

Abandoning Cumulative Voting Does Not Extend Term Of Office

Article By:

Keith Paul Bishop

In November 2018, the citizens of Mission Viejo elected three persons to the City Council for two-year terms of office, rather than four years as prescribed by California Government Code section 57377. This was done pursuant to the terms of a stipulated judgment by which Mission Viejo settled a lawsuit brought to address violations of the California Voting Rights Act of 2001. The intent of the stipulated judgment was to remedy the dilution of minority group voting rights by implementing a system of cumulative voting for Mission Viejo City Council members to start with the November 2020 general election. Although Mission Viejo [announced](#) that it would be the first California City to adopt cumulative voting, it was unable to implement by the November 2020 election and ultimately [abandoned](#) the effort in favor of district elections.

The three council members who had been elected for two year terms in 2018 were not re-elected in November 2020. Although they had voted to approve the stipulated settlement, they now argued that it violated Section 57377 and that as a result they were really elected to four-year terms. In the resulting *quo warranto* action the council members were adjudged to be holding office

unlawfully. This week, the Court of Appeal affirmed. *People ex rel. Schlesinger v. Sachs*, 2023 WL 8368763.

Because no successors to the three council members were elected in the November 2020 election, the council members argued that they were entitled to office as holdovers. While finding some "superficial appeal", the Court of Appeal found that the council members could continue to hold office only for so long as it took to hold a special election or for the city council to meet and appoint their replacements.

This case does not concern corporate law, but it involves two corporate law ideas: cumulative voting and office holdovers. California has long had a great affinity for cumulative voting, which is mandatory for California corporations that are not "listed corporations" (as defined). Cal. Corp. Code §§ 301.5 & 708. The California General Corporation Law similarly has a "holdover" rule for directors. Cal. Corp. Code § 301. Although a vacancies (other than those created by removal) may be filled by "approval of the board" unless otherwise provided in the articles or bylaws, there is a question of whether a vacancy exists when a director holds over.

© 2010-2024 Allen Matkins Leck Gamble Mallory & Natsis LLP

National Law Review, Volumess XIII, Number 340

Source URL: <https://natlawreview.com/article/abandoning-cumulative-voting-does-not-extend-term-office>