California Voters Choice Act and The California Voting Rights Act: What you Need to Know

2017 Mayors and Council Members Executive Forum, Thursday June 29, 2017
Agenda

California Voters Choice Act – California Secretary of State Alex Padilla
• Vote Center Model: What to Expect
• How will this Increase Voter Turnout?
• Potential Challenges with Vote Center Rollout
• What can City Officials do to Ensure Success?

California Voting Rights Act Reforms- Dane Hutchings, Randi Johl, Kimberly Hall-Barlow and Jonathan Stein
• The Problem for Cities, Dane Hutchings
• The Legislative Package, Dane Hutchings
• Benefits and Drawback of Recent Reforms, Kimberly Hall Barlow
• “The Process” How to Maximize the time Allocated Under Current law, Randi Johl
• What We’ve seen thus far?, Kimberly Hall Barlow
• Best Practices to Engaging Communities, Jonathan Stein
California Voters Choice Act

California Secretary of State Alex Padilla

- Vote Center Model: What to Expect
- How will this Increase Voter Turnout?
- Potential Challenges with Vote Center Rollout
- What can City Officials do to Ensure Success?
- Final Thoughts
Questions?
CVRA Presenters

Dane Hutchings, MPP, Legislative Representative, League of California Cities

Randi Johl-Olson, JD, MMC, Legislative Director, California City Clerks Association

Kimberly Hall Barlow, Partner, Law Office of Jones & Mayer

Jonathan Stein, Board Chair, California Common Cause
California Voting Rights Act: Top Line

• CVRA prohibits the use of an **at-large election system** if **racially polarized voting** and the at-large election system combine to either impair the ability of **protected class voters** to elect candidates of their choice or impair their ability to influence the outcome of an election.

• **At-Large** election system is where voters of the entire city elect all members to the city council.

• **From District** election system is where each council member is elected by voters from the entire city, but the city is divided into districts and each council member must reside within a particular district.

• **By District** election system is where a city is divided into districts and one council member is elected by only the registered voters in that particular district.
CVRA: The Problem for Cities

• Number of Challenges (Serial Litigation) / Low Threshold

• Limited Options Based on Population Size

• Costly Elections

• Costly Litigation / Settlements
California Voting Rights Act: Legislative Reforms

The Politics

- Legislative Latino Caucus “Priority”.
- Prior versions of AB 350 (Alejo) AB 278 (Hernandez) close to the finish line.
- Multiple Players: Legislative Minority Caucuses, Civil rights/ open government groups, the Governors Office Etc.
- The League was the “outsider” and needed to control our own destiny.
California Voting Rights Act: Legislative Reforms

The Measures:

**AB 2220 (Cooper)**

- Any general law city and any charter city whose charter is silent on the election system, regardless of population, may voluntarily switch from an at-large election system to district election system via the ordinance process without voter approval.

**AB 278 (Hernandez)**

- Allows for a district system to be implemented (via ballot measure) before maps are drawn and adopted.
- Viable option for Charter Cities who’s charter mandates at-large voting.
California Voting Rights Act: Legislative Reforms

The Measures:

AB 350 (Alejo)

- Limited safe-harbor provisions for cities voluntarily switching from at-large to district election system (45 Days + 90 Days)
- Public hearings / publications both before and after drawing preliminary map(s) of district boundaries
- Establishes $30,000 cap and procedures for reimbursement to the first prospective plaintiff whose notice prompted change
California Voting Rights Act: Legislative Reforms

Benefits/Drawbacks:

Benefits:
- Creates safe harbor much better/longer than under catalyst theory cases.
- Allows for election to go to districts without ballot measure.
- Allows system to be implemented before maps are drawn and decided.

- “AB 350 is helpful because it provides a defined process for making the switch, and limits the amount of costs and fees we would otherwise likely be assessed. In addition, for proponents of district elections, it provides an incentive for cities to make the switch more quickly than they otherwise might.”
California Voting Rights Act: Legislative Reforms

Benefits/Drawbacks:

Drawbacks:
- Still provides short period of time to complete process.
- No time to evaluate whether racially polarized voting actually exists.
- Requires two public hearings on selected map before selection.
- Does not address Charter Cities with at-large elections in charter.
The "Process" How to Maximize the Time Allocated Under the Reforms

1) City receives demand letter from prospective plaintiffs

2) City allowed a 45 day safe harbor response period to decide how to proceed:
   Convert to districts by ordinance, by ballot or contest the pending litigation (further safe harbor extension granted only if a city chooses to convert to districts by ordinance)

3) If a city chooses to convert to districts it must do so by ordinance to qualify for the additional 90 day safe harbor. To trigger the additional 90 days of litigation protection, a city must adopt a resolution of intent, follow the public outreach requirements outlined below and must pass an ordinance to switch to districts.

4) Two public hearings for Input on composition of districts maps before maps are drawn (Note: Cities can begin this process during step #2)
   (Within a 30-Day Period)

5) City drafts district map(s) and (if applicable) sequence of elections. Maps stay in print for 7 days to allow public to review.

6) Two public hearings on draft map(s) and sequence of elections.
   (Within a 45-Day Period)

7) After soliciting the public through the four public hearings, the city then adopts ordinance and establishes district-based elections.

8) Prospective plaintiffs entitled to compensation for reasonable costs. capped at 30K in total cost for the city. Note: City has ability to stipulate charges.
   (Not to exceed $30,000 + CPI).
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<td>Council Meeting / Public Hearing #4 – Introduction / First Reading of Ordinance</td>
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<td>Council Meeting – Second Reading of Ordinance</td>
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<td>Ordinance Effective Immediately (30 Days After If Charter Requires)</td>
<td>Government Code 36937 (Election Ordinance Effective Immediately) Unless Charter Requires Otherwise</td>
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<td>Council Members Transition to Representing Their Respective Districts via Ordinance</td>
<td>November 2018, November 2020</td>
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What We’ve Seen Thus Far

Cities who have received demand letters since effective date of AB 350

- Carlsbad
- Fremont
- Huntington Beach
- Mountain View
- Morgan Hill
- Murrieta
- Oceanside
- Vista
What We’ve Seen Thus Far

- **Fremont** received a CVRA demand on February 15, 2017 from attorney Kevin Shenkman. The City has strictly adhered to the safe harbor provisions of AB 350 so as to reduce possible liability.

- **Morgan Hill** received a demand from Morris Baller with the law firm of Goldstein, Borgen, Dardian & Ho on May 5. Morgan Hill is taking advantage of the safe harbor provisions despite some glaring errors in the demographic information asserted in the letter.
California Voting Rights Act: Legislative Reforms

What We’ve Seen Thus Far

• **Vista** received its demand from Mr. Shenkman on 2/13/17. It commenced the process to move to districts on 3/28/17 and concluded on 6/13/17, with the unanimous adoption of a districting ordinance. Vista successfully worked within the limits of AB 350. It held six public hearings, three formal workshops, one informal workshop, and considered 18 valid maps with an additional 13 invalid maps submitted.

• The City of **Carlsbad** received a demand letter from Mr. Shenkman on April 5, 2017. The City is currently using the safe harbor provisions of AB 350.

• **Huntington Beach** has vowed to fight in response to their demand letter from Mr. Shenkman.
Impact of *Cooper V. Harris*

Key holding:
Drawing district lines on basis of race:

1) Plaintiff must prove that “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.”

1) If racial considerations did predominate, the State must prove that its race-based sorting of voters serves a “compelling interest” and is “narrowly tailored” to that end.
California Voting Rights Act: Legislative Reforms

Impact of *Cooper V. Harris* (Cont.)

- Does the fact that CVRA is “remedial” in nature justify use of race to determine whether polarized voting exists?

- Can it be argued that CVRA violates U.S. Constitution even though factors to be used in creating district do not reference race or ethnicity?

- Does *Cooper* forbid creation of “majority minority” districts, either intentionally or without taking race/ethnicity into account?
• Residents are not familiar with “districting.”
• Create outreach/education materials and distribute them widely.
  • Local newspapers
  • Festivals/fairs/events
  • Robo-calls
  • Digital marquees at local schools
  • Flyers sent home with school children
Partner with community organizations

• Leverage their networks to do community education and outreach

• Train-the-Trainer model works well.

• Make sure to bring in communities that do not vote at high rates and historically do not engage with your city council.
California Voting Rights Act: Best Practices for Community Engagement

Significant Number of Hearings

- Before draft maps and
- After draft maps / before final approval

If possible, create standalone hearings separate from city council meetings.

- If not possible, identify for the public during city council meeting when districting will be discussed.
California Voting Rights Act: Best Practices for Community Engagement

Make hearings broadly accessible
  • Diverse days of week and times of day
  • Diverse locations/parts of town
    • Videotaping capabilities?

Locations accessible by public transit and to people with disabilities
California Voting Rights Act: Best Practices for Community Engagement

Create new section of city homepage.
- Explanation of districting and why it matters
- Resources for learning more
- Schedule of hearings for future hearings
- Video recordings of past hearings
- Demographic data and other map building blocks
- Mapping software
- Draft maps when ready
California Voting Rights Act: Best Practices for Community Engagement

Give the public opportunities to provide input even if they cannot attend a meeting

- Hotline (live or voicemail)
- Email submission
- Mechanism for submitting comments and/or maps on city website
California Voting Rights Act: Best Practices for Community Engagement

Language Access is Essential

- Translate relevant portion of website
- Translate outreach materials
  - Ad placement in English and ethnic media
- At hearings: simultaneous translation
  - Rent equipment and use community members as translators, if necessary.
Write a Comprehensive Final Report Which:

- Will be useful to the public
- Will be useful to the city when it redistricts for the first time
California Voting Rights Act: Best Practices for Community Engagement

KEY TAKEAWAY

• Robust community education & engagement is the only way to do right by your residents.
• Safe harbor provision provides real value to cities but complicates community engagement. Already seeing examples of this.
• Essential that cities act quickly on community education and dedicate sufficient resources.
Questions?