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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 OSCAR LUNA, ALICIA PUENTES,
12 DOROTHY VELASQUEZ, and GARY
RODRIGUEZ,

13 Plaintiffs,

14 v.

15 COUNTY OF KERN; KERN COUNTY
16 BOARD OF SUPERVISORS; MICK
GLEASON, ZACK SCRIVNER, MIKE
17 MAGGARD, DAVID COUCH, and
LETICIA PEREZ, in their official
18 capacities as members of the Kern County
Board of Supervisors; JOHN NILON, in
19 his official capacity as Kern County
Administrative Officer; and MARY B.
20 BEDARD, in her official capacity as Kern
County Registrar of Voters,

21 Defendants.
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No. 1:16-cv-00568-DAD-JLT

ORDER RE DEFENDANTS' MOTION IN
LIMINE TO LIMIT OR EXCLUDE THE
TESTIMONY OF PLAINTIFFS' EXPERT,
DR. ALBERT CAMARILLO

(Doc. No. 99)

23 On October 16, 2017, several pretrial motions in limine brought by the parties came on for
24 hearing before the undersigned. Attorneys Denise Hulett and Tanya G. Pellegrini appeared on
25 behalf of plaintiffs. Attorneys Marguerite Leoni and Christopher Skinnell appeared on behalf of
26 defendants. After hearing oral argument the court denied the parties' motions in limine from the
27 bench with the exception of the issue addressed by this order. (See Doc. No. 124.) Specifically,
28 the court took under submission that aspect of defendants' motion to limit or exclude the

1 testimony of Dr. Albert Camarillo, one of plaintiffs' experts, with respect to the history of
2 discrimination against Mexican Americans and other minorities in California and throughout the
3 American West on the grounds that such testimony does not specifically relate to Kern County
4 and will not aid the court in conducting what is an "intensely local appraisal" under the decision
5 in *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986). (Doc. Nos. 99-1 at 10-11; 117 at 7-12.) Having
6 further considered the parties' arguments and the authorities cited in support thereof, defendants'
7 motion in limine with respect to this aspect of Dr. Camarillo's testimony will be denied as well.

8 At the hearing defendants reiterated their contention that the decisions in *Gomez v. City of*
9 *Watsonville*, 863 F.2d 1407 (9th Cir. 1988) and *NAACP v. City of Niagara Falls, N.Y.*, 913 F.
10 Supp. 722 (W.D.N.Y. 1994), *aff'd sub nom., N.A.A.C.P., Inc. v. City of Niagara Falls, N.Y.*, 65
11 F.3d 1002 (2d Cir. 1995), support the granting of this aspect of their motion in limine. In *Gomez*,
12 however, the Ninth Circuit stated as follows:

13 [W]e nonetheless remain troubled by the court's handling of the
14 first and fifth Senate factors. The district court apparently believed
15 that it was required to consider only the existence and effects of
discrimination committed by the City of Watsonville itself. This
conclusion is incorrect.

16 The first Senate factor requires consideration of "[t]he extent of any
17 history of official discrimination *in the state* or political subdivision
18 that touched the right of members of the minority group . . . to
participate in the political process." S. Rep. No. 417 at 28, 1982
19 U.S. Code Cong. & Admin. News at 206 (emphasis added).
Arguably, this limitation requires that one consider only electoral
20 discrimination committed by the relevant political subdivision.
Such a reading, however, would result in precisely the sort of
21 mechanistic application of the Senate factors that the Senate Report
emphatically rejects. The court is required to consider the totality
22 of the circumstances, and given that the enumerated Senate factors
are "neither comprehensive nor exclusive," *Gingles*, 478 U.S. at 45,
23 106 S. Ct. at 2764, *there is nothing to suggest that courts are*
forbidden to consider discrimination committed by parties other
24 *than the relevant political subdivision.* Thus, even if the first
Senate factor does embrace only discrimination committed by
25 Watsonville, that does not imply that the district court may not
consider any relevant history or effects of discrimination committed
by others, *such as* the state of California.

26 Furthermore, such a restrictive reading places too much emphasis
27 on the plaintiff's ability to prove intentional discrimination.
Section 2 was amended by Congress precisely to relieve plaintiffs
28 of the burden of showing such intent. While any intent to
discriminate by Watsonville would indeed be supportive of the

1 plaintiffs' claim, plaintiffs need only show that, considering the
2 totality of the circumstances, they do not have an equal opportunity
3 to participate in the political process. There is no apparent reason
4 why other forms of discrimination against Watsonville Hispanics
may not be considered as factors that contribute to making the
Watsonville at-large election scheme a device that impedes
Hispanics' equal participation in the electoral process.

5 Lastly, the court decisions from which the Senate factors were
6 derived . . ., both considered the existence of statewide
7 discrimination as a factor in concluding that at-large elections in
8 particular counties violated Section 2. *See White v. Regester*, 412
9 U.S. 755, 766–67, 93 S. Ct. 2332, 2339–40, 37 L.Ed.2d 314 (1973)
10 (referring to statewide and countywide discrimination against
11 blacks in Dallas County, Texas); *id.* at 767–68, 93 S. Ct. at 2340–
12 41 (noting statewide discrimination against Mexican-Americans);
13 *Zimmer v. McKeithen*, 485 F.2d 1297, 1306 (5th Cir.1973)
14 (referring to the effect of statewide racial segregation in education).

15 These arguments apply with equal force to the fifth Senate factor,
16 which states that courts may consider “the extent to which members
17 of the minority group in the state or political subdivision bear the
18 effects of discrimination in such areas as education, employment,
19 and health, which hinder their ability to participate effectively in the
20 political process.” (emphasis added). Moreover, the literal
21 language of the fifth Senate factor does not even support the
22 reading that only discrimination by Watsonville may be considered;
23 the limiting language describes the people discriminated against,
24 not the discriminator.

25 The district court does not appear to have considered whether
26 Watsonville Hispanics have suffered from discrimination by parties
27 other than the City of Watsonville or whether any such
28 discrimination has affected the ability of Hispanics to participate
effectively in the city's electoral process. Thus, while the district
court's interpretation of the first and fifth Senate factors rested on
an erroneous view of the law, the appellants did not present, and the
record does not contain, sufficient evidence of historical
discrimination against Hispanics to permit this court to find that
Watsonville Hispanics have suffered from such discrimination.

Were it necessary to decide this issue, we would consider the
propriety of taking judicial notice of the pervasive discrimination
against Hispanics in California, including discrimination,
committed by the state government, that has touched the ability of
California Hispanics to participate in the electoral process. *See*,
e.g., *Castro v. State*, 2 Cal.3d 223, 231, 466 P.2d 244, 249, 85 Cal.
Rptr. 20, 25 (1970) (declaring a California constitutional provision
making the ability to read English a prerequisite for voting
unconstitutional as applied to those literate in another language).
However, we conclude that, even without such a showing, plaintiffs
have clearly established a violation of Section 2.

1 (reflecting that admissibility of evidence regarding the history of official discrimination against
2 African Americans “in New York State or any of its subordinate jurisdictions” to supplement
3 “evidence specific to a given polity,” with the district court ultimately affording little weight to
4 such evidence in light of the absence of evidence of historical discrimination touching on the
5 voting rights of African Americans in Niagara Falls).

6 Thus, the cases relied upon by defendants do not support the exclusion of Dr. Camarillo’s
7 testimony from evidence. Moreover, they do not support the distinction drawn by defendants at
8 argument on the pending motion that only evidence of past discrimination **by** the state as opposed
9 to **within** the state is admissible in a case such as this one. Rather, defendants’ objections to Dr.
10 Camarillo’s testimony go solely to the weight that testimony should be afforded by the court.
11 Accordingly, defendant’s motion in limine to exclude Dr. Camarillo’s testimony (Doc. No. 99) is
12 now denied in its entirety.

13 IT IS SO ORDERED.

14 Dated: **October 19, 2017**

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17 UNITED STATES DISTRICT JUDGE
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