

Legal bills piling up in Whittier's Latino voting rights lawsuit

ATTACHMENT 8

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\$400,000 and counting as city faces deficits

WHITTIER >> The city has spent more than \$400,000 in attorneys' fees on the California Voting Rights Act lawsuit it's facing, and the meter is still running.

The next step in the CVRA case is the April 16 status conference to discuss setting a date for the trial, according to City Manager Jeff Collier.

"In the meantime the election process will continue forward for both the April 8 City Council election and the June 3 City Charter Amendment election," he said in an email Wednesday afternoon.

The tab so far for two law firms representing the city totals \$418,000, not including March billings and bills from expert witnesses.

In addition to its own attorneys' fees, the city will have to pay the plaintiffs' legal bills if it loses or settles the lawsuit, under the provision of the California Voting Rights Act.

The suit was filed by three Latino residents who claim the city's at-large voting system prevents Latinos from being elected to City Council and is a violation of the California Voting Rights Act.

The bills come at a time Collier is projecting budget deficits of \$1.6 million in 2014-15 and \$3.2 million in 2015-16.

"I have not had a chance to talk to our attorneys yet, but my understanding is the way it goes out is our election goes forward," Mayor Bob Henderson said Wednesday in a telephone interview from his home, where he was sick with bronchitis. "After that, the June election should move forward."

The judge will either accept or reject the results of the election on a proposal to change the city charter to allow district-based voting, as sought by the lawsuit, he said.

The city scored a victory Tuesday, when Los Angeles Superior Court Judge Michael Johnson denied a motion by the plaintiffs to halt the city's April 8 election for two City Council seats.

In a June 3 election, voters will be asked whether they favor changing the city charter, which calls

for at-large elections.

The proposal calls for a mayor to be elected at-large every two years, and four council positions elected by districts every four years.

But either way, it appears the legal battle will continue.

Rod Pacheco, the plaintiffs' attorney, said Wednesday in a telephone interview that his firm is continuing to prepare to go to trial on the lawsuit.

If the city wants to avoid costs, there's an easy way to do it, he said — settle.

"It takes two people to dance," he said. "We've always been willing to dance, but they haven't.

"They've never used the dreaded 'S' word."

He rejected the city's argument that the City Charter must be changed before district-based voting can be used.

"The resolution is better than where they are today," Pacheco said of the ballot measure proposal. "But it's half a loaf. It does not resolve the issue of voter dilution because one of the City Council members, which they now call a mayor in the resolution, is elected at large."

Voter polarization will continue, he said.

Polarization is defined under CVRA as when the total electorate votes differently than a protected class such as Latinos.

Pacheco said polarization also occurs in the ballot measure on changing the city charter.

"The only question is whether it passes or whether it fails," he said. "I suspect it will fail."

The city of Palmdale also has been fighting a California Voting Rights Act lawsuit.

Kevin I. Shenkman, an attorney representing the plaintiff in the Palmdale lawsuit, said Wednesday he filed a motion March 11 seeking attorneys' fees totalling \$5 million. A hearing on the motion is set for May 8.

The city of Palmdale was unable to immediately say how much it has spent on the lawsuit.

Whittier and Palmdale both used attorneys Marguerite Mary Leoni and Christopher E. Skinnell, of San Rafael, to fight the lawsuits.

Shenkman said the judge in the case accepted the plaintiff's proposal for districting, which included an at-large "strong" mayor position, or a mayor with the power to appoint all commissioners.

He said the city's proposal was rejected as an "egregious incumbent gerrymander."

Collier said the city was faced with “aggressive legal action” and had to incur high legal costs to “preserve residents’ rights.”

“As a city manager I wish we were not spending taxpayer dollars on legal expenses,” he said. “Unfortunately, the city was sued after it announced it would consider a proposal to let the voters decide. Litigation was not the city’s choice.

“However, the City Council strongly believes in protecting the rights of Whittier residents to vote on their preferred method of electing their representatives on the City Council,” he said.

“From my perspective, it is frustrating to have to spend money on attorneys and other experts when we have many other pressing community needs — funding for social services, youth and senior services, infrastructure replacement, etc.,” he said. “I continue to see the dollar signs adding up — knowing full well that it is the residents of the city that pay the cost of this legal process.”

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