



School Law Update

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COURT OF APPEAL APPROVES REDUCED FEE AWARD AGAINST SCHOOL DISTRICT IN VOTING RIGHTS CASE

The California Court of Appeal recently upheld a Superior Court decision awarding significantly reduced attorney fees in a lawsuit under the California Voting Rights Act (“CVRA”). The Court also discussed at length the role of a County Committee on School District Organization and county elections officials in these cases.

In *Rey v. Madera Unified School District*,¹ Plaintiffs sued the district for violation of the CVRA, challenging the District's “at-large” election system. They also sued the County Board of Education in its capacity as the County Committee on School District Organization and the County Clerk-Recorder.

The District immediately began the process of changing its election system and did not oppose a preliminary injunction suspending its November 2008 election. The trial court granted the injunction and found that the Plaintiffs were entitled to attorney fees and costs under the CVRA, as the prevailing parties in the litigation. The Board adopted a trustee area plan in November of 2008, approved by the County Committee and the court.

The trial court slashed the plaintiff's request for some \$1.7 million in attorney fees to \$162,500 and excluded fees incurred in litigating against the County Committee. The Court of Appeal upheld the trial court's determination.

ATTORNEYS' FEES

At an early hearing, the trial court called the plaintiffs' fee request “patently unreasonable.” Almost \$300,000 of the request was for hours expended on work to recover the attorneys' fees and costs themselves, and another \$300,000 related to litigation against the County Committee. The plaintiffs sought to apply a multiplier to enhance the fee award.

¹*Rey v. Madera Unified School District* (2012) _____ Cal.App.4th _____.

In awarding the reduced fee amount, the court found that the attorneys' normal billing rates of \$295 to \$760 per hour were excessive and instead awarded what it found to be a reasonable rate for the Central Valley of \$325 per hour. The court did not agree with the plaintiffs' contention that they made a good faith effort to use qualified local counsel but were unable to do so.

The court concluded that the number of attorneys employed before and during the preliminary injunction hearing resulted in significant duplication of work. Some nine different attorneys worked in preparing the complaint, and eleven worked on the preliminary injunction. Of the more than 3,000 hours of attorney time claimed, the court found 500 hours to be a reasonable claim, noting that the plaintiffs achieved their goal on the merits of the case within three months of filing the complaint. The court declined to apply a multiplier.

The District was also ordered to pay approximately \$105,000 in plaintiffs' litigation costs.

The Court of Appeal found the trial court's assessment to be reasonable and upheld it.

THE COUNTY COMMITTEE

The trial court granted a motion by the County Committee seeking a judgment confirming that it had not violated any duties under the CVRA. The County Committee was involved in the formation of the District in 1964, but had no involvement in District elections after that.

On appeal, plaintiffs argued that because the County Committee had the power to impose trustee areas on the District, it was required to take action to address an election system that violates the CVRA. The court noted that the CVRA imposes liability for "imposing" or "applying" an at-large election system in such a way as to impair the ability of minority voters to elect their chosen candidates. Here, the County Committee had no involvement in District elections since the time the District was formed in 1964. Absent some active involvement in the District's elections, the Court of Appeal refused to impose liability on the County Committee.

The Court of Appeal also upheld the trial court's determination that a County Committee does not have a duty to review voting systems and proactively initiate proposals for change. The Court of Appeal noted that if the Legislature had intended to require County Committees to do this, it could have created a mandatory duty.

Plaintiffs had also argued that the County Committee was on notice of their demand by virtue of the fact that they were aware of demands made against the District. The Court of Appeal noted that those demands were directed to the District and no demands were ever made on the County Committee. The Court determined that it would not be appropriate to award attorney's fees against the County Committee, finding that the hours expended in litigating against the County Committee did not add to the plaintiffs' level of success.

COUNTY ELECTIONS OFFICIAL

During the proceedings on the preliminary injunction to halt the 2008 election, the County Clerk-Recorder argued that she had no control over whether the election was conducted by trustee areas or at-large and it was already too late for her to stop the District election without putting the entire election in peril.

The trial court concluded that the County Clerk-Recorder was not liable for attorney fees because she had no discretion to cause or prevent violations of the CVRA. The court dismissed the complaint against her as moot. The Court of Appeal did not permit the plaintiffs to challenge the County Clerk-Recorder's liability for attorney fees, since they did not raise the issue when they initially filed their appeal.

If you need further assistance or information regarding this case, do not hesitate to contact our office.

— Grant Herndon

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