 voters vote for that candidate? If so, is there any numerical cutoff for
23 voter preference or non-numerical method of differentiating preferred
24 from non-preferred candidates?
- 25 iv. In considering the differences in Latino and non-Latino voter support for
26 candidates, did the Court consider that small differences between
27 ecological-regression and ecological-inference estimates may not be
28 meaningful in this case, because Santa Monica's Latino population is

1 now and always has been too small and too dispersed for statistical
2 techniques to produce point estimates as accurate as those in the typical
3 federal voting-rights case, where members of the minority group
4 necessarily would account for a majority of eligible voters in a potential
5 district?

6 v. In considering the differences in Latino and non-Latino voter support for
7 candidates, did the Court also consider that estimates produced by
8 ecological regression and ecological inference in this case may be
9 systematically less accurate or inaccurate?

10 6. Who were the Latino-preferred candidates in each City Council election considered by
11 the Court? In particular, who were the Latino-preferred candidates in each of the seven
12 City Council elections analyzed by plaintiffs' expert, Dr. J. Morgan Kousser?

	First Latino-preferred Candidate	Second Latino-preferred candidate	Third Latino-preferred candidate	Fourth Latino-preferred candidate
13 1994				
14 1996				
15 2002				
16 2004				
17 2008				
18 2012				
19 2016				

20 7. Must white bloc voting cause a Latino-preferred candidate to lose in order for that
21 candidate's defeat to be part of a pattern of racially polarized voting? If not, why not?
22 If so, in each of the City Council elections considered by the Court, how many Latino-
23 preferred candidates lost, and how many did so because of white bloc voting? In
24 particular, in each of the seven City Council elections analyzed by plaintiffs' expert, Dr.
25 J. Morgan Kousser, how many Latino-preferred candidates lost, and how many did so
26 because of white bloc voting?
27
28

	# of Latino-preferred candidate(s)	# of Latino-preferred candidates who lost	# of Latino-preferred candidates who lost because of white bloc voting
1994			
1996			
2002			
2004			
2008			
2012			
2016			
Total			

8. Did the Court consider the results of exogenous elections (e.g., School Board) or voting on ballot initiatives? If not, why not? If so:
 - a. Who were the Latino-preferred candidates in each exogenous election considered by the Court?
 - b. In each exogenous election considered by the Court, how many Latino-preferred candidates lost, and how many did so because of white bloc voting?
 - c. How much weight did the Court give exogenous elections in its analysis, relative to the weight given to City Council elections?
 - d. For each ballot initiative considered by the Court, what was the Latino-preferred outcome?
 - e. For each ballot initiative considered by the Court, did sufficient numbers of white voters join with Latino voters to enable the ballot initiative to garner a majority of votes within the City in favor of the Latino-preferred outcome?
9. Did plaintiffs prove that Latino voters in Santa Monica cohesively prefer certain candidates?
10. Did plaintiffs prove that the white majority in Santa Monica votes sufficiently as a bloc to—in the absence of special circumstances—usually defeat candidates cohesively preferred by Latino voters? If so, how?

- 1 a. How did the Court define the word “usually,” as it is used in *Thornburg v.*
2 *Gingles*?
- 3 b. What fraction reflects the Court’s conclusion on this issue? In other words,
4 which losing Latino-preferred candidates defeated by white bloc voting are in
5 the numerator, and which Latino-preferred candidates are in the denominator?
- 6 c. Did the Court conclude that Oscar de la Torre’s deliberate attempt to lose the
7 2016 City Council election after his wife filed this lawsuit amounted to a
8 “special circumstance”?
- 9 11. Must a CVRA plaintiff prove vote dilution by showing that voters in the relevant
10 minority group would have a greater opportunity to elect candidates of their choice
11 under an alternative electoral system?
- 12 a. If so, against what objective and workable benchmark did the Court measure
13 actual Latino voting strength?
- 14 b. Did plaintiffs prove vote dilution through Mr. Ely’s estimate of vote totals in the
15 hypothetical Pico District?
- 16 c. Did plaintiffs prove vote dilution through Mr. Levitt’s opinions concerning
17 alternative at-large electoral schemes? If so, did the Court consider historical
18 levels of Latino voter cohesion or turnout? Or did the Court estimate actual
19 Latino voter turnout in order to determine whether Latino voters’ share of actual
20 voters would exceed the threshold of exclusion under a destaggered alternative
21 at-large electoral scheme?
- 22 12. Under what circumstances are the factors enumerated in Elections Code section
23 14028(e) relevant?
- 24 a. Were those factors part of the Court’s analysis of liability under the CVRA?
- 25 b. If so, what were the specific factors considered by the Court, and what factual
26 findings did the Court make relating to those factors?
- 27 c. What causal connection, if any, did the Court find between (i) any factors
28 considered by the Court and (ii) vote dilution?

1 13. Did plaintiffs prove that Santa Monica's method of election has caused a disparate
2 impact on minority voters?

3 a. Were plaintiffs required to prove, for purposes of their Equal Protection claim,
4 that minority voters would have a greater electoral opportunity under some other
5 electoral system?

6 b. When did the minority populations in Santa Monica become large and
7 concentrated enough that an alternative electoral system could have enhanced
8 minority voting strength? Which system(s), specifically, would have done so?

9 c. Did the 1946 Charter amendment—which put in place the system under which
10 seven City Council members are elected at-large in staggered elections, and
11 which eliminated designated posts—strengthen or weaken minority voting
12 power?

13 14. Did plaintiffs prove that the relevant decisionmakers affirmatively intended to
14 discriminate against minority voters by adopting and maintaining the current at-large
15 electoral system? If so, what were the relevant decisions, who were the relevant
16 decisionmakers, and what evidence did plaintiffs present showing that those
17 decisionmakers intended to discriminate?

18 a. Did the Court find intentional discrimination relative to Santa Monica's election
19 system at any point before 1946? If so, on which events, statements, or other
20 facts did the Court rely?

21 b. Did the Court find intentional discrimination relative to Santa Monica's 1946
22 Charter amendment? If so, on which events, statements, or other facts did the
23 Court rely?

24 c. Did the Court find intentional discrimination relative to Santa Monica voters'
25 rejection of Proposition 3 in 1975? If so, on which events, statements, or other
26 facts did the Court rely?

27 d. Did the Court find intentional discrimination relative to Santa Monica's
28 rejection of district elections in 1992? If so, on which events, statements, or

1 other facts did the Court rely?

2 i. If the Court found an affirmative intent to discriminate in 1992, is it
3 premising that finding on what was said or decided at the 1992 Council
4 meeting concerning the City's electoral system? If so, what specific
5 statements or decisions support the Court's conclusion?

6 ii. Has the Court found that any councilmembers intended to weaken
7 minority voting strength in order to preserve their seats, as was found in
8 *Garza v. County of Los Angeles*? If so, which councilmember(s)?

9 e. Did the Court find intentional discrimination relative to Santa Monica voters'
10 rejection of Measure HH in 2002? If so, on which events, statements, or other
11 facts did the Court rely?

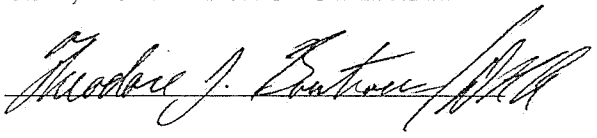
12 f. Did the Court find intentional discrimination relative to Santa Monica's election
13 system at any point after 2002? If so, on which events, statements, or other facts
14 did the Court rely?

15 15. Did the Court make findings under the five-factor framework set out in the United States
16 Supreme Court's decision in *Village of Arlington Heights v. Metropolitan Housing*
17 *Development Corporation* (1977) 429 U.S. 252? If so, what specific findings did the
18 Court make and what evidence supports those findings?

19 16. In assessing whether the City's at-large electoral system was adopted or maintained with
20 a discriminatory purpose, and whether the system has had a disparate impact on minority
21 voters, did the Court consider the legitimate, non-discriminatory purposes of the City's
22 at-large electoral system, including but not limited to (i) ensuring that all
23 councilmembers focus on all issues citywide, rather than only those issues facing their
24 particular districts; (ii) giving every voter a say concerning all seven Council seats, not
25 just one; and (iii) affording voters the opportunity to vote for Council seats every two
26 years, not every four years.

1 DATED: November 15, 2018

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

2
3 By: 

4 Theodore J. Boutros, Jr.

5 Attorneys for Defendant
6 *City of Santa Monica*

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EXHIBIT A

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FILED
Superior Court of California
County of Los Angeles

NOV 08 2018

Sherri R. Carter, Executive Officer/Clerk
By Neil M. Raya Deputy
Neil M. Raya

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION,) Case No.: BC616804
et al.)
)
Plaintiffs,) TENTATIVE DECISION; ORDERS
)
vs.)
)
CITY OF SANTA MONICA,)
)
Defendant.)
)
)
)

Pursuant to CCP §632 and CRC Rule 3.1590(a), the court
issues a Tentative Decision as follows:

1. On the first and second causes of action, in favor of
Plaintiffs Pico Neighborhood Association and Maria Loya and
against Defendant City Of Santa Monica.

2. The Court also orders as follows:

1 a) A post-trial hearing regarding the
2 appropriate/preferred remedy for violation of the California
3 Voting Rights Act on December 7, 2018, 9:30 a.m., Dept. 28. All
4 counsel are ordered to appear.

5 b) Plaintiffs shall file and serve an Opening brief (no
6 more than 15 pages) as if a moving party per the Code of Civil
7 Procedure;


8 c) Responding brief (no more than 15 pages) and Reply
9 brief (no more than 7 pages) shall be filed and served per the
10 Code of Civil Procedure.

11 d) A courtesy copy of each brief must be delivered to the
12 courtroom.

13
14 CLERK TO GIVE WRITTEN NOTICE.

15 IT IS SO ORDERED.

16 DATED: November 5, 2018

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19 
20 YVETTE M. PALAZUELOS
21 JUDGE OF THE SUPERIOR COURT
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1 **PROOF OF SERVICE**

2 I, Cynthia Britt, 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 November 15, 2018, I served the

6 **CITY OF SANTA MONICA’S REQUEST FOR STATEMENT OF DECISION**

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

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17 **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the
18 above-mentioned date. I am “readily familiar” with the firm’s practice of collection and pro-
19 cessing correspondence for mailing. It is deposited with the U.S. Postal Service on that same
20 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 can-
21 cellation date or postage meter date is more than one day after date of deposit for mailing an
affidavit.

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

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

26 Executed on November 15, 2018, in Los Angeles, California.

27 
28 _____
Cynthia Britt