

The Modesto Bee

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Posted on Tue, Oct. 16, 2007

Modesto Loses Vote Fight

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last updated: October 16, 2007 06:07:03 AM

WASHINGTON -- The U.S. Supreme Court on Monday rejected Modesto's bid to overturn a state voting law, forcing the city to defend its use of at-large council elections against a claim that the format disenfranchises Latino voters.

While not entirely unexpected, the court's decision was a blow for city officials, who took a risk in financing a long-shot Supreme Court appeal. On Monday, the court rejected more than 180 cases and agreed to hear only one.

"We can all speculate on the reasons," said William Bradford Reynolds, one of the Washington-based attorneys representing Modesto. "It could be that they just weren't ready to look at it. ... Maybe they thought it was premature."

Three Latino residents -- Emma Pinedo, Enrique Sanchez and Salvador Vera -- filed a lawsuit in June 2004. It was the first of its kind under the California Voting Rights Act.

Pinedo, Sanchez and Vera want Modesto to adopt district elections instead of citywide races, a change they say would make it easier for minorities to win office.

"From here, we'll seek to fully enfranchise the Latino citizens of Modesto so they can meaningfully participate in the civic affairs of the city," said Robert Rubin, a civil rights attorney representing the Latino residents.

Balvino Irizarry, who served from 1987 to 1991, remains the only Latino to win a council seat since 1911 in a city that, according to 2006 census figures, has a population that is 32 percent Latino.

The court's decision does not affect advisory measures Modesto voters will see on the Nov. 6 ballot asking if they support replacing citywide races with district elections.

Those nonbinding measures are expected to be followed by another initiative that, if passed, would implement district elections before the 2009 council campaigns.

Modesto argued in petitions to the U.S. Supreme Court that the voting law was unconstitutional because it appeared to give preferences to certain races. The city also contended that the law jeopardizes thousands of other at-large election systems throughout the state.

California's 5th District Court of Appeal in Fresno rejected those arguments in December, saying the voting law treated all races equally. In March, the California Supreme Court declined to hear Modesto's case.

The city has spent \$1.7 million defending itself against the lawsuit. Rubin is expected to submit a claim for the city to pay his legal fees, which are more than \$1 million.

The case isn't over.

The U.S. Supreme Court's decision upheld the constitutionality of the law, but now it must be tested in Stanislaus County Superior Court before any changes will occur in the city's voting methods.

It's up to Rubin to prove that racially polarized voting characterizes city elections. A judge could impose district elections on Modesto if Rubin succeeds.

Rubin, the legal director of the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, said a trial could take place next year.

He was dealt a setback two years ago in the Modesto court when Judge Roger Beauchesne sided with the city. Beauchesne's ruling was overturned by the appellate court.

It isn't clear how the district elections measures going before Modesto voters would affect the trial. But in written arguments to the U.S. Supreme Court, Rubin said the case would be moot if the city adopts district races.

The Lawyers' Committee for Civil Rights used the California Voting Rights Act to force election reforms on Hanford Joint Union School District in 2005.

Joaquin Avila, a co-counsel with Rubin on the Modesto lawsuit, also filed a claim under the law against the Tulare District Hospital

board of directors in August.

"There should be a lot of very nervous cities and other jurisdictions," said Douglas Johnson, a local government consultant whom Modesto hired to advise on its district elections measures. "I suspect a lot of people have been awaiting this decision before filing their own cases."

District elections are common in cities larger than Modesto, but a large majority of smaller communities and school boards use at-large systems.

Big cities favor district elections because they give a sense of neighborhood representation and they can trim campaign costs.

Supporters of at-large elections say they give elected officials a broader focus.

Modesto leaders remain uncertain about whether the high court's decision could open the city to more lawsuits even if it adopts district elections. Councilman Brad Hawn, for example, said claims could be filed challenging potential district boundaries.

"It is really difficult to know, to have the kind of foresight to see what's going to pass muster on this act," City Attorney Susana Alcala Wood said.

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