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WATSONVILLE - GOV'T + POLITICS

City loses appeal of election ruling

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A federal appeals court has rejected Watsonville's bid to keep its at-large election system, and it appears the city must now either accept the decision or appeal to the U.S. Supreme Court.

The decision was made Wednesday by a three-judge panel of the U.S. Ninth Circuit Court of Appeals in San Francisco — the same panel that on

July 27 overturned a lower-court ruling that the city's election system did not discriminate against minorities and thus didn't have to be changed. The city then sought to have the three-judge panel's ruling heard by the full circuit court, which yesterday's ruling appears to rule out.

In its July 27 decision, the appeals court panel found Watsonville's election system discriminatory against Hispanics and ordered it changed,

remanding it back to Judge William Ingram's U.S. District Court in San Jose.

The lawsuit was initiated by the Mexican American Legal Defense and Education Fund (MALDEF) on behalf of Watsonville residents Cruz Gomez, Patricia Leal and Waldo Rodriguez. MALDEF attorney Joaquin Avila said the next step, should the city accept the appeals court's decision, would be for both sides to present their proposals to Judge Ingram

for dividing Watsonville into districts. It would then be Judge Ingram's responsibility to rule on the proposals.

Mayor Betty Murphy, however, said she strongly feels the city should continue its fight up to the Supreme Court.

"I'm very disappointed, if they are not going to hear the appeal," she said after being informed of the appeals court's decision. "And I still think the city should fight it."

City Attorney Don Haile said this morning he and Vincent Fontana, the New York attorney who represented Watsonville in the lawsuit on behalf of the city's insurance company, were not sure yet of the meaning of the appeals court panel's latest decision, which was handed down Wednesday. Made in response to the city's request for a rehearing before the appeals court "en banc," meaning the full 15-judge court, the decision states, "The mem-

bers of the panel that decided this case have voted unanimously to deny the petition for rehearing and to reject the suggestion for rehearing en banc."

Haile said it was unclear whether the panel's decision was binding on the full court, or whether the matter of the rehearing might yet be put to the full court to decide.

However, Charlene Kluzek, See RULING page 2 ►

RULING

► From page 1

a deputy clerk of the appeals court, said as she understands it, the decision is binding on the full court. It is binding, she said, because of a statement following the one Haile referred to: "With the opinion so amended, the petition for rehearing is denied and the suggestion for rehearing en banc is rejected."

The amendment was a softening of the court's previous finding of historical discrimination of Hispanics in Watsonville.

In the July 27 decision, Judge Dorothy Nelson wrote, "Watsonville Hispanics have suffered from historic discrimination and they continue to bear the effects of discrimination which hinder their political participation."

In the latest decision, she wrote that MALDEF "did not present, and the record does not contain sufficient evidence of historical discrimination against Hispanics to permit the court to find that Watsonville Hispanics have suffered from such discrimination."

Judge Nelson went on to say, however, that MALDEF did not need to prove historical discrimination to establish a violation of Section 2 of the Voting Rights Act of 1965.

Section 2 allows individuals or groups to seek redress through the courts if an electoral law, practice or system causes an inequality in the opportunities by the majority and minority voters to elect their preferred representatives.

Judge Nelson wrote that an inequality exists in Watsonville because non-Hispanics usually vote as a bloc to defeat Hispanic votes. She further wrote that even though 41.5 percent of Watsonville's Hispanics are not citizens and cannot vote, those that do vote have "demonstrated near-unanimous support for Hispanic candidates," showing that Hispanics are politically cohesive in Watsonville. The third factor needed to show discrimination — that Hispanics could constitute a majority in at least one district through the district system — is also present in Watsonville, Judge Nelson wrote.

Mayor Murphy said the city has worked hard to help all its residents and many programs have benefited Hispanics. Hispanics have been increasingly active on city commissions, which Murphy sees as a stepping stone to the council. She said she's afraid a switch to district elections would destroy everything the city has gained in recent years.

"This is going to lead to a polarization that we've never had," she said. "It's going to work just the opposite of what the court's trying to accomplish."

However, Cruz Gomez, one of the plaintiff's in the MALDEF suit, said she was "elated" at the court's decision.

"I'm hoping the city will hear the message, that we don't need to prove discrimination," she said, "that we need to prove that we don't have representation and I think that has been proven here."

Gomez said she would run for the council this spring if districting goes through, but is

undecided if she would run again in an at-large system. (Gomez ran unsuccessfully for the council in 1983).

The appeals court's latest decision was handed down just one day after Salinas voters, in a low, 17 percent election turnout, decided to abandon Salinas' at-large system and go to district elections. MALDEF had filed a lawsuit against Salinas similar to that it filed against Watsonville after the appeals court ruled against Watsonville.

Salinas, however, chose to negotiate with MALDEF rather than to take the matter to court. Avila said Watsonville's decision to fight the suit "presents an interesting contrast with the city of Salinas."

Watsonville Councilman Dennis Osmer said he would urge the council to stop fighting and to negotiate with MALDEF, ideally bringing the matter to a vote of the people as Salinas did.

"There's flaws with the (districting) system," he said, "but we've got to go forward. We've got to put this thing behind us and we're not going to do that by going to the U.S. Supreme Court."

Avila said he thinks circumstances in Watsonville have gone beyond the point where a popular vote is needed, since the court has already made the finding that a violation of the election process exists in Watsonville. Judge Ingram could order a vote, Avila said, but he would find that very unusual in light of the appeals court's findings.

If the city takes its case to the U.S. Supreme Court, Avila said he would expect legal costs for MALDEF and Watsonville to total in excess of \$1 million.

Should the city abide by the appeals court's decision, it would have to pay MALDEF's court costs.