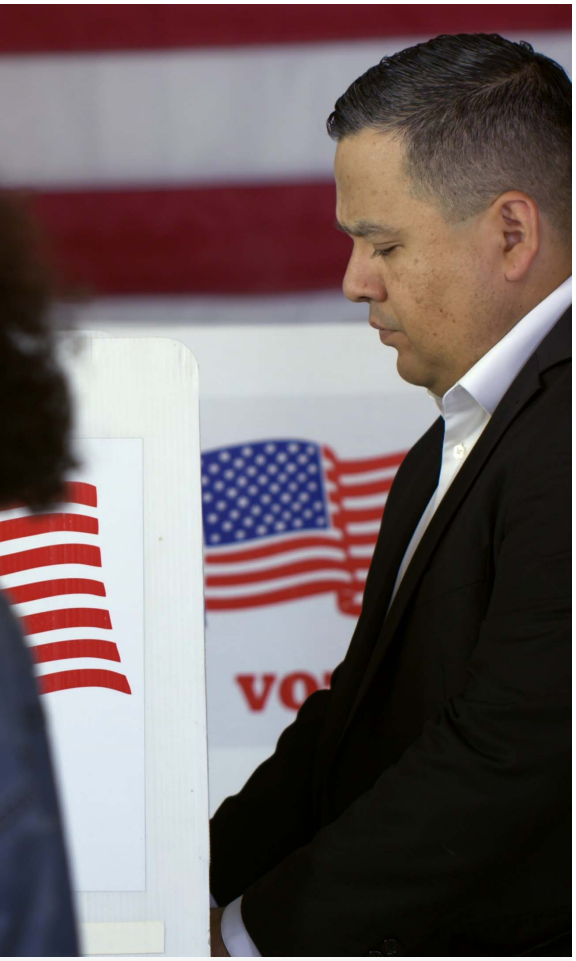

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Santa Monica's At-large Method of Elections Does Not Violate the California Voting Rights Act

On October 21, 2020, the California Supreme Court granted the petition for review on the following limited issue: what must a plaintiff prove in order to establish vote dilution under the California Voting Rights Act? On the Court's own motion, the Court of Appeal's Opinion was ordered depublished.

A recent ruling from the California Appellate Court has provided a win for the City of Santa Monica and much-needed clarity about the necessary elements in order to win a case under the California Voting Rights Act ("CVRA"). In *Pico Neighborhood Association et al. v. City of Santa Monica* (2020) 51 Cal.App.5th 1002, as modified on denial of rehearing (Aug. 5, 2020) the Second District Court of Appeal reversed a 2019 trial court decision against the City of Santa Monica. In its ruling, the Court of Appeal found that "dilution" is a separate, required element and a plaintiff must show that an at-large voting system *actually impairs* the ability of a protected class to elect candidates of their choice or ability to influence the outcome of an election. The Court of Appeal also found that the trial court applied the wrong standard in analyzing the equal protection guarantee of the California Constitution and that a plaintiff must show the government adopted or maintained the election system for the purpose of racial discrimination; knowledge of a disparate impact is not enough. As a result of the Court of Appeal's decision in this case, public agencies will be better able to evaluate the risks associated with a legal challenge to their election system. However, due to the significance of these issues, a petition to the California Supreme Court was filed on August 18, 2020. Accordingly, public agencies should await the Supreme Court's determination before taking any action to make changes to their election system based on the Court of Appeal's ruling in this case.

The City of Santa Monica has a long legislative history relating to its election system. Although its 1906 charter divided the City into seven districts, the City transitioned to its current at-large election system in 1946. Since that time, there have been various unsuccessful efforts to change the election system from an at-large system to a district-based election system. On February 23, 2017, plaintiffs, Pico Neighborhood Association and Maria Loya (collectively "Pico") filed a lawsuit against the City alleging the City's at-large election system violated the CVRA

and the California Constitution. Generally, an at-large election system is one in which voters vote for all members of the legislative body while a by-district election system divides a jurisdiction into sections and would allow voters to only vote for representatives that live in their district. Pico alleged that the City's at-large system was maintained intentionally to dilute Latino voting power and to deny Latinos effective political participation in City Council elections. Pico also alleged the at-large system prevented Latino residents from electing candidates of their choice or influencing election outcomes. After an approximately month-long bench trial, the trial court ruled on November 8, 2018, in favor of Pico and ordered the City to switch to a by-district election system.

In reviewing the trial court's ruling, the Court of Appeal analyzed the statutory language of the CVRA and concluded that a plaintiff must establish five elements in order to win a case under the CVRA: (1) plaintiff's membership in a protected class; (2) plaintiff's residence in the political subdivision being sued; (3) that political subdivision's use of an at-large method of election; (4) racially polarized voting in the political subdivision's elections; and (5) vote dilution. (*See* Elections Code §§ 14027- 14028). In this case, the Court of Appeal focused on the fifth element of dilution and after reviewing the evidence presented at the trial court, agreed with the City of Santa Monica and found that Pico had failed to establish sufficient evidence of dilution.

To satisfy this fifth element of dilution, a plaintiff must prove the political subdivision's at-large election method impaired "the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters" who belong to a protected class. (Elections Code § 14027). In order to determine whether there is vote dilution the Court of Appeal determined that a plaintiff must first propose a reasonable alternative voting practice to serve as the undiluted benchmark. In this case, Pico proposed a district system that, for one district within the City, would have increased Latino voting power to 30%, as compared to the 14% city-wide voting power Latinos hold in at-large elections. The Court of Appeal found that this showing was insufficient to show that the City's at-large system diluted the votes of Latinos. As the Court of Appeal explained, "Assuming race-based voting, 30 percent is not enough to win a majority and to elect someone to the City Council, even in a district system. There was no dilution because the result with one voting system is the same as the result with the other: no representation. [Plaintiffs] thus failed to show that at-large system was the reason Latinos allegedly have had trouble getting elected to the City Council. 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 into districts or wards. At-large voting is not to blame. Small numbers are."

Pico argued, among other things, that the change from 14 percent to 30 percent is legally significant because it increases the electoral "influence" of Latinos within the meaning of Elections Code section 14027. The Court of Appeal noted that while there was no definition of the word "influence" as used in section 14027, using the definition proposed by Pico would allow any plaintiff to win if they can draw a district map that would improve its voting power by any amount. The Court rejected the plaintiffs' argument finding that dilution requires a showing, not of a merely marginal percentage increase in a proposed district, but evidence that the change is likely to make a difference in the electoral results.

Finally, the Court of Appeal also found that the trial court applied an incorrect legal standard to the cause of action under the equal protection clause of the California Constitution. The trial court erroneously required only a showing that the City had knowledge that an at-large system would inhibit the election of minority candidates. The Court of Appeal found that a claim under equal protection requires proof of a purpose of race discrimination and in this case, there was insufficient proof.

In reversing the trial court's decision, the Court of Appeal awarded costs to the City.