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OPINION NO. 2004:3

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OPINION RE:

**VALIDITY OF A NEIGHBORHOOD COUNCIL VOTING SYSTEM
REQUIRING CERTAIN STAKEHOLDER GROUPS TO VOTE FOR
AT-LARGE SEATS INSTEAD OF GEOGRAPHICALLY BASED SEATS**

Board of Neighborhood Commissioners
Department of Neighborhood Empowerment
305 East 1st Street
Los Angeles, CA 90012

Honorable Members:

Your Commission requested that this office clarify in writing our previous advice of April 3, 2002 (Opinion No: 2002:5) regarding permissible neighborhood council board configurations and voting systems. Our office verbally advised the Commission at its meeting on January 29, 2004, that the section entitled, "Section IV: How to Vote" contained in the Valley Glen Community Council Election Procedures ("Election Procedures") set forth a legally valid voting system. This opinion letter memorializes that advice and provides the background and legal analysis supporting our conclusion so that it may be instructive if similar questions arise in the future.

BACKGROUND

City Attorney Opinion No. 2002:5 dated April 3, 2002, concluded that as long as neighborhood council election systems provide all stakeholders in a neighborhood council with the opportunity to elect at least one or more members of their governing body, it is consistent with the City Charter. In addition, the opinion advised that if a neighborhood council divided itself into geographic regions, it could require that only stakeholders within each given geographic area elect their respective representative, as long as all stakeholders within each geographic region were afforded the opportunity to vote for their designated representative. Finally, the opinion advised that a



neighborhood council could alternatively elect a governing board comprised of members representing community interests and only allow members of each designated stakeholder interest group to vote for their representative board member, again, as long as all stakeholders within the neighborhood council had an opportunity to vote for a designated board member. This previous advice was based upon the assumption that the two alternative neighborhood council boards – one comprised upon geographic regions and the other upon categories of community interests – were mutually exclusive so that either the board was entirely comprised of members representing geographic areas or entirely comprised of members representing community interests.

The Valley Glen Community Council (the "VGCC") is governed by a twenty-nine member board comprised of five community interest seats elected at-large, six community interest seats elected by caucus, and eighteen seats representing six geographic areas. VGCC's Election Procedures (the "Election Procedures") provide that if a member's stakeholder status arises exclusively as a result of a community interest (such as being a worker, a participant in a religious institution, a commercial property owner, or a youth between ages 16 and 19) then that member may only vote for the board seat representing that corresponding community interest and not for the board seat(s) representing a geographic area within which they may conduct their work or activities. This office has been asked whether, in light of its previous advice, is this voting system as set forth in Election Procedures legally valid?

QUESTION

When a neighborhood council board is comprised of seats representing geographic areas within the neighborhood council as well as other seats representing certain categories of stakeholder interests elected at-large or by caucus, may the neighborhood council require that stakeholders represented by the categorical seats vote only for those designated board seats and not for the geographic seats?

ANSWER

Yes, as long as all stakeholders have an opportunity to vote for at least one or more board members.

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DISCUSSION

1. A neighborhood council may require some stakeholders to vote for at-large seats and others to vote for geographically based seats as long as the election system meets the Charter mandate for openness and inclusiveness and affords all stakeholders the opportunity to participate in elections.

Neighborhood councils are advisory bodies of Los Angeles City government.¹ As such, neighborhood councils have significant latitude in structuring their boards and defining their election systems, subject only to mandates for inclusiveness set forth in the City Charter and Plan for a Citywide System of Neighborhood Councils (the "Regulations").

The City Charter provides that neighborhood councils are to, "promote more citizen participation in government," and to "include representatives of the many diverse interests in communities." Charter §900. The Charter further states that neighborhood councils seeking recognition from the City are to show that neighborhood council members "reflect the diverse interests within their area," and "permit, to the extent feasible, every stakeholder to participate in the conduct of business, deliberation and decision-making." Charter §906(a)(3) and(6). Accordingly, the Charter's intent to ensure the participation of all stakeholders in neighborhood councils is clear.

Similarly, the Regulations add further support for an open and inclusive neighborhood council system. It requires that neighborhood councils be "diverse, inclusive, and open to all Community stakeholders." Regulations, Article II, §1.

In addition, it is equally important to note that neither the Charter nor the Regulations restrict voting systems. To the contrary, the Charter states that the Regulations "shall not restrict the method by which the members of neighborhood councils are chosen, if the process otherwise satisfies the requirements of this Article." Charter §904(f). Accordingly, neighborhood councils may prescribe a board configuration and voting system without interference by the Department of Neighborhood Empowerment ("DONE") or other City agencies provided that they otherwise meet the requirements of the Charter.

¹ This office has previously advised that as long as neighborhood councils lack formal decision-making power, the federal Voting Rights Act of 1965 (the Act) does not apply. If the Act did apply, among the most important requirements it would impose are that neighborhood councils be apportioned through a formal redistricting process and be subject to local, state and federal election laws. Consequently, only registered voters residing within a given neighborhood council would be eligible to participate as either a voter or board member. Participation could not be achieved based on community interests such as "worker," "commercial property owner," or other interests so far identified by neighborhood councils.

2. VGCC's voting system will withstand scrutiny under the Equal Protection Clause because the vote classification system can be defended under the "rational basis test."

However, even if the Election Procedures are consistent with the Charter and Regulations, they must also be consistent with applicable state and federal laws. More specifically, rules and regulations promulgated by VGCC, whether through their by-laws or Election Procedures must not violate the Equal Protection Clause of the Fourteenth Amendment. Because the Election Procedures create different classifications among groups (e.g. certain classifications of stakeholders may only be eligible to vote for a representative elected at-large, while others may be eligible to vote for board members elected by a geographic area,) an examination as to whether the Election Procedures are consistent with the Equal Protection Clause is appropriate.

Fundamentally, when a law or action attributable to government classifies individuals or groups differently, this action must withstand scrutiny under the principles of the Equal Protection Clause. Depending upon what right or classification is involved, the courts will apply a different level of scrutiny in determining the constitutionality of the underlying action: strict scrutiny in the event the classification is based upon a suspect class such as race or burdens a fundamental right; heightened scrutiny if the classification is based upon gender or illegitimacy; and a rational basis test for all other actions. *U.S. Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980), *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985).

Participating in neighborhood council elections is not a fundamental right protected by the Constitution.² Further, VGCC stakeholder classifications are not based upon a suspect class, gender or illegitimacy and so they do not trigger strict or heightened scrutiny. Consequently, VGCC's vote classification system is subject to a rational basis test.

A rational basis review affords great deference to legislative and government bodies. *City of Cleburne v. Cleburne Living Center*, at 440. Government action creating classifications carry a strong presumption of validity and those challenging the

² Voting for a representative to a legislative body, e.g. Congress, City Council, is a fundamental right. *Reynolds v. Sims*, 377 U.S. 533, at 554 (1964). However, voting for members of Neighborhood Councils is not a fundamental right within the meaning of the 14th Amendment.

classification have the burden of negating every plausible basis that may support it.³ *Federal Communications Commission and United States v. Beach Communications*, 508 U.S. 307, at 314-315 (1993). Even if the court disagrees with the policy decision behind the classification or the means to the end, it will allow the classification to stand as long as it is not arbitrary and is predicated upon some rational basis to achieve a legitimate state interest. *U.S. Railroad Retirement Board v. Fritz*, 449 U.S. 166, at 175.⁴ "(E)qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* at 314-315.

In the case of VGCC, members of the interim board have offered several justifications for the voting system. Beginning with the designation of at-large versus geographically based seats, VGCC representatives have verbally stated to DONE staff and the City Attorney's Office that certain stakeholder groups are represented by at-large seats because either (i) those groups would be over-represented in relation to other stakeholder groups if a seat was designated for each geographic area (e.g. the number of youth between the ages of 16 and 19 is far less than the number of other persons of all other ages comprising the neighborhood council), (ii) the stakeholder group is based upon an interest that more readily cuts across geographic boundary lines (e.g.; non-profits may be more interested in social issues as opposed to neighborhood planning manners), (iii) each geographic area may not have a sufficient number of a given stakeholder group to justify its own seat (e.g. educational institutions), or (iv) the stakeholder group cannot be readily tied to one geographic area more than another (e.g. workers who work in the field or run delivery routes throughout the neighborhood council).

Additionally, the Election Procedures require that members who choose to vote or are only qualified to vote in one of the at-large categories be precluded from voting for a geographic seat even when they may be able to establish that their stakeholder interest

³ Further illustrating the highly deferential standard, the courts do not even require that the basis for the classification be articulated on or off the record by the promulgating agency. *U.S. Railroad Retirement Board v. Fritz*, 449 U.S. 166, at 179. The absence of an explanation for the distinction among classes at the time they were devised has been deemed "entirely irrelevant for constitutional purposes," and having "no significance in a rational-basis analysis." *FCC v. Beach Communications*, 508 U.S. 307, at 315.

⁴ "If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *U.S. Railroad*, at 175 quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. S 61, 78 (1911).

originates within a geographic area (e.g. commercial property owner). VGCC has stated that this is necessary to (i) prevent stakeholders from voting in more than one category, (ii) ensure that candidates running for the at-large seats are elected by a constituency that share the same interests (e.g. the commercial property representative is elected by other commercial property owners), and finally, (iii) to ensure that there is a sufficient electorate for the at-large seats (e.g. if commercial property owners are given the choice to vote for the geographic seat or the at-large seat, and if voting in two categories is prohibited, then the at-large seat potentially may be left without an electorate).

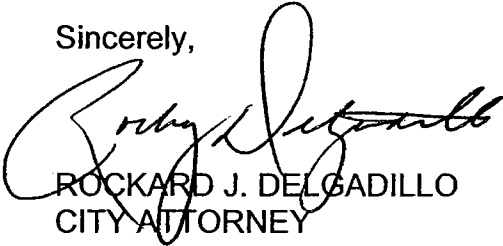
Given the decidedly deferential standard employed by the courts when conducting a rational basis review, the justifications articulated by VGCC are highly likely to withstand an equal protection challenge.

CONCLUSION

The Charter affords neighborhood councils significant latitude in composing their boards and the stakeholder constituencies that may elect those board members. Additionally, the Charter prohibits City intervention into these areas when the board seats and corresponding electorate meet the Charter mandate for inclusiveness, openness and diversity. Furthermore, neighborhood councils may require certain stakeholder groups to vote for at-large seats and others to vote for geographic seats provided there is a rational basis for the distinction and further provided that, as stated in our earlier opinion, all stakeholders have an opportunity to vote for at least one board seat.

Accordingly, based upon the facts as they have been presented to our office, we conclude that the voting system prescribed in VGCC's Election Procedures is consistent with the Charter, City ordinances, and applicable federal law.

Sincerely,



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