

# The California Voting Rights Act: A Revolution in Local Governance

*A Presentation for*



ROSE INSTITUTE  
OF STATE AND LOCAL GOVERNMENT  
CLAREMONT MCKENNA COLLEGE



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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

- Federal Voting Rights Act enacted in 1965 applies in California.
- 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: *Thornburg v. Gingles*, 478 U.S. 30 (1986)

- 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

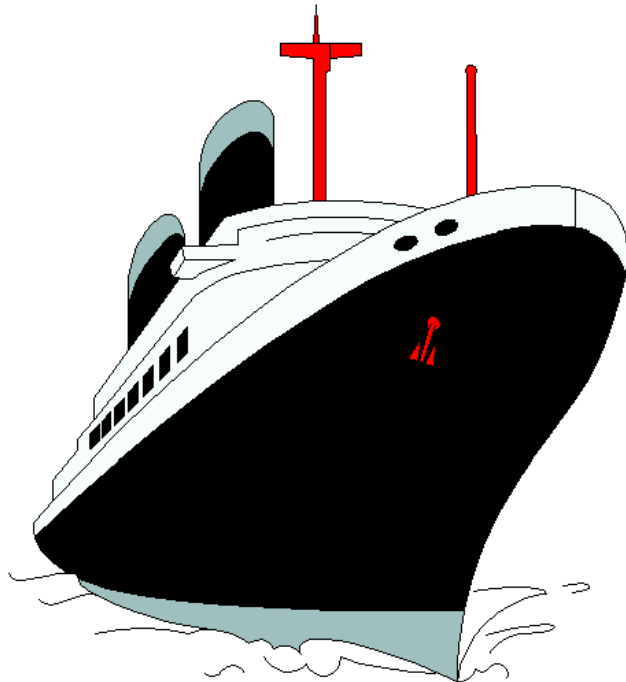
- Eliminates 1<sup>st</sup> *Gingles* Precondition
- Totality of Circumstances Remain?
- As MALDEF (Mexican-American Legal Defense and Education Fund) put it, the “[b]ill makes it easier for California minorities to challenge ‘at-large’ elections.”
- Generally protects plaintiffs from exposure to pay 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:

- *Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781 (2013).
- *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

- *Higginson v. City of Poway*, Appeal No. 19-55275, pending in the 9th Circuit Court of Appeals. Oral argument set for Nov. 5, 2019. Squarely presents the issue of the facial constitutionality of the California Voting Rights Act.
- *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.
  - **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.**

## 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

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

# Question Time

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