The California Voting Rights Act: A Revolution in Local Governance

A Presentation for

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The California Voting Rights Act

- Enacted in 2002 (S.B. 976)
- Took effect January 1, 2003
- Elections Code §§ 14025 to 14032
The California Voting Rights Act (CVRA)

• The CVRA prohibits at-large electoral systems that impair the right to vote of a protected class. It applies to any system that is not “by-district,” including:
  – At-large elections
  – “From-District” Elections
  – Combination Systems
  – Multi-member Areas?
  – Alternative Systems—RCV? Cumulative Voting?
The California Voting Rights Act

- So why did the California Legislature decide to enact its own voting rights law?
- Federal VRA claims were very difficult to win in California – only one challenge to an at-large electoral system was ever successful.
Requirements of Section 2:  

- When challenging at-large voting under Section 2, a plaintiff must first establish the three *Gingles* threshold preconditions:
  - “First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. . . .
  - Second, the minority group must be able to show that it is politically cohesive. . . .
  - Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority’s preferred candidate.”

  *Id.* at 50-51 (internal citations and footnote omitted).

- But then, defending jurisdiction liable only if the electoral system is demonstrated to have discriminatory effects under the “totality of the circumstances.”
The California Voting Rights Act

• Eliminates 1st *Gingles* Precondition

• Totality of Circumstances Remain?

• As MALDEF (Mexican-American Legal Defense and Education Fund) put it, the “[b]ill makes it easier for California minorities to challenge ‘at-large’ elections.”

• Generally protects plaintiffs from exposure to pay litigation costs if they lose.
The California Voting Rights Act

• CVRA compliance can be forced by private litigation, encouraged by the award of substantial attorneys’ fees to successful plaintiffs, even if the case settles.

• CVRA litigation, or the mere threat of litigation has forced many local jurisdictions to abandon at-large elections.
  – 150+ school districts
  – 28+ Community College Districts
  – 80+ cities with several in the process of changing
  – The San Mateo County Board of Supervisors
  – Several water and other special districts.

• All of these jurisdictions must redistrict in 2021 – and in some cases the rules are very different from those used to establish districts in the first place, due to new legislation.
The CVRA Safe Harbor

“Single-member District” Elections

A jurisdiction that elects by “single-member district” has no liability under the CVRA.

Caveat: districts can be challenged on other grounds, such as lack of population equality, the federal Voting Rights Act, etc.
The CVRA Safe Harbor: “Single-member District” Elections

A jurisdiction that elects by “single-member districts” in compliance with the CVRA

MUST REDRAW ITS DISTRICT BOUNDARIES

after the 2020 Census (and each subsequent Census) in accordance with law.

Note: Gov. Newsom just signed A.B. 849, which completely overhauls the redistricting rules and process for cities and counties.

For a discussion of the new law, join our “Local Redistricting” webinar on November 7, 2019, at 10:00 a.m.

For more info: http://roseinstitute.org/redistricting/
Effects of the CVRA

Litigation to date:

Most cases have settled with by-district elections adopted, but three cases have gone to full trial:

- *Pico Neighborhood Association v. City of Santa Monica*, LA County Superior Ct. No. BC 616804
- *Kaku v. City of Santa Clara*, Santa Clara County Superior Ct. No. 17CV319862
Some Notes About

*Jauregui v. City of Palmdale*

- *First* CVRA case tried to judgment.
- Possible to draw majority-Latino district.
- Latino and other minority members had been elected to the Council.
- The trial court imposed extensive remedies, including shortening terms of office of elected council members.
- The appeal concerned a legal issue—applicability of CVRA to charter cities—*not* the merits of the trial court decision. (The court held charter cities *are* subject to the CVRA.)
- The case settled before Court of Appeal reached the merits. Accordingly, there is no appellate decision interpreting the CVRA.
Some Notes About
*Kaku v. City of Santa Clara*

- Possible to draw majority-Asian district.
- The court gave great weight to the fact that an Asian candidate had never been elected to the City Council, though ten had run.
- The trial court, on its own, re-calculated statistical data to demonstrate racially polarized voting.
- An appeal is pending – among key issues: whether plaintiffs met the legal standard for proving racially polarized voting & the judge’s manipulation of statistical data.
- The appeal is fully briefed.
Some Notes About

_Pico Neighborhood Assn. v. City of Santa Monica_

- Not possible to draw majority-Latino district.
- Latinos had been elected to the City Council.
- Complaint included an equal protection cause of action: the at-large electoral system was instituted and maintained for a discriminatory purpose.
- Trial court ruled in favor of plaintiffs on both the CVRA and equal protection causes of action.
- Plaintiffs seeking $22 million in attorneys’ fees.
- The appeal has been accelerated, with a goal of deciding the case by mid-summer 2020.
Other Pending Litigation & Appeals

Issues Presented


• *SVREP v. City of Barstow*, San Bernardino County Sup. Ct., No. CIVDS 18-24627. Action to collect attorneys’ fees.

• *Sanchez v. City of Martinez*, Contra Costa County Sup. Ct., Case No. MSC18-02219. Presents the issue whether the redistricting criteria in current Elections Code section 21601 are applicable when establishing districts for the first time and, if so, whether they are exclusive.

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Settlement Scenarios & Risks

Many jurisdictions have abandoned at-large elections after being sued under the CVRA. Settlements scenarios include:

- Delay of districting until after the 2020 Census data is released. *Risk of different plaintiffs demanding earlier action.*
- Cumulative voting. *Risk of different plaintiffs asserting the new system still violates the CVRA.*
- Ranked Choice Voting. *Risk of different plaintiffs asserting the new system still violates the CVRA.*

All settlements have included the payment of substantial attorneys’ fees to plaintiffs’ attorneys.
Costs of CVRA Litigation

- Reasonable attorneys’ fee awards to prevailing plaintiffs are mandatory, with some conditions.
- Prevailing defendants are not entitled to fees or costs.
- The City of Modesto is reported to have paid $1.7 million to its attorneys and $3.0 million to plaintiffs’ attorneys. The case never even went to trial, though legal issues did get litigated through the appeals courts up to the U.S. Supreme Court.
- City of Tulare reportedly paid $250,000.
- Tulare Local Healthcare District paid $500,000
- City of Escondido: reportedly $585,000
- City of Palmdale: reportedly $4.5 million through briefing on appeal, no argument
- City of Anaheim: $1.2 million in settlement long before trial
- City of Whittier: ~ $1 million, although City defeated motion for preliminary injunction, and case eventually dismissed as moot
- San Mateo County: $650,000; City of Santa Barbara: $600,000; Madera Unified SD: $170,000; Hanford JUHSD: $118,000; Merced City: $42,000; Fullerton $260,000; Highland $1.3 million; City of Santa Clara: $3.3 million; City of Santa Monica: demand $22 million, and so on.
Legislative Reform: AB 350

- Certain jurisdictions (City of Whittier, Cerritos Community College District) were sued by would-be plaintiffs, even after indicating their intention to move forward with district-based elections.

- In response to lobbying by the League of California Cities and others, AB 350 adopted a requirement that would-be plaintiffs send a demand letter to a jurisdiction before filing suit, and provides jurisdictions with a grace period (up to 135 days) within which to adopt districts/trustee areas. The period can be extended under AB 2123.

- If the jurisdiction complies with the requirements of AB350 after a demand letter is sent, the plaintiffs’ attorneys can demand reimbursement of their costs without filing suit, but costs and fees are capped at $30,000.

- If the jurisdiction does not comply within the grace period, the plaintiffs can file suit and seek reimbursement of costs and fees without the $30,000 cap.

- Numerous AB 350 demand letters are sent nearly every month, most by the same law firm.
Voter Approval Needed?

• In some cases, No. Another Legislative Reform: AB 278.

• **General Law Cities:** California Government Code § 34886 authorizes the adoption of an ordinance requiring district-based elections (either with or without a separately elected mayor) to comply with the CVRA “without being required to submit the ordinance to the voters for approval.”

• **Charter Cities:** application to charter cities not settled; may depend on language of charter.
# Process: Sample Timeline to Take Advantage of Safe Harbor Provisions

<table>
<thead>
<tr>
<th>Activity</th>
<th>Timing (per EC 10010)</th>
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<tbody>
<tr>
<td>Resolve to Change to Single-member Districts; Adopt Tentative Calendar; Provide for Retention of Demographer</td>
<td>Within 45 days of receiving demand letter</td>
</tr>
<tr>
<td>Two Public Hearings Before any Maps Are Drawn</td>
<td>No more than 30 days apart</td>
</tr>
<tr>
<td>Draft Maps and Election Rotation Published</td>
<td>7 days prior to 1st public hearing</td>
</tr>
<tr>
<td>First of Two Additional Public Hearings on Draft Maps</td>
<td>No more than 45 days apart</td>
</tr>
<tr>
<td>Additional Maps Published with Election Rotation</td>
<td>7 days prior to 2nd public hearing</td>
</tr>
<tr>
<td>Second Public Hearing on Draft Maps; Select Preferred Map; Introduce Districting Ordinance</td>
<td></td>
</tr>
<tr>
<td>Final Public Hearing to Adopt Districting Ordinance and Rotation of Election</td>
<td>At least 7 days after any changes to map proposed for adoption</td>
</tr>
<tr>
<td><strong>Statutory Deadline</strong></td>
<td><strong>90 days of Resolution to Change</strong></td>
</tr>
<tr>
<td>Implement Adopted Single-member Districts</td>
<td>Next Regular Election</td>
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Question Time
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Rose Institute of State and Local Government
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