



CALIFORNIA VOTING RIGHTS ACT: LEGAL CHALLENGE TO CITY'S AT-LARGE ELECTION SYSTEM

City Council Meeting
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California Voting Rights Act

- ❖ Enacted in 2002
- ❖ Aimed at protecting the voting strength of minority voters
- ❖ Expands protections of the Federal Voting Rights Act

California Voting Rights Act

Key provision:

- ❖ Prohibits the use of an **at-large election system** “in a manner that **impairs** the ability of a **protected class** to elect candidates of its choice or to influence the outcome of an election.”

California Voting Rights Act

Four essential elements:

- ❖ **At-large election system:** Voters of the entire city vote for, and elect, all members of the City Council.
- ❖ **Presence of protected class:** Class of voters who are members of a race, color or language minority group, as defined by the Federal Voting Rights Act.

California Voting Rights Act

Four essential elements (con't):

- ❖ **Racially polarized voting:** Voters in the protected class prefer candidates and electoral choices that are different from those preferred by voters in the rest of the electorate.
- ❖ **Impairment of voting influence:** The votes of those in the majority non-protected class have the effect of defeating the preferences of the protected class.

California Voting Rights Act

- ❖ It is important to note that no finding of racial animus or intent to discriminate is required to find a violation of the CVRA.
- ❖ Nor is there any requirement that the protected class be concentrated in a single geographic area.
- ❖ Liability under the CVRA rests solely upon the presence of racially polarized voting that results in impairment of the voting strength of a protected class of voters.

Challenge to At-Large Elections

- ❖ Under CVRA, a claim is initiated by filing a certified letter with the City Clerk.
- ❖ On July 17, 2017, City received formal challenge to the City's at-large voting system.
- ❖ Filed by Southwest Voter Registration Education Project, represented by attorney Kevin Shenkman.
- ❖ Southwest Voter Registration Education Project has filed similar challenges throughout the state.

Challenge to At-Large Elections

- ❖ Alleges that racially polarized voting within the City has combined with the City's at-large election system to impair the ability of Latino voters to elect candidates of their choice or to influence the outcome of an election.
- ❖ Alleges that the City's at-large election system thus violates the California Voting Rights Act.
- ❖ Threatens litigation if the City does not voluntarily transition to a district-based election system.

Analysis of Challenge

Review the four essential elements:

- ❖ **At-large election system:** By Charter, Santa Rosa has an at-large election system, in which the top vote-getters across the City are elected to the City Council.
- ❖ **Presence of protected class:** Latino voters qualify as a protected class under the CVRA.

Analysis of Challenge

- ❖ **Racially polarized voting:** The Education Project alleges that Latinos in Santa Rosa vote differently than the rest of the Santa Rosa electorate. The Education Project, however, has not submitted any statistical evidence to support that allegation.
- ❖ **Impairment of voting influence:** The Education Project alleges that the non-Latino majority in Santa Rosa vote as a bloc and thereby defeat the preferences of the City's minority Latino voters. The Education Project, however, again has not submitted any statistical evidence to support the allegation.

Analysis of Challenge

To fully evaluate the claim, the City would need to undertake detailed analysis of the City's demographics and historic voting patterns, including:

- ❖ Past election results
- ❖ Success of candidates from the protected class
- ❖ Other factors
 - History of discrimination
 - Voting practices / procedures that dilute minority voting
 - Denial of access to financial or other election support
 - Past discrimination in education, employment, or health
 - Overt or subtle racial appeals

Remedies

If demographic and statistical evidence indicates a violation of the CVRA, the remedies can be substantial:

- ❖ Court-ordered imposition of district elections
- ❖ Costs and attorneys' fees
 - From less than \$50,000 for quick settlement
 - To over \$4 million for a case fully litigated

Safe Harbor

Under Elections Code section 10010, litigation will be postponed and attorneys' fees capped at \$30,000 if:

- ❖ Within 45 days of receipt of claim, Council adopts resolution stating its intent to transition to district elections.
- ❖ Within 90 days of resolution of intent, Council adopts ordinance establishing district elections.
- ❖ Four public hearings held within the 90 day period.
 - Two prior to drafting of maps
 - Two to review draft maps

Options

- ❖ No current statistical evidence of racially polarized voting within the City or of any impairment of the ability of Latino voters to elect candidates of their choice or to influence the outcome of an election.
- ❖ Nevertheless, the Council may wish to consider several options:

Defend Lawsuit

- ❖ Direct staff to research and pursue a defense of the claim under the CVRA.
- ❖ Must establish that (a) no racially polarized voting exists within the City, **or** (b) that if there is such polarized voting, it does not operate to impair the voting influence of a federally protected voting class, **or** (c) that other legal defenses apply.
- ❖ Defense costs likely to include outside counsel and demographic consultant fees.
- ❖ Risk of liability for plaintiff's attorneys' fees.

Call Election

- ❖ Resolution of intent to place a measure on the ballot to amend the City Charter to transition the City to a district-based election system.
- ❖ Proposed district maps and voting system would be researched and formulated over the coming months, with extensive public participation.
- ❖ The election could be held in June 2018 or as soon thereafter as practical.

Adopt Ordinance

- ❖ Government Code Section 34886 allows cities to adopt an ordinance to transition to district elections without need for voter approval.
- ❖ Citing to that provision, Council may adopt resolution of intent to transition to district-based elections by ordinance.
- ❖ Proposed district maps and voting system would be researched and formulated over the coming months, with extensive public participation.

Court Action

- ❖ Direct staff to file an action for declaratory relief in Superior Court, seeking a judicial determination of the City's compliance with CVRA or other relief.
- ❖ The Court's decision could set a clear path for further Council action.

Recommendation

It is recommended by the City Attorney that Council state its intent to respond to a legal challenge, brought under the California Voting Rights Act, to Santa Rosa's at-large voting system. Council action may be by:

1. Motion directing staff to research and defend against claims that the City's at-large election system violates the California Voting Rights Act; or
2. Resolution stating Council's intent to place a measure on the ballot in June 2018, or as soon thereafter as is practical, proposing an amendment to the City Charter to transition the City to a district-based election system, and directing staff to undertake associated actions; or

Recommendation

3. Resolution stating Council's intent to transition to district-based elections by ordinance adopted pursuant to Elections Code Section 10010 and Government Code Section 34886, and directing staff to undertake associated actions; or
4. Motion directing staff to seek declaratory relief in Superior Court.

QUESTIONS?