LEGAL ADVOCACY REPORT
October 2, 2019

The League of California Cities® Legal Advocacy Committee considered the following cases for amicus support from **May 31, 2019 through October 2, 2019.** League amicus filings are available at www.cacities.org/recentfilings. To submit a request for amicus assistance, go to www.cacities.org/requestamicus. For more information about the Legal Advocacy Program, go to the Legal Advocacy Center at http://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys or contact the League's Legal Department staff:

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We gratefully acknowledge and thank all of the attorneys identified below who volunteered and devoted their time, effort and expertise to advocate on behalf of California cities. We also thank their associated public agencies and law firms for the generous support.

Attorney's Fees

Guillory v. Hill
Pending Court: 4th District Court of Appeal, Div. 3

Case Number: G054027

Citation: 36 Cal.App.5th 802

In 2007, SWAT officers raided a large party in a mansion. The SWAT team forcibly detained 12 individuals and restrained their hands with zip ties. About an hour later, Officer Hill and other officers entered the mansion to conduct a warrant-based search for evidence of illegal gambling. At various times that day, Hill interviewed and released each individual (collectively, Plaintiffs) separately, with certain detentions lasting for as long as 14 hours. Plaintiffs sued Hill for violation of their civil rights under 42 U.S.C. section 1983. A six-week trial ensued. At the close of trial, the trial court granted Hill's motion for a directed verdict on all of Plaintiffs' claims. Plaintiffs appealed, and the Court of Appeal affirmed, except as to Plaintiffs' claims based on prolonged detention. The Court of Appeal ordered the parties to bear their own costs on appeal.

The trial court retried Plaintiffs' prolonged detention claim, and a jury found that 9 of the 12 Plaintiffs were released after the search ended in violation of section 1983. The jury awarded less than $5,400 in damages (out of $1 million sought). Plaintiffs then moved under 42 U.S.C. section

1988 for almost $3.8 million in attorney fees in a 392-page motion. The motion revealed that Plaintiffs sought "compensation for all, or nearly all, the time attorneys and paralegals spent on anything connected with plaintiffs, whether or not connected with [the] litigation,…from the inception of their involvement [in the case]." The trial court denied the motion. Plaintiffs again appealed. The Court of Appeal affirmed, holding the trial court properly exercised its discretion to deny the attorney fees motion. The court found substantial evidence to show that Plaintiffs "sought over $1 million in damages, were awarded less than $5400, and then requested almost $3.8 million in attorney fees in an almost 400-page motion crammed with obfuscating and questionable billing records."

Approved Action: Join in the County's letter requesting publication of the opinion.

Status of Filing: The letter was filed and the court published the opinion.

The League thanks letter writer Lee H. Roistacher, Partner with Daley & Heft.

CEQA

Sierra Club, et al. v. County of San Diego
Pending Court: 4th District Court of Appeal, Div. 1

Case Number: D075478

Citation: None

In 2011, the County adopted a Program Environmental Impact Report in connection with its general plan update, which included various mitigation measures. One of the mitigation measures, Mitigation Measure CC-1.2, required the County to adopt a Climate Action Plan (CAP) that would achieve certain greenhouse gas (GHG) emissions reductions from County operations and the community, and establish thresholds of significance based on the CAP. In 2012, the County adopted the required CAP (2012 CAP). The Sierra Club filed a Petition for Writ of Mandate, alleging that the 2012 CAP failed to comply with Mitigation Measure CC-1.2 and CEQA. The court granted the petition, and the Court of Appeal affirmed.

In 2018, amid continuing and procedurally complex litigation concerning the 2012 CAP and related policies, the County adopted a new CAP (2018 CAP) and accompanying Supplemental Environmental Impact Report (SEIR). The 2018 CAP and SEIR included the adoption of Mitigation Measure M-GHG-1, which allows project proponents to increase GHG emissions within the County in exchange for the purchase of carbon offsets from anywhere in the world, at the discretion of the County's planning director.

In the case at bar, the Sierra Club and several other organizations (Plaintiffs) challenged the adequacy of the 2018 CAP and SEIR. Plaintiffs alleged, among other things, that M-GHG-1 was inconsistent with the County's general plan policy that GHG emissions reductions be accomplished locally. Plaintiffs also alleged that M-GHG-1 violated CEQA because the County: (1) failed to ensure the carbon offsets were enforceable and of sufficient duration; (2) failed to study the cumulative environmental impacts of carbon offsets; and (3) improperly delegated the

decision to accept carbon offsets to the County's planning director. The trial court found in favor of Plaintiffs, holding that M-GHG-1 was contrary to the County's general plan and violated CEQA. The county appealed.

Approved Action: Monitor.

Soda Canyon Group v. County of Napa, et al.
Pending Court: 1st District Court of Appeal

Case Number: A158130

Citation: None

The Napa County Planning Commission approved a winery project on January 4, 2017. An association of Napa County residents and property owners (Plaintiff) appealed the approval to the Board of Supervisors, which held a hearing on May 23, 2017. The Board denied the appeal and finalized the project approval on August 22, 2017.

Plaintiff then filed a lawsuit challenging the project on CEQA grounds and, as relevant to this amicus request, sought to introduce records that were not part of the administrative record. Those records fell into two categories: (1) documents that were available prior to the planning commission hearing, but not submitted (water studies, road studies, etc.); and (2) evidence relating to the October 2017 Atlas Fire, which occurred after the Board's final approval of the project.

The trial court denied plaintiff's attempt to augment the record with the first group of documents, concluding those records were properly excluded. However, the trial court concluded that the Atlas Fire evidence was "truly new evidence of emergent facts" that should be included in the administrative record and considered by the County on remand. In so holding, the court applied *Fort Mojave Indian Tribe v. Dept of Health Care Services* (1995) 38 Cal.App.4th 1575 – an administrative mandamus case that held when there is relevant evidence of events that had not occurred at the time of the administrative hearing, the court should remand to the agency for reconsideration in light of the new evidence. The court rejected the County's argument that *Fort Mojave* should not be applied to CEQA cases. The court also declined to apply *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559 – a traditional mandamus case which held that courts generally may not consider extra-record evidence when reviewing a quasi-legislative administrative decision for substantial evidence. The County filed a petition for writ of mandate/prohibition.

Approved Action: If the Court of Appeal issues an order to show cause and sets a briefing schedule, file an amicus brief joining in the arguments made by CSAC in its brief in support of the petition for writ of mandate/prohibition.

Contracts

City of Simi Valley v. Negele & Associates
Pending Court: 2nd District Court of Appeal

Case Number: B297629

Citation: None

From 2009 to 2013, Negele & Associates (N&A) represented the City in litigation. In 2012, City staff discovered N&A was submitting invoices exceeding the $50,000 limit for City Manager authority. City staff notified the then-City Attorney, but the City Attorney assured staff it was proper to authorize payment of the invoices without City Council approval.

After the City Attorney resigned in 2013, the City refused to pay outstanding invoices, and N&A filed a lawsuit against the City in May 2014. In June 2014, the City requested and N&A agreed to binding arbitration under the Mandatory Fee Arbitration Act. During discovery, the City uncovered evidence tending to show N&A manipulated its invoices to avoid City Council approval. The City then filed the instant lawsuit, alleging N&A violated the False Claims Act (FCA) by billing more than was permitted by the contract. The trial court stayed the FCA action pending resolution of the Contract Action. In the Contract Action, the arbitrators found in favor of N&A and awarded $524,792.

Once the Contract Action concluded, the stay was lifted in the FCA action and the City filed a First Amended Complaint. N&A demurred, so the City filed a Second Amended Complaint. N&A demurred again, arguing that the City's claims were barred by the preclusive effect of the Contract Action and by the statute of limitations. The court found the City was estopped from recovering any of N&A's attorneys' fees under the FCA since those fees were resolved in the arbitration; however, the court found the City's claim for certain invoiced expert witness fees was not subject to the preclusive effect of the arbitration award. Notwithstanding the lack of preclusion for the expert witness fees, the court found the case was time-barred by the one-year statute of limitations for attorney professional misconduct under Code of Civil Procedure section 340.6. The court rejected the City's argument that the case was governed by the six-year statute of limitations for the FCA set forth in Government Code section 12654.

Approved Action: File an amicus brief with the Second District Court of Appeal in support of the City.

Status of Filing: Before the League filed an amicus brief, the case settled and the appeal was abandoned.

Government Claims Act

Bonney v. City of Menifee
Pending Court: 4th District Court of Appeal, Div. 2

Case Number: E071952

Citation: None

Bonney was struck by a pickup truck in a crosswalk and sustained serious injuries. The crosswalk on the other side of the street was supervised by a crossing-guard employed by the Menifee Union School District (MUSD). The MUSD crossing guard was interviewed by police and identified in the traffic collision report. Bonney and her husband hired an attorney, who obtained a copy of the traffic collision report on January 27, 2017. On April 5, 2017, Plaintiffs filed suit against the truck driver. As part of that lawsuit, Plaintiffs' deposed the MUSD crossing guard on March 8, 2018.

On March 29, 2018, Plaintiffs presented claims to MUSD pursuant to the Government Claims Act, alleging negligence on behalf of MUSD. MUSD rejected the claims for failure to state sufficient facts and because they were untimely. On April 30, 2018, Plaintiffs submitted amended claims to MUSD, and also submitted claims to the City. MUSD and the City returned the claims as untimely and refused to grant leave to file late claims. Plaintiffs then filed a petition for relief from Government Code section 945.5, alleging delayed discovery. Plaintiffs maintained they did not discover any negligence on the part of the City or MUSD until they deposed the crossing guard. The trial court rejected that argument and denied the petition.

Plaintiffs appealed, and sought leave from the trial court to amend the complaint. The trial court issued an order denying leave to amend and Plaintiffs attempted to appeal that order as well. The Court of Appeal directed Plaintiffs to file a letter explaining why the trial court's order denying leave to amend was appealable. In the letter, Plaintiffs argued that the trial court lacked authority to decide whether the accrual date was delayed because the delayed discovery issue should be decided by a jury. The Court of Appeal dismissed the appeal from the trial court's order denying leave to amend. The appeal from the order denying the petition for relief will move forward.

Approved Action: Monitor.

Huckey v. City of Temecula
Pending Court: 2nd District Court of Appeal

Case Number: E070213

Citation: 37 Cal.App.5th 1092

Charles Huckey sustained injuries when he tripped and fell on a defective sidewalk that was vertically uneven between two concrete panels. Huckey sued the City, alleging in relevant part that the defect was a dangerous condition of public property under the Government Claims Act. The City moved for summary judgment on the ground that the defect was trivial as a matter of

law. The trial court agreed and granted the City's motion. The court was persuaded by the City's evidence, which established: (1) that the height differential between the two concrete panels ranged from 9/16 of an inch to 1 inch, (2) that the sidewalk had no jagged or broken edges, and (3) that the City's Maintenance Superintendent was unaware of any other trip and fall incidents on the sidewalk in question.

Huckey appealed, and the Court of Appeal affirmed in an unpublished opinion. Although the Court acknowledged that the record, when construed in the light most favorable to plaintiff, could support a reasonable inference that height differentials higher than ½ of an inch pose a trip hazard, the court found that the sidewalk did not pose a substantial risk of injury when used with due care in a manner in which it was reasonably foreseeable to be used.

Approved Action: Join in the City's letter requesting publication of the opinion.

Status of Filing: The letter was filed and the Court of Appeal published the opinion.

The League thanks letter writer T. Peter Pierce with Richards, Watson & Gershon.

Labor & Employment

City and County of San Francisco v. Public Employment Relations Board
Pending Court: 1st District Court of Appeal

Case Number: A152913

Citation: 2019 WL 3296947

City voters passed Proposition G, which made transit operators (operators) of the City's Municipal Transportation Agency (Agency) subject to collective bargaining and interest arbitration. It also added subdivisions (o) and (q) to section 8A.104 of the City Charter. Subdivision (o) amended the interest arbitration procedures for transit operators. Subdivision (q) altered the traditional use of side letters and past practices during collective bargaining or arbitration. The operators' unions filed an unfair practice charge with PERB, alleging that subdivisions (o) and (q) were facially contrary to the MMBA. PERB agreed with the unions, reasoning that the subdivisions unreasonably abridged the unions' right to represent their members, and frustrated the parties' duty to meet and confer in good faith and maintain the status quo until completion of negotiations under the MMBA. PERB therefore largely invalidated subdivisions (o) and (q).

The City appealed, and the Court of Appeal affirmed in part and reversed in part. The Court of Appeal affirmed PERB's conclusion that subdivisions (o) and (q) violated the MMBA to the extent they required unions to justify proposals with clear and convincing evidence, and to the extent they required formal approval to incorporate side letters and past practices into MOUs. However, the court found that PERB applied the wrong standard of review in assessing the unions' facial challenge. The court rejected PERB's argument that a party challenging a local regulation facially under the MMBA must only demonstrate that the regulation is "unreasonable." Rather, the court concluded that a facial challenge requires PERB to consider

whether there are any circumstances under which the ordinance would not conflict with the MMBA's reasonableness requirement. The court also reversed PERB's decision to invalidate nearly all of the text of subsections (o) and (q).

Approved Action: Join in the City's letter requesting partial publication of sections II.C.1 (pp. 10-12) and II.D (pp.30-33) of the Opinion.

Status of Filing: The letter was filed but the Court denied the request for partial publication of the opinion.

The League thanks letter writer Arthur A. Hartinger and Ryan P. McGinley-Stempel with the Renne Public Law Group.

Land Use

AIDS Healthcare Foundation v. City of Los Angeles (Paladium)
Pending Court: 2nd District Court of Appeal

Case Number: B292816

Citation: 2019 WL 4071763

Developers sought to restore the Palladium theater and transform it into a residential, commercial, and entertainment complex (Project). To facilitate the Project, the developers applied for a vesting tentative tract map, and asked the City to amend its general plan to change the land use designation for part of the site and re-zone the entire site. The City prepared an environmental impact report (EIR) for the Project. The City's Planning Director then conditionally approved the tract map, and issued a report recommending that the Planning Commission certify the EIR and the City Council amend the general plan and re-zone the site.

Plaintiff appealed to the Planning Commission. The Commission held two hearings, during which four commissioners disclosed they had ex parte communications with the developers. At the end of the hearings, the Commission voted to deny Plaintiff's appeal, certify the EIR, and recommend that the Council amend the general plan and re-zone the Project site. Plaintiffs again appealed. The City's Planning & Land Use Management Subcommittee heard Plaintiff's appeal. After hearing comments from Plaintiff and the City Planner, the Subcommittee recommended the Council deny Plaintiffs appeal, certify the EIR, and amend the general plan and re-zone the Project site. At their next regular meeting, the City Council voted to adopt the recommendations.

Plaintiff then filed suit, seeking a writ of mandamus to stop the Project. Plaintiff alleged that the City improperly approved the Project and violated Plaintiff's right to due process. As to the validity of the City's actions, Plaintiff argued that (1) the City's modification of the general plan violated the City's Charter and Municipal Code; (2) the City did not make the necessary findings to eliminate height and residential unit restrictions which were allegedly adopted as mitigation measures under CEQA; and (3) the City improperly approved the EIR after approving the tentative tract map.. Plaintiff further argued the City violated its due process rights, because: (1) the planning commissioners engaged in ex parte communications with the developers; (2) the

Subcommittee permitted the City Planner to speak after Plaintiff without the same time limits; (3) and the Council only allowed Plaintiff to submit written – not oral – comments.

The trial court denied Plaintiff's claims. In an unpublished decision, the Second Appellate District affirmed. In reaching its conclusion that the City's approval of the Project was proper, the court noted (1) that the City's interpretations of its Charter and Municipal Code were reasonable; (2) that Plaintiff failed to prove that the height and residential restrictions were mitigation measures; and (3) that Plaintiffs were not prejudiced by any error in the order of approval of the EIR and tentative tract map, especially since Plaintiff's appeal resulted in the City Council issuing final approval for both at the same time. In reaching its conclusion that the City did not violate Plaintiff's right to due process, the Court reasoned; (1) that the Plaintiffs failed to show that the Planning Commissioners were actually biased by their ex parte communications with the developers; (2) that due process does not require that each citizen be granted as much time as the City to speak or to speak in a specific order; and (3) that Plaintiffs were properly limited to written comments before the council where they had been granted to opportunity to speak before the Subcommittee.

Approved Action: Join CSAC's letter in support of publication.

Status of Filing: The letter was filed but the Court of Appeal denied the request for publication.

The League thanks letter writer Verne Ball with the Sonoma County Counsel's Office.

Liability

United States ex rel. Mei Ling v. City of Los Angeles

Pending Court: Federal District Court

Case Number: CV 11-00974-PSG-JC

Citation: None

Between 2001 and the present, the U.S. Department of Housing and Urban Development (HUD) issued funds to the City from: (1) the Community Development Block Grant Program and the Economic Development Initiative Program; (2) the HOME Investments Partnership Program; (3) Housing Opportunities for People with AIDS; and (4) the Emergency Solutions Grant program (collectively, Entitlement Grants). In order to receive the Entitlement Grants, the City was required to enter into agreements with HUD and certify its compliance with certain requirements, including accessibility requirements. In 2011, HUD conducted a compliance review of the City's housing projects, during which it observed alleged accessibility deficiencies. HUD then sought to reach a voluntary compliance agreement with the City, but has yet to do so, and negotiations concerning that agreement are ongoing.

In February 2011, two private whistleblowers filed a qui tam complaint against the City, bringing claims under the federal False Claims Act (FCA), 31 U.S.C. § 3729. In 2017, the U.S. Government filed a complaint-in-intervention in that action, alleging seven causes of action against the City. The first four causes of action are based on alleged violations of the FCA. The

fifth cause of action is for negligent misrepresentation, the sixth is for unjust enrichment, and the seventh is for payment by mistake. All of the claims stem from the certifications the City made in its Entitlement Grant agreements with HUD regarding compliance with the federal accessibility requirements. The Government alleges that, despite repeatedly making such certifications, the City failed to enforce the federal accessibility laws in its housing program, resulting in the development of inaccessible housing projects and programs with federal funds.

The City moved to dismiss the complaint-in-intervention for failure to state a claim. In its July 25, 2018 minute order, the court granted the motion as to all causes of action except the cause of action for unjust enrichment, concluding that the Government did not adequately allege that the City's certifications of compliance with federal accessibility requirements were material to HUD's decision to award Entitlement Grants to the City. The court reasoned that HUD continued to provide the City with Entitlement Grant funds after learning of the alleged violations. However, the court granted the Government leave to amend, explaining that additional evidence might be enough to allege a plausible claim.

The Government then filed a first amended complaint-in-intervention. The City moved to dismiss the amended complaint. In its July 15, 2019 minute order, the court denied the City's motion, finding in relevant part that allegations in the amended complaint—that HUD is still trying to obtain voluntary compliance before reducing or terminating funding—are enough to render it plausible that compliance with federal accessibility laws was material to HUD's decision to continue funding the Entitlement Grants. The court also rejected the City's contention that HUD could not bring an FCA claim until it exhausted remedial efforts under the complex statutory and regulatory scheme governing the Entitlement Grants. The court reasoned that the fact that administrative procedures were created to address noncompliance led to the opposite conclusion—that compliance was important—and therefore, noncompliance was material to HUD. The City filed a motion to certify the July 15, 2019 order for interlocutory appeal.

Approved Action: Monitor

Police Power

City and County of San Francisco v. Uber Technologies, Inc.
Pending Court: 1st District Court of Appeal

Case Number: A153205

Citation: 36 Cal.App.5th 66

After receiving complaints about transportation networking company (TNC) vehicles, the City Attorney opened an investigation into possible violations of state and municipal law by TNCs, including Uber. Pursuant to San Francisco's authority as a charter city and the San Francisco Administrative Code, the City Attorney issued administrative subpoenas requesting certain information, including all annual reports filed by Uber with the California Public Utilities Commission (CPUC) from 2013 to 2017 and the raw data supporting those reports. After Uber refused to produce the reports, the City Attorney filed a petition for an order requiring Uber to

comply. Uber took the position that it was refusing to comply because Public Utilities Code section 1759 prohibits a trial court from interfering with the CPUC in the performance of its official duties. Uber contended that because the CPUC regulates TNCs, compliance with the subpoena could interfere with CPUC rulemaking, and that any suit the City ultimately might file would be preempted. The trial court rejected that argument and ordered Uber to produce the reports. Uber appealed.

The Court of Appeal also rejected Uber's arguments that the subpoena was preempted under Public Utilities Code section 1759. The court found that Uber's preemption arguments were premature, reasoning that the subpoena was properly issued pursuant to the City's investigative power and was not a collateral attack on something the CPUC had asserted jurisdiction over. The court noted: (1) the subpoena was related to an inquiry the City Attorney was authorized to make regarding potential violations of municipal and state laws, including nuisance laws, minimum wage laws, and laws protecting individuals with disabilities; (2) the subpoena sought information reasonably relevant to that inquiry, since the CPUC reports contain information and data regarding safety problems with drivers, accessibility plans, and amounts paid to drivers; and (3) the subpoena was limited in time and scope.

Approved Action: Join in the City's letter requesting publication of the opinion.

Status of Filing: The letter was filed and the court published the opinion.

The League thanks letter writer Kenneth Walczak, Deputy City Attorney, City and County of San Francisco.

Redevelopment

City of Fontana v. Bosler
Pending Court: California Supreme Court

Case Number: S257169

Citation: 2019 WL 2762927

In 1981, the City adopted a redevelopment plan. In order to accomplish redevelopment, the former Fontana Redevelopment Agency (RDA) entered into an Owner Participation Agreement (OPA) with the Ten-Ninety, Ltd., under which Ten-Ninety agreed to finance public infrastructure improvements for a large mixed-use development (Project). In exchange, Fontana RDA agreed to pay Ten-Ninety for the development costs plus interest from the future tax increment revenue generated by the Project. The OPA was subsequently amended. Under the third amendment to the OPA, Ten-Ninety was required to make payments to the City in settlement of disputes concerning negative financial effects of the Project on the City, including administrative expenses, maintenance activities, and police and fire services. The settlement payments amounted to 35% of the tax increment revenue. The OPA and all subsequent amendments were validated, and the validation judgments were never challenged.

In 2011, the Legislature enacted Health & Saf. Code § 34170, et seq. (Dissolution Law),

eliminating redevelopment agencies. Under the Dissolution Law, the City became the Successor Agency for the Fontana RDA. Beginning in 2012, the City submitted the required Recognized Obligation Payment Schedule (ROPS), which included the payments it owed Ten-Ninety, to the Department of Finance (DOF). DOF approved the payments under the OPA as enforceable obligations on the first seven ROPS, but in 2015, rejected the payments, claiming the OPA was not an enforceable obligation. The City and Ten-Ninety filed actions against DOF seeking to enjoin DOF from rejecting the enforceability of the OPA. The City prevailed at trial, but the Court of Appeal reversed, holding that the third amendment to the OPA constituted an unenforceable obligation under the Dissolution Law. The court rejected the City's argument that a change in the law does not constitute a "changed circumstance" for purposes of challenging a validation judgment.

Approved Action: File a letter with the California Supreme Court supporting the City's Petition for Review.

Status of Filing: The letter was filed but the court denied the Petition for Review.

The League thanks letter writer William H. Ihrke of Rutan & Tucker, LLP.

Takings

Chevron USA, Inc., et al. v. County of Monterey, et al.
Pending Court: 6th District Court of Appeal

Case Number: H045791

Citation: None

The electorate in Monterey County approved a County initiative known as "Measure Z," which prohibits or phases out: (1) well stimulation (e.g., "fracking"); (2) underground wastewater injection and impoundment of wastewater; and (3) drilling of new wells for the recovery of oil or gas. Measure Z also includes "savings provisions" authorizing the County to grant exemptions where Measure Z would interfere with vested or constitutional rights. Oil companies filed suit alleging that Measure Z was preempted by state and federal law and effected a facially unconstitutional taking of their private property.

With respect to the well stimulation provisions, the court first held that Plaintiffs had no standing to challenge Measure Z because no plaintiff claimed to have plans to use well stimulation. With respect to the underground injection or impoundment and well drilling provisions of Measure Z, the court held the provisions were preempted by state and federal law. The court reasoned the extensive state regulatory scheme for oil and gas regulation fully occupies the field of oil and gas regulation in California, and that the federal Safe Drinking Water Act precludes interfering with or impeding underground injections. However, the court found the groundwater and well drilling provisions were severable from the well stimulation provisions. The court rejected all but one of Plaintiffs' takings claims, finding that most plaintiffs had failed to show the mere enactment of Measure Z caused an unconstitutional taking. However, the court concluded that Measure Z's

well drilling provisions caused a facially unconstitutional taking by eliminating the economic value of the undeveloped mineral rights held by one plaintiff. The court further held that the "savings provisions" of Measure Z provided an inadequate administrative remedy and violated due process. Plaintiffs and the proponents of Measure Z have both appealed.

Approved Action: File an amicus brief with the Sixth District Court of Appeal.

Status of Filing: The brief was filed and the matter is pending.

The League thanks brief writer Sean Hecht with the UCLA School of Law.

Voting Rights

Pico Neighborhood Association v. City of Santa Monica
Pending Court: 2nd District Court of Appeal

Case Number: B295935

Citation: None

In 1946, the City adopted its current Charter, which calls for the at-large election of seven City Council members. On April 12, 2016, Plaintiffs filed a complaint against the City, alleging that the City's at-large voting system prevents Latino voters from electing candidates of their choice, in violation of the CVRA. The complaint also alleged the at-large voting system was adopted and has been maintained with the intent of discriminating against minority voters, in violation of the Equal Protection Clause. The trial court issued a tentative decision stating only that it had found in favor of plaintiffs on both causes of action, without any reasoning or citations to evidence or case law. The City requested a statement of decision, which the court ordered the Plaintiffs to draft. The trial court adopted the Plaintiffs' proposed statement of decision.

The court held in favor of Plaintiffs on both causes of action. As to the CVRA claim, the court concluded that the plaintiffs established racially-polarized voting because they showed that Latino voters preferred Latino candidates and only one Latino had been elected to the City Council since 1946. As to the equal protection claim, the court found that the City adopted and maintained the at-large election system with the intent to discriminate against Latinos because they were generally aware that at-large elections could impact the ability of minorities to elect minority candidates. The court enjoined the City from holding future at-large elections for City Council seats; ordered that the City hold off-cycle district-based elections for City Council; ordered that these elections be held based on a seven-district map drawn by Plaintiffs' expert without any public process or public hearings; and required the City to pay the Plaintiffs' attorneys' fees. The City appealed.

Approved Action: File an amicus brief in this case with the Second District Court of Appeal in support of the City.

Status of Filing: The brief will be filed shortly.

The League thanks brief writer Derek Cole with Cole Huber LLP.