

DEPARTMENT 30 LAW AND MOTION RULINGS

Case Number: 23STCV25587 **Hearing Date:** January 16, 2024 **Dept:** 30

Dept. 30

Calendar No.

Gutierrez vs. City of Burbank, et. al., Case No. 23STCV25587Tentative Ruling re: Defendant's Demurrer to Complaint

Defendant City of Burbank (the City) demurs to the Complaint of Plaintiff Nicholas Gutierrez (Plaintiff). The demurrer is sustained.

In reviewing the legal sufficiency of a complaint against a demurrer, a court will treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*); *C & H Foods Co. v. Hartford Ins. Co.* (1984) 163 Cal.App.3d 1055, 1062.) It is well settled that a “demurrer lies only for defects appearing on the face of the complaint[.]” (*Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) “The rules by which the sufficiency of a complaint is tested against a general demurrer are well settled. We not only treat the demurrer as admitting all material facts properly pleaded, but also give the complaint a reasonable interpretation, reading it as a whole and its parts in their context.” (*Guclimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38 (internal quotes omitted).) For purposes of ruling on a demurrer, the complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 958.)

When ruling on a demurrer, the Court may only consider the complaint's allegations or matters which may be judicially noticed. (*Blank, supra*, 39 Cal.3d at 318.) The Court may not consider any other extrinsic evidence or judge the credibility of the allegations plead or the difficulty a plaintiff may have in proving his allegations. (*Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.) A demurrer is properly sustained only when the complaint, liberally construed, fails to state facts sufficient to constitute any cause of action. (*Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578.)

The Complaint alleges that the City's method of at-large elections for its City Council violates the California Voting Rights Act (CVRA) and Equal Protection Clause of the California Constitution. (Comp. ¶¶ 5-7.) Plaintiff seeks injunctive relief enjoining the City from further use of at-large elections and requiring the City to design and implement district-based elections. (Comp. ¶ 7.)

Plaintiff is a registered and eligible voter in the City. (Comp. ¶ 11.) The City Council is a five-member governmental body responsible for the operation of the City. (Comp. ¶ 18.) The Council is elected in at-large elections on a staggered basis; every two years, the electorate elects two or three councilmembers who serve four-year terms. (Comp. ¶ 20.) The Complaint presents a list of City Council members from the past two decades, and next to each, “an AI-generated assumption of the origin of their last name.” (Comp. ¶ 21.) The

apparent import of this is that the councilmembers are likely all of European descent, except for Zizette Mullins, who “[c]ould be various origins.” (Comp. ¶ 21.)

Plaintiff alleges that the Council began to consider transitioning to district-based elections in April 2022, and by January 2023 adopted a Resolution of Intent regarding the transition. (Comp. ¶¶ 34-36.) However, after conducting a number of public hearings and forums, the Council has delayed implementation of the plans for district-based elections, allegedly because “certain members of the Burbank City Council are worried that district elections ‘could mean the end of the line for some of the councilmembers.’” (Comp. ¶ 49.)

The CVRA (Elec. Code § 14025, *et seq.*) prohibits “[a]n at-large method of election [that is] imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.” (Elec. Code § 14027.) The definition of protected class is derived from the federal Voting Rights Act of 1965, 52 U.S.C. § 10301 *et seq.* (Elec. Code § 14026, subd. (d).) Like the federal Voting Rights Act, the CVRA “require[s] a plaintiff to show racially polarized voting — i.e., that the protected class members vote as a politically cohesive unit, while the majority votes ‘sufficiently as a bloc usually to defeat’ the protected class’s preferred candidate,” though the CVRA “make[s] it easier to successfully challenge at-large districts” in important respects. (*Pico Neighborhood Assn. v. City of Santa Monica* (2023) 15 Cal.5th 292, 306.) “A court presented with a dilution claim should undertake a searching evaluation of the totality of the facts and circumstances (see, e.g., Elec. Code, § 14028, subd. (e)), including the characteristics of the specific locality, its electoral history, and ‘an intensely local appraisal of the design and impact of the contested electoral mechanisms’ as well as the design and impact of the potential alternative electoral system.” (*Id.* at 308.)

The Court finds that Plaintiff’s CVRA cause of action has not been adequately pled because Plaintiff fails to allege which protected class is the subject of his claim. The Complaint is unclear as to which protected class has been affected by the alleged voter dilution; for instance, the Complaint alleges that “Burbank also has a high concentration of Asian residents” and “none of the aforementioned Burbank City Council members were born with Asian surnames. (Comp. ¶ 23), but next alleges, “Plaintiff is Latino. For the purposes of explaining the serious challenges that residents face in selecting their desired candidates, to the best of Plaintiff’s knowledge, none of the aforementioned elected Burbank City Council members have Armenian surnames.” (Comp. ¶ 24.) Although Plaintiff generally alleges that “[r]acially polarized voting exists within the City of Burbank,” “[v]oters from protected classes are harmed by racially polarized voting,” and “there is evidence of racially polarized voting and vote dilution” on specific ballot measures since 2008 (Comp. ¶¶ 27, 30-31), he does not specify which protected class has been harmed by the City’s alleged racially polarized voting.

Without specifying the protected class that has been harmed, Plaintiff’s allegations are insufficient. (Compare *Pico Neighborhood*, 15 Cal.5th at 308 [alleging “that the City’s at-large method of electing its city council unlawfully impaired the ability of Latino voters to elect their preferred candidates”]; *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 397 [alleging “that racially polarized voting between the electoral choices of Asian American voters and those of non-Asian American voters prevented Asian American voters from electing candidates of their choice”]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 666 [alleging voter dilution of Latino voters].) Accordingly, the demurrer is sustained as to the first cause of action.

Plaintiff has presented no argument regarding the second cause of action for violation of the Equal Protection Clause in the California Constitution, and so the demurrer is also sustained as to that claim.
