

# CLIENT NEWS BRIEF

## Court of Appeal Rules that Santa Monica's At-large Method of Elections Does Not Violate the California Voting Rights Act

On July 9, 2020, California's Second District Court of Appeal unanimously held that the City of Santa Monica's (City) at-large elections do not violate the California Voting Rights Act (CVRA) (Elec. Code, § 14025, *et seq.*). The CVRA is a state law that allows voters to sue public agencies whose at-large elections may result in underrepresentation of minorities. *Pico Neighborhood Association et al., v. City of Santa Monica* represents the first time a public agency has successfully defended its at-large method of election when sued under the CVRA. While the case was decided based on the specific facts and record before the court, the decision shows that public agencies can successfully defend a CVRA challenge where there is no evidence of discriminatory intent or effect.

### Background

This case's long history began in 2016 when the Pico Neighborhood Association (Plaintiff) filed a lawsuit alleging that the City's at-large elections violated the CVRA and the equal protection clause of the California Constitution. In at-large elections, elected officials may reside anywhere within the public agency's boundaries, and all registered voters in the boundaries may vote for all seats on the governing board. The Plaintiff here argued that the City's at-large elections prevented Latinos from influencing local elections and diluted their voting power. At the time of the trial, Latinos made up approximately 16 percent of the City's total population.

On February 15, 2019, the Los Angeles Superior Court issued a judgment in favor of the Plaintiff, holding that the City's at-large elections violated the CVRA and the California Constitution. As a remedy, the court ordered the City to implement by-district elections. In by-district elections, a public agency is separated into areas (or "districts"), and residents of each area vote to elect a candidate who resides within their specific area. The court also ordered the City to pay the Plaintiff's attorneys' fees and costs, estimated at \$22 million.

### The Appellate Court Rules that the City did Not Violate the CVRA or the California Constitution.

On appeal, a three judge panel from the Second Appellate District unanimously overturned the trial court's ruling, finding that the City's at-large method of elections did not violate the CVRA or the California Constitution.

A plaintiff must show five elements to succeed in a CVRA claim:

- (1) **Membership** in a protected class.
- (2) **Residence** in the public agency they are suing.
- (3) The public agency uses an **at-large method of election**.
- (4) **Racially polarized** voting has occurred.

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(5) **Dilution** has occurred.

Here, the parties agreed that the first three elements were met, but disagreed on whether element four, racially polarized voting (meaning there is a difference in the choice of candidates preferred by voters in a protected class and of candidates preferred by the rest of the electorate), and element five, dilution, had occurred. The appellate court's analysis focused on element five, dilution, eventually holding that no dilution occurred.

The appellate court explained dilution as "the act of making something weaker by mixing in something else," explaining that "pouring a quart of water into a quart of milk for instance, dilutes the milk to half strength." The appellate court continued: "this familiar concept applies to electoral results. Many techniques can manipulate a voting system to dilute the ability of particular groups to achieve electoral success."

After analyzing the history of the City's election procedures going back almost 75 years, and the City's prior consideration and rejection of by-district area elections in the 1990's, the appellate court held that Plaintiffs failed to prove that the City's at-large elections diluted the votes of Latinos. The appellate court reasoned that the City's Latino population was not sufficiently large enough to constitute a statistical majority in any potential trustee area. The appellate court concluded that, at most, Latinos would constitute 30 percent of any particular trustee area, and "30 percent is not enough to win a majority and to elect someone to the City Council, even in a district system." "The reason for the asserted lack of electoral success in Santa Monica would appear to be that there are too few Latinos to muster a majority, no matter how the City might slice itself." In sum, the appellate court concluded that at-large voting was not to blame for the Latino population's lack of electoral success. Instead, "small numbers" were.

Additionally, the appellate court found that the City's at-large elections did not violate the California Constitution because Plaintiff was unable to prove that the City historically implemented at-large elections with the purpose of discriminating against Latinos.

## **Takeaway**

This decision, should it stand after any further appeal, significantly impacts the landscape of CVRA litigation and public agency elections. Most public agencies transition from at-large to by-district elections when threatened with CVRA litigation. Some public agencies make the transition because by-district elections are appropriate for their voters. Other public agencies, however, make the transition in order to avoid incurring significant attorneys' fees, even if they don't believe by-district elections are appropriate for their voters, transitioning primarily because at-large elections historically have not stood up to challenge under the CVRA.

This case provides an example of when at-large elections can be found in compliance with the CVRA. By requiring plaintiffs to show that a trustee area can be created that allows a protected class of voters to elect their preferred candidate, the appellate court has acknowledged that by-district elections are not appropriate for every jurisdiction. However, it is too early to know if this case represents a new direction in the law or is an aberration. The court based its decision on the specific record before it, and it may be too soon to expand the holding of the case to other factual settings. Maintaining at-large elections remains problematic for public agencies that do not want to risk a court loss or who do not have the funds and commitment to litigate these types of issues. Additionally, the court noted several arguments that the Plaintiff failed to make, leaving those issues to be litigated elsewhere at some point in the future.

The Plaintiff in this case has already indicated publicly that they plan to appeal to the California Supreme Court. Based on the history and purpose of the CVRA, and the unprecedented nature of this case, it would not be surprising to see the California Supreme Court address this decision in the coming years. We will continue to monitor this case and report on its progress should there be an appeal or if legislation is proposed to address this issue.

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**UPDATE:** On October 21, 2020, the California Supreme Court granted review of the Court of Appeal's decision in *Pico Neighborhood Association et al., v. City of Santa Monica*. In doing so, the California Supreme Court depublished the Court of Appeal's opinion, preventing public agencies from citing the Court of Appeal's decision as binding precedent during the pendency of the Supreme Court's review. The California Supreme Court also ordered the parties to brief the Court on what standard that a plaintiff needs to prove "in order to establish vote dilution under the California Voting Rights Act." The outcome of the Supreme Court's decision will likely establish significant legal precedent for public agencies under the CVRA. We will continue to monitor this case, and will issue an update once this case is ultimately decided.

If you have any questions about your public agency's election process, or to discuss any legal matters pertaining to public agencies, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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