



CITY OF SANTA BARBARA

INDEPENDENT REDISTRICTING COMMISSION

AGENDA REPORT

AGENDA DATE: May 26, 2021

TO: Honorable Chairperson and Members of the Commission

FROM: City Attorney's Office
Marguerite Mary Leoni, Special Counsel

SUBJECT: Extension Of November 1, 2021 Redistricting Deadline

RECOMMENDATION:

That the Independent Redistricting Commission recommend that the City Council authorize and direct the City Attorney's Office to file a Petition for Writ of Mandate to extend the November 1, 2021 Redistricting Deadline to a date seven months from receipt of the official redistricting database from the State of California, or by April 17, 2022, whichever is later.

EXECUTIVE SUMMARY:

At the April 28, 2021 meeting of the City of Santa Barbara Independent Redistricting Commission ("IRC"), the IRC adopted motions to:

- 1) Find and determine that it is presently impossible to comply with the November 1, 2021 redistricting deadline contained in City Charter Section 1301, and in the Settlement Agreement and Stipulated Judgment in *Banales v. City of Santa Barbara*, SBSC Case No. 1468167 ("*Banales*"); and
- 2) Direct the City Attorney to return to the Independent Redistricting Commission within 30 days to report on recommendations for appropriate legal actions to extend the November 2021 deadline, and the duration of the proposed extension.

Based on the precedent set forth in *Legislature of State of Cal. v. Padilla* (2020) 9 Cal. 5th 867, the City Attorney recommends the following legal actions:

That the City Council, within 30 days, file a Petition for a Writ of Mandate naming the City Clerk as respondent, seeking an order extending the November 1, 2021 date in City Charter Section 1301 by which the IRC must submit a final redistricting map to the City Council and requiring the City Council to accept the IRC's map as the 2021 redistricting map for the City of Santa Barbara.

Extending the IRC's deadline based on the delayed receipt of the official redistricting database will ensure the voters' intent in amending Section 1301 is given effect, facilitate the City's compliance with the *Banales* settlement agreement, and avoid a costly, confusing, and unnecessary ballot measure asking the voters to amend Section 1301 to address an extraordinary timing issue created by a worldwide pandemic and the consequent delay in receipt of the 2020 Census data from the United States Census Bureau. Extending the deadline to a date seven months from receipt of the official redistricting database from the State of California, or by April 17, 2022, whichever is later, closely approximates the timing incorporated in Section 1301 as enacted, and is generally consistent with the timing provided in state law for Charter Cities without their own timing provisions to complete redistricting.

The City Attorney has also entered negotiations with representatives of the plaintiffs in the *Banales* case, who are amenable to entering into a supplemental agreement similarly extending the November 1, 2021 date contained in the settlement agreement and stipulated judgment.

DISCUSSION:

Judicial Authority to Reform Section 1301 of the Charter

In *Legislature of the State of California v. Padilla*, the California Supreme Court granted the Legislature's petition for a writ of mandate extending dates by which the California Citizens Redistricting Commission ("CRC") must accomplish key redistricting tasks to implement the intent of the voters. In that case, like here, the deadline for the CRC's action was prescribed by a voter-approved constitutional amendment, which became infeasible to meet because of the Census Bureau's delay in releasing the 2020 Census data. The Court held: "We consider it clear from the constitutional framework that, confronted with extraordinary pandemic-related federal delay, the enactors of article XXI, section 2, would have preferred shifting the date for approval of the Commission's final maps to the available alternatives." (9 Cal. 5th 867, 880 (2020).)

The two alternatives to judicial relief would have been triggering the constitutional provisions for default of the redistricting process to the Supreme Court when the CRC fails to enact a redistricting plan or the rapid adoption of a constitutional amendment by the voters (which petitioner argued was impracticable given the short timeframe for placing a constitutional amendment on the November 2020 ballot). The Court ruled there were strong reasons to believe voters would not have preferred transferring primary responsibility for redistricting from the CRC to the Court to employing the usual redistricting procedures on an adjusted timeline. The Court noted the voters enacted the constitutional amendments creating the CRC to vest the responsibility of drawing new district maps from the Legislature to an independent panel of citizens and to increase opportunity for public participation in the process. The voters tasked the Supreme Court with redistricting only as a matter of last resort. (Cal. Const., art. XXI, § 2, subd. (j).) For the Court to undertake to draw maps in the first instance would both displace the role voters envisioned for the CRC and preclude opportunities for the public to participate in the process as the voters intended. (See Cal. Const., art. XXI, § 2, subd. (b)(1).) Extending the deadline gave effect to the voters' intent that the CRC play the lead role in drawing new district maps, with input from the public received in a timely manner. (9 Cal. 5th at 880.)

In reaching this conclusion, the Court applied principles established in *Kopp v. Fair Political Practices Commission* (1995) 11 Cal.4th 607 (*Kopp*) and in *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231. The Court explained that:

“‘[u]nder established decisions of this court and the United States Supreme Court, a reviewing court may, in appropriate circumstances, and consistently with the separation of powers doctrine, reform a statute to conform it to constitutional requirements in lieu of simply declaring it unconstitutional and unenforceable. The guiding principle is consistency with the Legislature's (or, as here, the electorate's) intent.’ [A] court may reform a statute to satisfy constitutional requirements if it can conclude with confidence that (i) it is possible to reform the statute in a manner that closely effectuates policy judgments clearly articulated by the enacting body, and (ii) the enacting body would have preferred such a reformed version of the statute to invalidation of the statute.”

Legislature v. Padilla (2020) 9 Cal.5th 867, 876 [266 Cal.Rptr.3d 2, 7, 469 P.3d 405, 409]

In other words, the Court concluded that the judiciary has the inherent authority to reform a statute consistent with legislative intent in situations where impossibility would have the same effect as invalidity, but only if the court can do so consistent with the voters' intent. (*Id.* 876-77.)

Here, the considerations are similar. The voters amended Section 1301 to conform the City's electoral system to the judgment in *Banales*, including provisions for the 2021 redistricting to be performed and completed by an independent commission within seven months of receipt of the new 2020 Census data based on a process that would include robust public participation through public hearings, easy public access to information about the process, mandated transparency, and the ability to submit citizen-developed maps. As the IRC has already found, the delay in the Census Bureau's release of redistricting data makes it impossible to comply with the voters' intent under the November 1, 2021 deadline in Section 1301.

Alternatives to Judicial Reformation

The alternatives to judicial reformation of the November 1, 2021 deadline are: (1) an extremely rushed redistricting process by the IRC, defeating the goal of robust public participation; (2) possible default to the Elections Code requirement that the City Council redistrict after receipt of the 2020 Census data if the IRC is unable to complete the process (Elec. Code § 21621), completely destroying the voters' intent that the IRC conduct the redistricting and exposing the City to a lawsuit to enforce the *Banales* settlement; or (3) a costly and likely confusing ballot measure on a 2022 ballot to amend the deadline in Section 1301 on a one-time basis to address an extraordinary circumstance the voters could not have foreseen when approving amended Section 1301. Based on the cost of the 2018 ballot measure amending Section 1301, the cost of a 2022 ballot measure would likely be in the range of \$250,000. If the measure were to fail due to voter confusion, resort to the courts would be inevitable. In addition, going to the ballot in 2022 would likely delay redistricting until 2023 and thus undermine the intent of the voters that the redistricting be performed closely after release of the new Census data, when those data are fresh, and public confidence in their accuracy and public awareness of redistricting are at their highest levels.

It is the City Attorney's view that all available alternatives would undermine the voters' intent in enacting amended Section 1301. In contrast, judicial reformation of the November 1, 2021 deadline would be consistent with and effectuate the voters' intent. In addition, it is possible to reform the deadline in a manner that closely effectuates policy judgments of the voters, and it seems clear that the voters would prefer a reformed

version of Section 1301 to its effective nullification. A date seven months after State of California's release of the official redistricting data base (about six weeks after receipt of the Census data) closely approximates the timing for the redistricting process provided in the *Banales* settlement documents and Section 1301.¹ It is also analogous to the deadline established in the California Elections for Charter Cities that do not have their own deadlines to complete the redistricting process. (Elec. Code § 21622(a)(3).)

Procedures

Form of Lawsuit

The most appropriate lawsuit is a petition for a writ of mandate that would order the City Council to accept a redistricting map from the IRC later than the November 1, 2021 deadline in Section 1301. (See generally Cal. Code Civ. P. § 1085; *Legislature v. Padilla*, 9 Cal. 5th 867 [petition for peremptory writ of mandate seeking relief from deadlines set by California law].) The documents to file will include a verified petition for writ of mandate, accompanying memorandum of points and authorities, declaration(s) related to the *Banales* case, the Section 1301 ballot measure, the redistricting process, and Census delays, and a request for judicial notice. The verified petition, like the process in *Padilla*, would request issuance of a preemptory writ in the first instance. It is possible an *ex parte* application may be necessary to bring this matter to the attention of the court on an expedited basis.

Basis for Relief

There are four primary grounds for the petition:

- As a factual matter, the delays in the Census Bureau data and the prerequisites of the redistricting process (e.g., public hearings) will make it impracticable for the IRC to comply with Section 1301, as already found by the IRC, and the City Council has a beneficial interest as the entity required to receive the IRC's redistricting plan on or before November 1, 2021 and call elections.
- The City has no plain, speedy, and adequate remedy in the ordinary course of law, absent the granting of the petition.

¹ At the time the voters approved amended Section 1301, the requirement to use a database developed by the State of California from the Census data was not included in the Code. That requirement came into effect in AB 849, effective January 2020. See Elec. Code § 21621(a)(2). The timing proposed in this report takes into account that new requirement as well as the approximately 5 month delay in the receipt of the Census data in "legacy" format.

- Extending the IRC’s deadline would fulfill the purpose of the voters in enacting Section 1301 (by enabling the Commission to solicit public input and draft and refer a map to the City Council) and would not disrupt the conduct of upcoming elections.
- The California Supreme Court’s recent decision in *Padilla* recognizes the judiciary’s general authority to reform laws in a manner that is consistent with the intent of the voters who enacted them and endorsed the specific objective of extending redistricting deadlines that are infeasible due to delays in Census Bureau data.

Parties

By analogy to the *Padilla* decision, it would be suitable for the City Council to serve as Petitioner. As in that case, the City Council is the legislative and policymaking body for the jurisdiction. In addition, as in *Padilla*, the City Council is not itself subject to the relevant redistricting deadline but is responsible to receive the redistricting map on or before November 1, 2021, and is statutorily responsible for the redistricting process in the absence of other charter-based provisions (Elec. Code § 12620), and would be responsible for seeking a vote of the people to amend the City Charter to extend the IRC’s deadline. (See also *City of Burbank v. Burbank-Glendale-Pasadena Airport Authority* (2003) 113 Cal.App.4th 465, 482.)

The general principle that governs the naming of respondents in a petition for a writ of mandate is that relief must be sought against the officer who bears the duty of enforcing that law. (See *City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 908 fn. 4 [State of California improperly named as defendant in mandamus action contesting constitutionality of state law].)

Accordingly, the petition for writ of mandate filed by the state Legislature to extend the deadlines for the CRC to meet key redistricting tasks was filed against Secretary of State Alex Padilla, given that he is “responsible for overseeing the State’s elections, including ensuring that all [relevant] elections . . . are conducted using the current district boundaries.” (Pet. at 10, citing Cal. Elec. Code § 10.)

Applying that principle and precedent here, the most appropriate respondent in this action would be the City Clerk because that office has the “power and shall be required to . . . [h]ave charge of all City elections.” (Charter, § 704(h).) The naming of the City Clerk would also be consistent with the defined role of a city clerk under state law. (Elec. Code §§ 307

["clerk" is the city clerk "charged with the duty of conducting any election"], 320 ["elections official" means a clerk or any person who is charged with the duty of conducting an election].)

Venue and Jurisdiction

The action may be brought in the Santa Barbara Superior Court, the Second District Court of Appeal, or the California Supreme Court. (Cal. Const., art. VI, § 10; Code Civ. P. §§ 1085, 1086; Rule of Court 8.486.) The Superior Court for Santa Barbara County would appear to be the proper court primarily because the court in *Banales* retained jurisdiction to enforce the California Voting Rights Act (CVRA) settlement agreement (and is familiar with the facts of that related case). Paragraph 18 of the *Banales* settlement provides:

18. Action to Enforce Agreement. Venue over any dispute that may arise under this Agreement shall be in the Superior Court in and for the County of Santa Barbara and shall be pursued as a related case to the CVRA Lawsuit. In the event that any action in law or equity is initiated by any party to enforce the provisions of this Agreement, to obtain a declaration of rights and obligations in conjunction therewith, or otherwise arising out of this Agreement, the prevailing party in such action as that term is defined in Code of Civil Procedure section 1032 shall be entitled to recovery of its reasonable attorneys' fees and costs.

To justify original jurisdiction in the Court of Appeal or Supreme Court, the petitioner(s) would need to explain why such jurisdiction is warranted, particularly why the case presents an issue of great and broad public importance that must be resolved promptly. (See generally *Vandermost v. Bowen* (2012) 53 Cal.4th 421, 449, 452-453.)

As with the *Padilla* case (which was heard directly by the California Supreme Court), reasonable arguments can be made for direct review in the higher courts. However, it is not difficult to envision a higher court rejecting a request for direct review because the trial courts are capable of applying the principles in *Padilla*, the issues are unique to the City of Santa Barbara, and return to the Superior Court for related actions (e.g. an action "otherwise arising out of this Agreement") is anticipated in the *Banales* settlement. Skipping the superior court and being denied would likely result in delay in obtaining a decision. (See Cal. Rule of Court 3.300.)

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