

MARCH 15, 2017

# THE 2017 CLAY AWARDS

The 21st Annual California Lawyer Attorneys of the Year

## CIVIL RIGHTS

# HELPING A COMMUNITY EXERCISE ITS VOICE

### *Vietnamese American Community of Northern California vs. City of San Jose*

Fallout from the Vietnam War in the form of a nomenclature dispute roiled expatriate Vietnamese residents of San Jose in 2007 as the large enclave grew divided politically over the designation of a business district to honor the lost name of their homeland's capital, Saigon, now Ho Chi Minh City. Groups favoring "Little Saigon," "New Saigon" or "Vietnamese Business District" for the area around two largely Vietnamese shopping malls on San Jose's Story Road lost a city council vote 8-3 to a compromise name, "Saigon Business District," proposed by Councilmember Madison Nguyen, herself a Vietnamese refugee.

The name "Little Saigon" was seen as a tribute to other Vietnamese community hubs in the U.S., in Orange County, San Diego, Houston and elsewhere. Nguyen was accused of ignoring the will of her constituents and bowing to economic interests that wanted a "business" component to the name.

Few were pleased. Some launched an unsuccessful Nguyen recall movement. At a 2008 council meeting at which more than 1,000 "Little Saigon" supporters participated, the lawmakers rescinded "Saigon Business District" but did not rename the area.

Into the fray stepped veteran trial lawyer James McManis of McManis Faulkner, retained by "Little Saigon" supporters to accuse the city council of violating the Ralph M. Brown Act, a state sunshine statute that prohibits secret meetings by elected legislators in favor of a public deliberative process.

The claim McManis filed in court papers arose when, in an

interview, Councilmember Forrest Williams disclosed that he had spoken privately with Nguyen about the issue before the vote. McManis developed evidence that Brown Act violations have occurred in other cases before the council due to its policy of allowing members to issue pre-vote memoranda supporting predetermined outcomes.

After nearly a decade of pretrial litigation, during which the city adamantly denied the claim and defended its legislative practices, McManis' clients prevailed at a monthlong 2016 trial before Santa Clara County Superior Court Judge Vincent J. Chiarello. The judge ruled that Nguyen secretly solicited signatures from four other councilmembers for "Saigon Business District" and discussed the matter with another member. That totaled a six-member majority, violating the open meeting law. *Vietnamese American Community of Northern California v. City of San Jose*, 1-08-cv-107082 (Santa Clara Super. Ct., filed Feb. 29, 2008).

"My clients didn't want a politician telling them what they wanted," said McManis. "But from day one the city pooh-poohed our position and called it a frivolous lawsuit." He said he struggled to get the court to frame a remedy, because the council still issues memos with five signatures and any discussion on an issue with one additional councilmember would mean a Brown Act violation. San Jose's mayor, former vice mayor and other councilmembers have admitted to at least three similar Brown Act violations in 2016. The ruling is expected to have implications for municipalities statewide. "It would be a huge loophole in the



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panying future memos certifying they have not discussed an issue with a sixth member. "A big step in the right direction," McManis said.

McManis' record of civil rights litigation includes a case now before the state Supreme Court challenging San Jose officials' practice of withholding conversations relating to public business that were sent or received on private devices like cellphones on the grounds they are not public records. A decision on that case is expected shortly. *City of San Jose v. Superior Court (Smith)*, S218066 (Cal. Sup. Ct., filed May 7, 2014). The ruling is expected to have implications for municipalities statewide. "It would be a huge loophole in the

California Public Records Act if the city's position prevailed," McManis said.

He added that the problem stems from the way elected politicians are shielded from scrutiny. "Public officials never get cross-examined when they are non-responsive at press conferences or in interviews," he said. "But at a trial they have to sit there as the truth emerges. It makes them uncomfortable, but the rule of law saves us from politicians."

In the Vietnamese case, a permanent marker was unveiled near Story Road early this year. It reads, "Welcome To Little Saigon San Jose."

—John Roemer