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**The California Voting Rights Act - an Update**  
League of California Cities Annual Conference  
Thursday, September 4, 2014, 1:00 - 2:15 p.m.





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“The CVRA makes all cities that conduct elections for council members "at-large" vulnerable to legal action if plaintiffs who are members of a protected class can prove racially polarized voting and impairment of their ability to elect their chosen candidates. Hear about cities that have been subject to legal action under the CVRA and learn how the Act can affect your city. Receive an update on current legal issues and what the future outlook may be.”

Presenters: Marguerite Mary Leoni, Partner, Nielsen Merksamer Parrinello Gross & Leoni, LLP  
Kimberly Hall Barlow, Partner, Jones & Mayer

1. Key Provisions of the California Voting Rights Act
2. California Appellate Decisions Interpreting the California Voting Rights Act
3. Status of Litigation against California Cities Under the California Voting Rights Act
4. Proposed new Legislation Affecting Voting Rights & Status
  - a. SB 1365 (Padilla)
  - b. AB 280 (Alejo)
  - c. AB 2715 (Hernandez)
5. Attachments
  - California Elections Code §§ 14026 – 14032
  - Sanchez v. City of Modesto*, 145 Cal.App.4th 660 (2006)
  - Rey v. Madera Unified School District*, 203 Cal.App.4th 1223 (2012)
  - Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781 (2014)
  - SB 1365
  - AB 280
  - AB 2715
  - Trial Court Statements of Decision in *Jauregui v. City of Palmdale*
  - Chart of Cities subject to CVRA Demands/ Litigation
  - Sample Demand Letters





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### California Voting Rights Act Challenges to California Cities

City Population 2010	Charter	Electoral System	GME <sup>1</sup> Date	Minority % <sup>2</sup>	Minorities Elected <sup>3</sup>	Demand Letter	Lawsuit Filed	Procedural Status	Settlement Terms <sup>4</sup> ; Other Actions	Attorneys Fees to Plaintiffs
Anaheim 336,265	Yes	At-large w/ separately elected mayor	Nov. Even	53% Latino	Yes	Yes	Yes	OC <sup>5</sup> settlement; Complaint dismissed	Ballot meas. for SMD & to increase size of council; keep separate mayor	\$1.2 Mil.
Bellflower 76,616	No	At-large	Mar. Odd	54% Latino 14% Af.Am.	Yes	Yes	Yes	Demurrer pending	N/A	N/A
Compton 96,455	Yes	From-districts with separately elected mayor	Apr. Even, with runoff in June	66% Latino 30.6% Af.Am.	Yes, but ethnicity subject to debate as to meaning of “Latino”	Yes	Yes	OC settlement; Complaint dismissed	Ballot Meas. for SMD successful; keep at-large mayor.	Confidential, but subject to PRA request

<sup>1</sup> GME = General Municipal Election

<sup>2</sup> Percents are of Total Population based on 2006-2012 Am. Com. Survey

<sup>3</sup> Since 2000

<sup>4</sup> Primary terms concerning electoral system only

<sup>5</sup> OC = Out of Court settlement



City Population 2010	Charter	Electoral System	GME Date	Minority %	Minorities Elected	Demand Letter	Lawsuit Filed	Procedural Status	Settlement Terms; Other Actions	Attorneys Fees to Plaintiffs
Escondido 143,911	No	At-large	Nov. Even	48% Latino	Yes	Yes	Yes	Consent decree	SMD established by Comm'n; keep at-large mayor.	\$385k
Fullerton 135,161	No	At-large	Nov. Even	34% Latino	Yes	Yes	Yes	Compl. Served Aug. 2014	N/A	N/A
Highland 53,104	No	At-large	Nov. Even	49% Latino	No	Yes	Yes	Compl. served	Ballot Meas. for SMD	N/A
Los Banos 35,972	No	At-large	Nov. Even	68% Latino	Yes	Yes	No	N/A	Ballot Meas. for SMD	N/A
Merced 78,958	Yes	At-large w/ separately elected mayor	Nov. Odd	49% Latino	Yes	Yes	No	N/A	Ballot Meas. for SMD & to change GME to Nov. Even; keep separate mayor	N/a
Modesto 201,165	Yes	Numbered posts with at-large voting	Nov. Odd	36.5% Latino	Yes	No	Yes	Settled for fees	Ballot Meas. for SMD w/ separate mayor successful	\$3.0 Mil.
Palmdale 153,750	Yes	At-large w/ separately elected mayor	Nov. Odd	55% Latino 13% Af.Am.	Yes	Yes	Yes	On Appeal	N/A	\$3.5 Mil., on Appeal
Riverbank 22,678	No	At-large	Nov. Even	55% Latino	Yes	Yes, countywide	No	N/A	Ballot Meas. for SMD	N/A



City Population 2010	Charter	Electoral System	GME Date	Minority %	Minorities Elected	Demand Letter	Lawsuit Filed	Procedural Status	Settlement Terms; Other Actions	Attorneys Fees to Plaintiffs
Santa Barbara 88,410	Yes	At-large w/ separately elected mayor	Nov. Odd	40%	Yes	Yes	Yes	Compl. served late July 2014	N/A	N/A
Santa Clarita 176,320	No	At-large	Apr. Even	30% Latino	Yes, in at-large system but after lawsuit filed	No	Yes	Settlement (Court Supervised)	Req. to BOS to change GME to Nov. Even; Cum. Voting if approved by court and w/in specified cost limitations	\$600k less poss. contrib. to implement. of cum. voting
Tulare 59,278	Yes	At-large	Nov. Even	56% Latino	Yes	Yes	Yes	OC Settlement; Complaint dismissed	Ballot measure for SMD successful	\$225k
Turlock 68,549	No	At-large	Nov. Even	35% Latino	No	Yes, countywide	No	N/A	Ballot measure for SMD w/ separate mayor	N/A
Visalia 124,442	Yes	At-large	Nov. Odd	45% Latino	Yes	Yes	Yes, after ballot measure for SMD failed	Settled; Stip. Judgment	Court ordered process for SMD	\$125k
Whittier 85,331	Yes	At-large	Apr. Even	66% Latino	No, but yes in 1990s	Yes	Yes	Mot. to Dismiss by City & Mot. to Amend by Pltfs	Ballot Meas. for SMD w/separate mayor successful	N/A





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# The California Voting Rights Act - an Update

- California Elections Code §§ 14026 – 14032

The CVRA prohibits at large electoral systems that impair the right of a protected class to elect, or influence the election of, its chosen candidates. It applies to:

- ❖ At-large elections
- ❖ “From-district” Elections
- ❖ Districts & Separate Mayor?
- ❖ Alternative Systems, e.g., Ranked Choice?



# **The California Voting Rights Act - an Update**

- CVRA based on Section 2 of FVRA.
- Section 2 applies nation-wide.
- Section 2 forbids any “qualification or prerequisite to voting or standard, practice, or procedure ... which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color” or membership in a language minority group.



# The California Voting Rights Act - an Update

- Under § 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).
- Many cases have failed because plaintiffs failed to establish the first precondition.
- A violation must ultimately be proven based on the totality of the circumstances.



# **The California Voting Rights Act - an Update**

- In the late 1990s and early 2000s, voting rights plaintiffs nationwide, but especially in California, were experiencing trouble bringing successful actions under Section 2 of the federal Voting Rights Act.
- Many of the most blatantly problematic voting structures had been remedied, and voting rights groups perceived the federal courts as less-than-entirely hospitable to their claims.



# **The California Voting Rights Act - an Update**

- **Solution: The CVRA**
- **Enacted in 2002 (S.B. 976).**
- **Took effect January 1, 2003.**
- **Elections Code     14025 to 14032**
- **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.”**



# The California Voting Rights Act - an Update

- What is prohibited?
- The language is very unclear. The Court of Appeal in *Sanchez v. City of Modesto* remanded the case to the superior court to determine the elements of a claim. The case settled before that happened.
- The trial court in *Jauregui v. City of Palmdale* (currently on appeal) held that it was sufficient if plaintiffs proved that polarized voting occurred in the at-large electoral system.



# The California Voting Rights Act - an Update

Plaintiffs at least need to show:

1. At-large election systems in which,
2. Voting patterns correlate with the race of the voter.

Trial Court in *Jauregui v. City of Palmdale* stopped here, and ruled in favor of Plaintiffs. Which other factors are required, and the exact elements, are part of the pending appeal from the trial court decision in *Jauregui v. City of Palmdale*.

3. Impairment of the ability of voters in the protected class to elect the candidate of their choice?
4. The minority-preferred candidate (who is also of the same protected class) loses?
5. Dilution demonstrated based on the totality of the circumstances?

Charter cities are subject to CVRA:

*Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781 (2014), petition for review pending.



# The California Voting Rights Act - an Update

What are “Appropriate” Remedies:

- Court- and Plaintiff-Approved Single-Member Trustee Areas?
- “Influence districts”?
- Continuing Jurisdiction?
- “Remedial” Racial Gerrymandering?
- Removal from Office of council members elected at-large?
- Enjoining elections?
- Change of election date?

(All of the above was ordered in *Jauregui v. City of Palmdale*, and are challenged in the pending appeal.)

- Establishment of alternative electoral systems?



# The California Voting Rights Act - an Update

**Salient litigation to date: all cases that have settled, paid fees to plaintiffs' attorneys:**

- City of Modesto (*Sanchez v. City of Modesto*, 145 Cal. App. 4th 660 (2006), *rev. denied*, 2007 Cal. LEXIS 2772 (Mar. 21, 2007), *cert. denied*, 128 S. Ct. 438 (U.S. Oct. 15, 2007).)
- Madera Unified School District (*Reyes v. Madera Unified School District*, 203 Cal. App. 4th 1223 (2012).) (Stipulated judgment.)
- Hanford Joint Union High School District - settled
- Tulare Local Healthcare District - settled 1<sup>st</sup> day of trial
- Ceres Unified School District - settled
- City of Compton - settled
- San Mateo County - settled
- Compton Community College District - settled
- City of Tulare - settled
- Cerritos Community College District - settled
- City of Palmdale - judgment against City, on appeal on merits
- City of Anaheim - settled

(Cont'd)



# The California Voting Rights Act - an Update

**Salient litigation to date: all cases that have settled, paid fees to plaintiffs' attorneys:**

- City of Escondido – settled
- City of Santa Clarita – settled
- City of Whittier– litigation pending
- City of Highland– complaint recently filed
- City of Visalia – settled
- City of Bellflower– complaint recently filed
- City of Fullerton – complaint recently filed
- City of Santa Barbara– complaint recently filed
- ABC Unified School District – settled
- Glendale Community College District (case dismissed; no fees)
- Santa Clarita Community College District – settled

Many continuing threats of litigation.



# **The California Voting Rights Act - an Update**

- Most cities are without the ability to address the potential of CVRA liability except through the ballot box, which poses additional risks (compare the outcome in City of Compton and County of San Mateo, to that in City of Escondido and City of Visalia). Careful analysis of exposure and, if indicated, preparations for a political solution are essential.
- And then there is the extraordinary case of the City of Whittier: voters approved change to SMD, but litigation continues (San Mateo County too).



# **The California Voting Rights Act - an Update**

- **Elusive Legislative “Fix”**

**AB 2330 (2009-2010 Reg. Sess.) (Arambula):** if enacted, this bill would have imposed a claim-filing requirement and a 30-day response period before a lawsuit could be filed against a school district. It would have given districts a mechanism to avoid litigation and possible attorneys’ fees. The bill died in committee.

**AB 684 (2011-2012 Reg. Sess.) (Block):** enacted into law in late 2011, this bill streamlined the process by which community college districts are able to move from at-large elections to by-district elections. This bill permits CCDs to adopt district elections with only the concurrence of the California Community College Board of Governors.



# **The California Voting Rights Act - an Update**

## **Experience of California Cities:**

- **1 litigated to judgment, lost, \$3.5 mil. fee award to plaintiffs' attorneys, case on appeal** (Palmdale)
- **4 new lawsuits filed** (Bellflower, Fullerton, Highland [measure on Nov. 2014 ballot], Santa Barbara [CVRA study ongoing])
- **4 placed measures on November 2014 ballot after CVRA demand letter. To date, no lawsuits filed** (Los Banos, Merced, Riverbank, Turlock)
- **1 placed measure on ballot after demand; measure failed; litigation filed and settled, including fees to plaintiffs' attorneys** (Visalia [court supervised process for SMD])



# The California Voting Rights Act - an Update

- 1 placed measure on ballot after demand; measure successful; ongoing litigation filed between demand and vote (Whittier)
- 2 placed measures on ballot soon after CVRA litigation filed, one measure successful, the other not, litigation settled, including fees to plaintiffs' attorneys (Tulare, Escondido [consent decree for SMC by commission])
- 4 settled at various later stages of litigation, settlement included fees to plaintiffs' attorneys (Modesto [settlement involved fees only], Anaheim [ballot measures for SMD & to increase council size], Compton, [ballot measure for SMD successful], Santa Clarita [reschedule muni .elec. & initiate cum. voting subj. respectively, to county approval and court approval])



# The California Voting Rights Act - an Update

- New Voting Rights Legislation

## SB 1365 (Padilla)

*This bill would provide parallel provisions to the existing CVRA that prohibit the use of a district-based election system in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The bill would require a court to implement specified remedies upon a finding that a district-based election was imposed or applied in a manner that impaired the ability of a protected class to elect candidates of its choice or otherwise influence the outcome of an election.*



# The California Voting Rights Act - an Update

## AB 280 (Alejo)

*This bill would establish a state preclearance system. Under this system, if a political subdivision enacts or seeks to administer a voting-related law, regulation, or policy, as specified, that is different from that in force or effect on the date this act is enacted, the governing body of the political subdivision would be required to submit the law, regulation, or policy to the Secretary of State for approval. The bill would require the Secretary of State to approve the law, regulation, or policy only if specified conditions are met. The bill would provide that the law, regulation, or policy shall not take effect or be administered in the political subdivision until the law, regulation, or policy is approved by the Secretary of State. The bill would allow the governing body of the political subdivision to seek review of the Secretary of State's decision by means of an action filed in the Superior Court of Sacramento. By requiring local governments to seek approval of the Secretary of State for changes to voting procedures, this bill would impose a state-mandated local program.*



# The California Voting Rights Act - an Update

## AB 2715 (Hernandez)

*This bill would permit the legislative body of a city to provide by ordinance, without submitting the ordinance to the voters of the city for approval, for the election of members of the legislative body by district if the voters of the city previously rejected such an ordinance, as specified. This provision would be repealed on December 31, 2016.*

*The bill would, commencing January 1, 2017, require the legislative body of a city with a population of 100,000 or more, as determined by the most recent federal decennial census, to provide by ordinance, without submitting the ordinance to the voters of the city for approval, for the election of members of the legislative body by district. The bill would, commencing January 1, 2017, permit the legislative body of any other city to provide by ordinance, without submitting the ordinance to the voters of the city for approval, for the election of members of the legislative body by district.*