WAIT, WHAT?!?!
PRACTICE POINTERS
FOR MANAGING COMPLEX LITIGATION

City of Colorado Springs, City Attorney's Office

Wynetta Massey, City Attorney

Tracy Lessig, Deputy City Attorney

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Citizens Project et al. v. City of Colorado Springs et al. 22-CV-01365-SKC-MDB

- Case filed June 1, 2022
- Plaintiffs sought to enjoin the City from holding non-November municipal elections
- Argument: Timing of non-partisan City elections in April of odd years violates Section 2 of the Voting Rights Act (VRA) by disparately impacting Black and Hispanic voters
- July 9, 2024, U.S. District Ct. (Colorado) dismissed without prejudice finding it did not have subject matter jurisdiction because the Plaintiffs did not have Article III standing



Citizens Project – VRA Background

- Section 2 of the VRA provides that no electoral "standard, practice, or procedure shall be imposed or applied . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a).
- A violation of Section 2 "is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election . . . Are not equally open to participation by members of a [racial or ethnic minority] in that its members have less opportunity than other members of the electorate to participate in the political process." *Id.* § 10301(b).



Citizens Project - Pleadings

Plaintiffs' Argument

- Section 2 "effects" test - totality of the circumstances
- Statistics show April of odd year elections create disparate impact on Black and Hispanic voters
- Holding city elections attracting less interest than state or federal elections held at the same time will increase minority participation in the lower-interest city elections

City's Defense

- Charter established April odd year elections in 1873. Plaintiffs did not pursue a Charter amendment before filing complaint
- Plaintiffs' statistical analysis is flawed and inaccurate
- Section 2 requires equal openness, not equal turnout
- Equal minority opportunity to participate in City elections because all are mail-in ballot elections with many 24-hour drop off locations



Citizens Project – Litigation Defense

- Outside counsel with expertise in VRA cases
- Six expert witnesses
- Twenty-four depositions
- Thirty-two witnesses endorsed
- 548 exhibits listed for trial
- Seven-day trial scheduled
- Dismissal by district court came two years from date complaint filed



CITIZENS PROJECT - JULY 9, 2024
U.S. DISTRICT COURT (COLORADO) DISMISSED FOR LACK OF STANDING

- Plaintiffs claimed the City's election timing caused Plaintiffs to divert and duplicate resources for voter outreach and limited funding from outside organizations. Plaintiffs alleged injury only to themselves as organizations, not on behalf of their members.
- Court held Plaintiffs lacked Article III standing because they failed to demonstrate an organizational injury in fact
- Court relied on holding in *Food & Drug Admin. v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (June 13, 2024) to find that diversion of resources by an organization is not sufficient to confer standing



Defending Complex Litigation

Initial Role of City Attorney's Office

- Legal research
- Communicate with internal decisionmakers
- Outside Counsel ("OC") Retention Agreement
- Expert Retention Agreement(s)



Defending Complex Litigation

Retaining Specialized OC

- Network with subject matter experts
- RFP / Sole Source process
- Scope of representation
- Budget
- Relationships



Defending Complex Litigation

OC And CA Roles Throughout Litigation:

- Division of responsibilities between OC and CA
  - Motions
  - Witnesses
  - Discovery and depositions
- Invoices
- Ongoing reassessment of roles
- Media Interest



Defending Complex Litigation

Challenges:

- Managing internal engagement
- Length of the litigation process
- Witness attrition
- Documents, documents, documents
- Cost



Defending Complex Litigation

Benefits Of This Model:

- Leverage OC resources
- CA Professional development
- Bridge federal and state municipal law
- Factual development of case
- Client management
- Witness management
- Cost control



Questions?