



Riverside

Appeals court backs Riverside questioning ballot measure



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12:10 PM PDT on Tuesday, October 16, 2007

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The Press-Enterprise

RIVERSIDE - An appeals court has ruled the city of Riverside was not trying to squelch resident Ken Stansbury's First Amendment rights when it sued him in November 2005 over a proposed ballot measure he backed.

The city was merely asking a judge to rule on the constitutionality of the proposed initiative before it went on the ballot, the court said.

City officials did nothing to limit Stansbury's First Amendment activities in connection with the initiative, the court added.

The 4th District Court of Appeals, Division 2, in Riverside, filed its opinion Friday.

Stansbury and his attorney, Richard Reed, said Monday they plan to petition the state Supreme Court to review the case.

"It doesn't stop me whatsoever," Stansbury said.

City Attorney Greg Priamos said the appeals court clarified existing law.

And while the decision entitles the city to seek to recover its attorney's fees from Stansbury, the council has not yet decided to do so and could decide not to, he said.

The city sued Stansbury and the group Riversiders for Property Rights in November 2005 as they were preparing to circulate a petition to get an initiative on the city ballot.

The initiative would have severely restricted the city Redevelopment Agency's ability to use eminent domain to acquire private property to transfer it to a developer.

The city asked a judge to rule on the proposed measure's constitutionality.

It's a critical issue for Riverside, because its Redevelopment Agency has filed 18 eminent domain cases since

2004, primarily as part of efforts to revitalize downtown, Merrill Avenue across from Riverside Plaza and portions of University Avenue in the Eastside neighborhood.

In response to the city lawsuit, Stansbury and the group filed a motion saying the suit was an attempt to stifle their First Amendment rights and should be dismissed.

Riverside County Superior Court Judge E. Michael Kaiser granted the motion, throwing out the city's suit in March 2006.

The city later reached an \$11,000 settlement with Riversiders for Property Rights, leaving Stansbury alone to fight the city.

The appeals court opinion overturns Kaiser's decision, reinstating the city's suit.

"If the trial court's ruling is allowed to stand, no one could ever challenge an initiative's constitutionality prior to the election, which is contrary to law," the appeals court wrote.

Stansbury and Reed argued that only the people who might be hurt by the proposed initiative, such as developers, should be able to sue for judicial review of the measure, but not the city.

"A government can't be harmed by democracy," Stansbury said.

If Stansbury appeals to the state Supreme Court and the court decides not to hear his case, the city could pursue its original lawsuit in Superior Court asking for a ruling on the constitutionality of the proposed ballot measure, Priamos said.

In the original lawsuit, the city asked for its "costs of suit," which include everything except attorney's fees. Costs of suit are the costs of photocopies, research, mailings, expert witnesses and more. It could amount to thousands of dollars.

Stansbury and Reed said the city's request for costs of suit was a tactic to scare citizens contemplating gathering signatures for a city ballot measure.

"It's like putting the brass knuckles on," Reed said.

Priamos said the city includes the request for its costs as a matter of course in every lawsuit it files and there was no intent to scare anyone. What's more, he said, the city has not yet been awarded its costs of suit and could decide not to press the issue.

As for attorney's fees the city has paid out, which amount to more than \$100,000 in this case, the city could recover them from Stansbury only if it proved to a judge that Stansbury's motion to dismiss the city suit was frivolous or solely meant to cause unnecessary delay.

"That is a very difficult standard to meet," Priamos said.

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