

The California Voting Rights Act and Imposed District Election Systems



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Types of Local Election Systems



- **At Large**
 - All voters may vote for candidates from throughout the jurisdiction
- **By District**
 - Voters who reside in a district elect candidates from that district
- **From District**
 - Voters from the entire jurisdiction elect candidates who reside in specific geographic districts
 - A type of at large system
- **Combination**
- **Cumulative Voting**

Considerations in Establishing Election Systems



- Governance
- Constituent service
- Representation
- Participation
- Communications
- Protection of voting rights
- Protection of minority voters' ability to elect a candidate of their choice or to influence the election result

California Voting Rights Act (“CVRA”)



- “An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class”
 - Elections Code Section 14028

CVRA Considerations



- Applies to “at large” type voting systems
 - At large
 - From districts
 - Combination
- Do members of a “protected class” have the ability to elect candidates of their choice or influence the outcome of elections?
 - Race, color or language minority
 - Dilution or demonstrable difference in result
- “Racially polarized voting”

CVRA Considerations



- **Less difficult standard of proof than federal law**
 - “Geographic compactness” not required, for example
- **Analysis of past election results**
 - Both candidate and measure results; past elections more probative
 - Not time limited
 - Intent to discriminate need not be proved
- **Promotes the right to win, not just the right to vote**
- **Remedies**
 - New election system imposed by the court
 - Award of costs and attorneys fees

The Highland Experience



- **Challenge letter in 2013**
 - Pre-2000 voting results
 - Minority population data
 - No elected minority candidates
- **Efforts to seek voter approval**
 - District research
 - Unsuccessful ballot measure
- **Immediate legal challenge**
 - Stipulated as to violation
 - Extensive Settlement Discussions
 - Contested the remedy

The Highland Experience



- **Remedies Trial**

- Cumulative voting vs. “By District” system
- Migrated to issues of “racism” or “discrimination” in providing services
- The statistical probabilities
- Plaintiff’s attorneys didn’t know who their client was

- **Court ruling**

- Cumulative voting may be permissible
- Cumulative voting would not accomplish the CVRA’s goals in Highland
- No inequality in the provision of services
- Judgment pending

“By District” Election Considerations



- Change requires voter approval in most cases
- Plaintiffs don't care what the voters think of district-based voting
- Secretary of State appears to disfavor any remedy other than districts
- Costs of drawing districts and conducting an election
- Boundaries
- Voter education

Suggestions



- Make the Legislature and stakeholders understand the fundamental problems with this law
- Voter/Constituent education
- Recruit and mentor qualified minority candidates
- Prepare to settle quickly, or lose