

# The California Voting Rights Act

A Presentation by:

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# The California Voting Rights Act (CVRA)

The CVRA prohibits at-large electoral systems that impair the right to vote of a protected class. Elec. Code § 14027.

- § 14028(a) A violation of Section 14027 is established if it is shown that **racially polarized voting** occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision. ...

# Definition of Racially Polarized Voting

- (e) “Racially polarized voting” means voting in which there is a difference, as defined in case law regarding **enforcement of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.)**, in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

# Racially Polarized Voting:

## *Thornburg v. Gingles*, 478 U.S. 30 (1986)

- 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).
- The conclusions reached from analysis of the Second and Third preconditions are known as “racially polarized voting”

# Relevant Elections for Determining Racially Polarized Voting

- § 14028(b) The occurrence of racially polarized voting shall be determined from examining results of **elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.** One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section.

## Racially Polarized Voting

- July 14, 2017 letter from the law firm of Shenkman & Hughes asserts that racially polarized voting exists in Santa Rosa and results in the dilution of Latino voting strength. The Shenkman & Hughes letter provided no data to substantiate that claim.

# Racially Polarized Voting

- “Minority Voting Patterns in Santa Rosa, California, A Study Prepared for the Leadership Institute for Ecology and the Economy”, by David A. Selby, and Kelly P. Wurtz, asserts: “With a high degree of confidence, this study concludes that Latinos in Santa Rosa have distinct voting patterns that track with their political interests, and that the current system of at-large voting dilutes the voting power of Latinos.”
- > 30 Elections analyzed dating from 1992 but no data provided, just charts reflecting results.

## Racially Polarized Voting

- Independent analysis of the question: “Is there evidence on which potential plaintiffs could base an allegation of racially polarized voting in a lawsuit under the CVRA?”
- **Do not** consider possible defenses the City might have if litigation were filed, including questions regarding the statistical validity/reliability of estimates.



# Racially Polarized Voting

- 2012 – Measure Q
- 2012 – City Council in which candidates Olivares (incumbent) and Banuelos vied against seven other candidates for four seats on the City Council
- 2012 – Santa Rosa High School Board of Trustees in which candidate Gonzalez (appointed incumbent) vied against five other candidates for four seats on the Board of Trustees.
- 2014 -- Santa Rosa High School Board of Trustees in which candidate Medina vied against four other candidates for three seats on the Board of Trustees.
- 2016 – Santa Rosa High School Board of Trustees in which candidate and incumbent Gonzalez and candidate Banuelos vied against four other candidates for four seats on the Board of Trustees.
- 2016 – City Council in which candidate and incumbent Olivares vied against five other candidates for four seats on the City Council

## Racially Polarized Voting

- Without regard to the City’s defenses, including reliability:
  - 2012 Measure Q was strongly supported by Latino voters and opposed by non-Latino voters, and was defeated at the polls.
  - Basic correlation analysis reflects that, with some exceptions, Latino-preferred candidates generally did better in precincts as the percentage of Latino voters increased.

## Racially Polarized Voting

- Seven Latino candidates ran for election to the governing body of the City of Santa Rosa or Santa Rosa High School District since 2012.
- Three were successful, all incumbents, who were also supported by non-Latino voters.
- Four were unsuccessful, including a Latino incumbent in 2016.
- Non-Latino candidates supported by Latino voters were also defeated.

# Racially Polarized Voting -- Caveat

- There is also evidence supporting the proposition that the City could be victorious in a CVRA lawsuit, but
- The cost of that victory could be millions of dollars.
- Also, a victory would not protect the City from a subsequent lawsuit by other potential plaintiffs, at some time in the future.

# 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 it did get litigated through the appeals courts up to the U.S. Supreme Court.
- 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

# Questions?