The California Voting Rights Act and the District-Drawing Process

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2018 Mayors and Council Members Executive Forum
Wednesday, June 27, 2018

Agenda

- Overview of the California Voting Rights Act ("CVRA")
- California Cities' Statistics
- Elections Code § 10010 - District-Drawing Process
- City of Rancho Cucamonga - Lessons Learned
- Community Engagement
- Issues to Keep in Mind
- Recent Litigation and Outcomes
Overview of the CVRA

- Applies to at-large election systems, which include:
  - Voters of the entire jurisdiction elect the members of the governing body
  - “From District Election System”—each councilmember resides in a district but the voters of the entire city vote for the councilmembers
  - An election system that “combines at-large elections with district-based elections”
- Provides a private right of action to members of a protected class
- Violation occurs when there is “racially polarized voting” that “impairs the ability of a protected class to elect candidates of its choice or its ability to influence outcome of an election.”

Overview of CVRA (CVRA v. FVRA)

- Modeled after the federal Voting Rights Act of 1965 (“FVRA”)
- Protected class does not have to be geographically compact or concentrated
- Protected class does not have to form a majority of a district
- Proof of intent to discriminate is not required
- Eliminates “totality of circumstances” test → result: liability based on statistics

End result: lower threshold for Plaintiffs to prove violation of the CVRA
Which Cities Challenged?

CVRA Challenges by City Population

Horizontal axis numbers are the 2010 Total Population of the City

By-District vs. At-Large Cities

By-District Cities

Horizontal axis numbers are the 2010 Total Population of the City
Maps of Cities Changing to Districts: Inland Empire

Bay Area
Excerpts from Demand Letter

- “It is our belief that Rancho Cucamonga’s at-large system dilutes the ability of minority residents - particularly Latinos (a “protected class”) - to elect candidates of their choice or otherwise influence the outcome of Rancho Cucamonga’s council elections."
- “Our research shows that in at least the last 20 years, only one Latino has ever been elected to the Rancho Cucamonga City Council - many have run but have been unsuccessful . . . .”
- “Give the historical lack of Latino representation on the city council in the context of racially polarized elections, we again urge Rancho Cucamonga to voluntarily change its at-large system of electing council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief . . . .”

Government Code Section 34886

- Previously allowed cities with populations less than 100,000 to adopt district elections by ordinance
- Recent amendments eliminated the population cutoff
- Now any city, regardless of population, can transition to district elections by ordinance
  - Potential exception: charter cities
Elections Code Section 10010

► “Safe-harbor” provision
► Once a prospective plaintiff sends a demand letter, that puts a 45-day stay on ability to bring an action.
► Within 45 days, if city adopts a resolution establishing intent to transition to districts, that puts an additional 90-day stay.

Helpful Tips

► Once the city receives a letter, place the matter on closed session for discussion and to assess the demand;
► Retrieve election results;
► Engage a demographer to determine whether there are any defenses;
► Determine in the 45 days whether to transition to district elections or defend a potential action; and
► If “evidence” used in the demand letter is inaccurate, consider sending back a letter with counter-evidence.
What is Polarization?

Example of a solid, clear statistical dataset:

What we often get in the real world:
District Drawing Process

- At least two (2) public hearings prior to drawing district maps → solicit public input Re: composition of districts
  - Generally, low public participation
- Draw district maps and propose sequencing (to maintain staggered terms)
- “Publish” district maps at least 7 days before consideration at public hearing
- Hold 3rd public hearing to receive input regarding draft maps

District Drawing Process (cont’d)

- “Publish” any revised maps/any new maps at least 7 days before adoption
- Hold 4th public hearing to receive input
- Hold 5th public hearing to adopt ordinance establishing district-based elections
  - May be held on the same day as 4th public hearing
  - Ordinance v. Emergency Ordinance
- If elections are consolidated, demographer to send boundary lines to Registrar to implement.
District-Drawing Criteria

- Federal Laws
  - Equal population
  - Federal Voting Rights Act
  - No racial gerrymandering

- Traditional Redistricting Principles (Elec. Code §§ 21601, 21620)
  - Communities of interest
  - Compact
  - Contiguous
  - Visible (natural & man-made) boundaries

- Respect for past voter choices and continuity of government

Sample Compact Maps

Glendale Unified

Compton
City of Rancho Cucamonga: Lessons Learned

- If everyone around you is getting CVRA letters - don’t wait
- Putting issue on ballot vs. adopting districts by ordinance
- Understanding your City is important - communities of interest
- Speak with one voice - much easier for community to accept
Helpful Tips: Community Engagement

- Depending on public interest - may be beneficial to hold additional community meetings to solicit public input and answer the public’s questions
- If there is a large minority, have interpreters available at public hearings and community meetings
- Translate material into other languages
- Encourage public to submit proposed maps - depending on city’s budget

Issues to Keep in Mind: After Districts Are Drawn

- Don’t forget new development or the Census - districts may change
- Adjusting district lines - may potentially draw councilmembers out of office
- Potential downside - competition among districts
  - Measures cities can take to prevent it
Issues to Keep in Mind

- Notice and Publication
  - “Publication” in newspaper vs. other means
  - Translation of notices
  - Potential solution: notice listing locations where maps are available
- Subject to Referendum?
  - Effective in 30 days or immediately
  - May subject city to lawsuit if there is a petition for referendum
- Prison Populations

Issues to Keep in Mind: Sequencing

- To maintain sequencing → phase in transition to district-based elections
  - May cause confusion to the public as to who represents them
  - Depending on where councilmembers reside, districts may be drawn with sequencing to coincide with councilmembers’ election years
  - Issue where councilmembers from different election cycles are paired in the system district
Issues to Keep in Mind: Charter Cities

- Charter provisions may provide process for charter amendment
- Question regarding the extent of application of Elections Code Section 10010 to charter cities
- Holding public hearings before OR after placing charter amendment on ballot
- Timing may be an issue
- Some charter cities have begun the process of transitioning without amending their charter

Issues to Keep in Mind: At-large Mayor Position

- CVRA definition of at-large elections is broad, encompassing:
  - From-district elections
  - Systems that “combine” at-large with district-based elections
  - Plaintiffs have used the plain language to argue that a by-district system with an at-large mayor is an at-large system
- No binding appellate court decisions
- Settlements often allow for at-large mayor positions
- Gov. Code §§ 34886, 34871
- Risk of a challenge is higher if creating an at-large mayor seat would potentially dilute the voting power of a protected class
Litigation Update

- **Southwest Voter Registration Education Project v. City of Rancho Cucamonga** (San Bernardino Superior Court Case No. CIVDS1603632)
  - Settled, except for attorneys’ fees
  - Case should have ended once issue placed on ballot
  - Broadly-interpreted remedies

- **Pico Neighborhood Association, et al. v. City of Santa Monica** (Los Angeles Superior Court Case No. BC616804)
  - Trial is set for July 30, 2018; MSJ argued but not decided yet
  - Minority population is roughly 13%

Litigation Update (cont’d)

- **Higginson v. Xavier Becerra, et al.** (S.D. Cal. Case no. 3:17-cv-02032-WQH-JLB; 9th Cir.) (City of Poway)
  - Case dismissed in district court for lack of standing and subject matter jurisdiction
  - Case was appealed to Ninth Circuit—oral argument was on June 7, 2018; court reversed and remand on June 14, 2018
Litigation Update (cont’d)

- *Yumori-Kaku, et al. v. City of Santa Clara* (Santa Clara Superior Court Case No. 17CV319862)
  - Case alleges racially polarized voting with respect to Asian-American voters (30.5% of CVAP).
  - City’s proposed solution → 2 at-large districts with 3 council seats in each & at-large mayor; ranked choice voting
  - Trial commenced on April 23 on the liability phase
  - Court found that the at-large system impairs the ability of Asians to elect candidates.
  - Remedy phase is set for July 9, 2018

Summary

- Pending CVRA may form case precedent in the future
- Until then, cities remain susceptible to receiving a CVRA demand letter
- First step: determine viability of claim and whether the city will transition to district or defend a potential action
- Second Step: if city will transition, create timeline to insure compliance with Elections Code Section 10010
- Plan ahead for issues that may apply to your city
- Initiate the process set forth in Elections Code Section 10010