Colantuono Highsmith & Whatley, PC

CH&W Newsletter

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State Voting Rights Act Bars At-Large Elections

By Ryan Thomas Dunn

The Los Angeles Court of Appeal recently upheld a preliminary injunction under the California Voting Rights Act ("CVRA") against the charter City of Palmdale requiring an end to at-large elections for City Council to improve the electoral chances of minority candidates. In doing so, the court held charter cities were subject to the CVRA and even allowed a court to enjoin a regularly scheduled election to enforce the Act. Ironically, the election result to be enjoined produced the City's first African-American Councilmember.

The plaintiffs in *Jauregui v. City of Palmdale* alleged the City's at-large elections diluted votes of Latino and African-American residents in violation of the CVRA. Plaintiffs presented statistical evidence from expert witnesses and evidence only one Latino and no African-Americans had served on the Council in a City which is 54% Latino and almost 15% African-American. The trial court found a violation of Elections Code section 14027, which prohibits at-large elections which result in the "dilution or abridgment of the rights of voters who are members of a protected class," here Latinos and African-Americans. The City did not challenge on appeal the factual findings of vote dilution.

The plaintiffs sought to enjoin the City from conducting the November 2013 election on an at-large basis. The trial court granted the injunction, in part, which the Court of Appeal construed to enjoin only certification of election results rather than the conduct of the election. Palmdale held its election and the Court of Appeal then heard its appeal.

The City asserted two points on appeal: (1) the CVRA does not apply to charter cities; and (2) statute prohibits injunctions that prevent public officials from fulfilling ministerial duties, such as conducting elections.

In rejecting Palmdale's contentions, the Court considered whether the City's charter provisions could contradict a state statute. The Court of Appeal agreed with the City that its charter's at-large provision addressed a municipal affair, but found an actual conflict between the CVRA and the charter provision because that charter provision, as it applied to Palmdale, impaired the ability of a protected class to elect candidates of its choice and thus amounted to illegal vote dilution. The Court also held that the CVRA addressed a matter of statewide concern because preventing vote dilution in any city "goes to the legitimacy of the electoral process." The CVRA is also narrowly tailored, the Court held, because it "can necessarily only interfere with municipal governance when vote dilution is present."

The Court also rejected Palmdale's argument from state law prohibiting injunctions against performance of official duties, holding the CVRA provision allowing courts to "implement appropriate remedies" allowed the injunction against the City's certification of the results of the at-large November 2013 election.

The City has sought review in the California Supreme Court. If the Supreme Court does not take the case, *Jauregui* will stand as strong precedent that charter cities are bound by the CVRA and that trial courts have wide discretion to prevent at-large voting when there is evidence of vote dilution. In effect, the CVRA could prohibit at-large voting in cities with significant minority populations. It is notable that Palmdale did not challenge the finding of vote dilution on appeal, and the *Jauregui* court made no ruling on that point.

Plaintiffs' lawyers are suing cities, school districts and other local governments around the State with significant minority populations to end at-large elections. Cities with diverse electorates which rely on at-large elections may wish to consult legal counsel about the requirements of the CVRA .

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For more information on this topic, contact Ryan at 213/542-5717 or rdunn@chwlaw.us.

Be Careful What You Pray For!

By Mathew T. Summers

The United States Supreme Court recently ruled in *Town of Greece v. Galloway* that Christian prayer before meetings of local legislative bodies does not violate the First Amendment's Establishment Clause. However, California officials should proceed cautiously as to prayer at public meetings, because three religion clauses in the California Constitution may demand more than the U.S. Constitution in terms of government neutrality toward religion. Because the California courts have not yet plainly construed these clauses, some uncertainty remains. However, it does seem that sectarian prayer at government meetings involves more legal risk in California than elsewhere.

The Town Board of Greece, New York, invited clergy to give invocations at its meetings. From 1999 to 2007, every participant was a Christian minister. In 2007, the plaintiffs complained and the Town began inviting leaders of other faiths to provide invocations before Town meetings. Nonetheless, the plaintiffs sued.

The Supreme Court held the Town's invocations do not violate the First Amendment's Establishment Clause, citing our country's long history of legislative prayer, which commenced with the Founders. The Court rejected the argument that Christian references rendered the prayers unconstitutional. Instead, the Court held that each clergyperson may pray as he or she wishes as long as the prayers, over time, neither denigrate nor proselytize for any religion. The Court also held that a clergy may ask the audience to bow their heads or to stand, but Town officials may not.

The California Constitution has three religion clauses: the Establishment Clause, the No Preference Clause, and the No Aid Clause. California's Establishment Clause is interpreted as is its federal equivalent, and thus *Town of Greece* is persuasive on this clause. Further, in 2013, the Ninth Circuit approved the City of Lancaster's prayer policy under the state and federal Establishment Clauses. However, neither case considered the No Preference and No Aid Clauses.

The No Preference Clause states: "Free exercise and enjoyment of religion without discrimination or preference are guaranteed." The California Supreme Court has not yet articulated a test to evaluate government action under this clause. In a 1991 case, the Court held that prayer at high school graduations violates the No Preference Clause because government appears to take a position on religious questions when it sponsors religious prayer. The No Aid Clause prohibits the government from providing material aid for religion, with exceptions for certain charitable works. The Court that this section prohibits not just financial aid but also "any official involvement that promotes religion," such as government-sponsored prayer at public high school graduations.

Should a local government wish to pursue invocations, the following may reduce this legal risk: invocations should be open to anyone. The local government should avoid association with any particular religion or even with religion as opposed to irreligion or non-religious beliefs. Public officials should not ask audience members to bow their heads, to stand or otherwise to participate. Speakers should be cautioned not to proselytize or denigrate other religions. Public officials should not offer prayers from dais.

A policy allowing invocations before local government meetings involves legal risk in light of the undeveloped state of California law and the willingness of advocates for government neutrality on religion to sue to give force to the religion clauses of the California Constitution. Further legal developments are likely. Stay tuned!

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For more information on this topic, contact Matt at 213/542-5719 or msummers@chwlaw.us.

Michael Colantuono Elected Bar Treasurer

The Board of Trustees of the State Bar of California elected Michael G. Colantuono Treasurer of the Bar for the 2014–2015 year. Colantuono is entering his third year as an appointee of the Speaker of the California Assembly to the Trustees of the State Bar of California, the state agency which regulates the practice of law in California. Colantuono will be sworn in as Treasurer at the Bar's Annual Conference in San Diego in September.

The State Bar is comprised of some 237,000 attorneys licensed to practice in California and is a public corporation formed under state law. It is within the judicial branch and serves as an arm of the California Supreme Court. The Bar's missions include:

- To protect the public by ensuring that lawyers and other legal services providers meet the highest standards of competence and ethics.
- To provide services and benefits to meet lawyers' professional development, business and personal needs.
- To promote access to justice for all Californians regardless of financial means.

The Bar Treasurer leads the Board's work in overseeing the finances of the State Bar to protect the public. The Treasurer chairs the Bar's Audit Committee and Chairs or Vice-Chairs its Planning & Budget Committee. Colantuono said: "I am deeply honored by my peers' vote of confidence. I look forward to working with my fellow Trustees to protect the public, lead the profession, and seek adequate funding for our courts. I am grateful for this opportunity to continue my public service in a new setting."

Legislature has Full Plate of Revenue Measures

By Michael G. Colantuono

The Legislative season is heading toward its end-of-summer close and a number of proposals affecting local government revenues are pending. These include:

AB 1434 (Yamada, D-Davis) would direct the PUC to develop a program to establish a Low-Income Water Rate Assistance Program. Such **water rate** subsidy programs, common in public utilities, involve difficult questions under Propositions 218 and 26 because a subsidy to some rate payers cannot be funded by overcharging others. As of late July, the bill is pending in the Senate Appropriations Committee.

AB 1521 (Fox, D-Palmdale) would adjust property tax payments paid in lieu of Vehicle License Fees (VLF) for changes in assessed valuation of property to provide funding for cities which annex unincorporated territory. It would correct a disincentive to annex territory arising from the Legislature's elimination of earlier **VLF funding for annexation** areas. As of late July, it is pending in the Senate Appropriations Committee. Comparable language appears in SB 69 (Roth, D-Riverside), which would also restore funding for four cities in Riverside County which incorporated recently on the assumption these funds would be available and are struggling to stay afloat without them.

AB 1717 (Perea, D-Fresno) is a reprise of last year's AB 300 (which Governor Brown vetoed) and would authorize the State Board of Equalization to collect state and local **telephone users taxes** on prepaid telephone services. At present, it is difficult to collect taxes on prepaid telephone services because the point of sale (where the tax can be conveniently collected) is not the point of use (where the tax is due). This measure would assume the point of sale is the point of use and collect state and local telephone taxes along with sales tax. It would involve a loss of local control over the tax and the SBE would recoup its costs from local governments, but net tax collections are expected to increase. As of late July, AB 1717 was pending in the Senate Appropriations Committee.

AB 1760 (Chau, D-Monterey Park and Bocanegra, D-San Fernando Valley) would prohibit agreements by which affordable housing providers make payments in lieu of taxes (PILOTs) to fund municipal services to **housing developments exempt from property tax**. As of late July, it is pending third reading in the Senate. SB 1203 (Jackson, D-Santa Barbara), a comparable measure, is pending third reading in the Assembly.

AB 2372 (Ammiano, D-San Francisco, and Bocanegra, D-San Fernando Valley) would allow **reassessment of commercial property** upon a "change of control" of a business entity. Specifically, it does not require one person take 50% ownership for a change of control; a change will be recognized if 90% of the ownership interest changes hands in 36 months regardless of how many buyers are involved. It reduces, but does not completely eliminate, the ease with which commercial property can escape reassessment upon what amounts to sale. The Howard Jarvis Taxpayers Association is neutral on the bill, although Cal.Tax and the California Teachers Association oppose it — for different reasons, of course! Cal.Tax supports the status quo. The CTA advocates an amendment of Proposition 13 to allow annual reassessment of commercial property — a so-called "split roll" by which residential property alone would retain the benefit of Proposition 13's limit of reassessments to when property is sold. As of late July, AB 2372 is pending third reading in the Senate. SB 1021 (Wolk, D-Davis) failed to get out of the Assembly Revenue & Taxation Committee in June and would have undone the *Borikas v. Alameda USD* decision and allowed school districts to impose special parcel taxes with different rates for residential and commercial property. The split roll debate is alive and well, it seems, notwithstanding broad agreement on AB 2372.

AB 2618 (John Pérez, D-Los Angeles) amends the Business Improvement District statute to clarify that incidental benefits to third parties from a BID's activities do not convert **BID assessments** into special taxes under Proposition 26. That measure generally prohibits a service fee if those who do not pay the fee benefit from the services it funds. AB 2618 is comparable to last year's AB 483 (Ting, D-San Francisco) which amended the Proposition 218 Omnibus Implementation Act to guide application of Proposition 26 (which amends Proposition 218) as to all **non-property based assessments**. As of late July, AB 2618 is pending third reading in the Senate.

SB 663 (Lara, D-Bell Gardens) clarifies the post-redevelopment statutes to ensure cities with pre-Proposition 13 **supplemental property taxes to cover pension obligations** will continue to receive those taxes. Absent the change, those funds may flow to the redevelopment property tax trust fund (**RPTTF**), which funds all local taxing agencies. As of late July, SB 663 is pending in the Assembly Appropriations Committee.

Plainly it is a busy session for public finance; local governments will do well to let their legislators and the Governor know which of these proposals are important to their ability to serve the public.

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For more information on this subject, contact Michael at 530/432-7357 or mcolantuono@chwlaw.us.

Colantuono, Highsmith & Whatley, PC is a law firm with offices in Los Angeles and outside Grass Valley in the Sierra Foothills which represents public agencies throughout California. Its municipal law practice includes public revenues, elections, post-redevelopment matters, land use, housing, CEQA, LAFCO matters and associated litigation. We are committed to providing advice that is helpful, understandable, and fairly priced.

Colantuono, Highsmith & Whatley, PC
11364 Pleasant Valley Road
Penn Valley, CA 95946

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