Thursday, April 6, 2017

Santa Clara faces lawsuit over not switching to district elections
By James Getz
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The city of Santa Clara is the latest jurisdiction to be sued for choosing to elect its city council members at large instead of by district.

San Francisco attorney Robert Rubin warned the city about possible litigation over California Voting Rights Act violations last fall, and the city moved to create a charter review commission to explore a change in February.

But Rubin, in filing a lawsuit last week, said the city's moves were too little and too late. He said the decision to sue was not affected by new state laws that give cities and school districts ways to postpone lawsuits over at-large voting while expediting switches to district elections. *Mukoyama v. City of Santa Clara*, 17CV308056 (Santa Clara Super. Ct., filed March 30, 2017).

"The new law certainly didn't affect us because it was a longstanding issue," Rubin said. "I wrote a letter to them in 2011, and the city had failed to respond. What we allege goes back over 50 years, since an Asian-American has never been elected to the city council."

The suit, brought by longtime city resident Wesley Mukoyama, states that the city's voting age population is 30.5 percent Asian and 15.5 percent Latino. But since the city's current charter was adopted in 1951, no Asian-Americans and one Latino have been elected to the Santa Clara City Council.

These facts, and the city's at-large voting system, fit the California Voting Rights Act's definition of racially polarized voting, Rubin argued. Court cases so far have held cities or school districts must use district voting to remedy such situations.

Brian Doyle, Santa Clara's interim city attorney, said he spoke to Rubin shortly after the plaintiffs' attorney joined with the Asian Law Alliance and Oakland firm of Goldstein, Borgen, Dardarian & Ho to file suit.

"I'm a little bit confused about the timing of this because we're already in the process of amending our charter to allow district elections," Doyle said. "I'm not sure what the lawsuit would produce."

The council is slated to appoint the nine Charter Review Commission members next week. The commission's first meeting is tentatively set for April 24, said Jennifer Yamaguma, the city's community relations manager.

But Rubin said the commission is inadequate. "There's no promise the commission will even address the issue," he said. "They had a similar problem in 2011. They met and didn't even consider the issue."

Richard Konda of the Asian Law Alliance said that fact motivated Mukoyama this time. "When he saw that that committee failed to reach any consensus, he was not happy," Konda said. "He was hoping they would do what was necessary through that charter process, but they didn't."

The voting rights act has prompted many lawsuits since its passage in 2001.

But after years of Rubin and other attorneys sending demand letters and sometimes racking up hundreds of thousands of dollars, or even a few million, on voting rights act cases, state lawmakers reacted last year.

Legislators passed laws with the intent "to try and detour those plaintiffs' attorneys who have turned CVRA litigation into a cottage industry," Dane Hutchings of the California League of Cities said.

The group estimated that from 2009 to 2016, voting rights act lawsuits had cost cities $20 million in attorney fees — and that figure did not include cities' in-house costs.

Gov. Jerry Brown signed AB 2220 and AB 350 into law, with both taking effect Jan. 1. The first amended an earlier law to enable cities of any size to switch to districts by passing an ordinance, instead of having to put the issue before voters.

AB 350 created a 45-day "safe harbor" period for cities or school districts that had received a demand letter to pass a resolution outlining how they would make the switch. If such a resolution is passed, the plaintiff cannot sue for 90 days. The new law also mandates a specific process for map-drawing and citizen involvement after the resolution.

The city of Fremont, after receiving a demand letter from attorney Kevin Shenkman of Malibu-based Shenkman & Hughes, passed such a resolution last week.

Rubin doesn't see the "safe harbor" provisions applying to Santa Clara, or the creation of the commission as necessarily following the new law's directions.

"I always give the jurisdiction a chance," he said. "A demand letter, and then at least several weeks or even months before taking action. I think six years is long enough to remedy the position."

"If they want to come forward with a more straightforward process, that's fine, but I don't want to hear about commissions as a way to hold up litigation," he said.

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