

The California Voting Rights Act: Update: Alternative Electoral Systems

The City of Glendale
Study Session
October 24, 2023

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What's New

- California Supreme Court decision in *Pico Neighborhood Ass'n v. City of Santa Monica*, 15 Cal. 5th 292 (2023).
- Relevance of alternative electoral systems.
- Reminder: Glendale Demographics
 - LCVAP Citywide approx. 17%
 - The strongest Latino district in a 6-district plan - about 28% LCVAP

Some Lessons from *PNA v. City of Santa Monica*

- Confirmed: Plaintiffs must prove racially polarized voting.
- Plaintiffs must **also prove vote dilution.**
- Plaintiffs are not required to demonstrate they could form the majority of voters in a single-member district.

Proving Vote Dilution

- Vote dilution presumes a measure of undiluted voting strength.
- What is required to establish “dilution” of a protected class's “ability ... to elect candidates of its choice”?
- Proof that, ***under some lawful alternative electoral system***, the protected class would have the potential to elect its preferred candidate.
- A court presented with a dilution claim should undertake a ***searching evaluation of the totality of the facts and circumstances***.

Lawful Alternative Electoral System

- A charter city has significant discretion in designing an electoral system for their city council.
- Some available alternatives include:
 - By-district elections
 - Cumulative Voting
 - Limited Voting
 - Ranked Choice Voting
 - Approval Voting

By-district Elections

- The plaintiffs may be able to demonstrate that, assuming the same degree of racial polarization, the greater concentration of protected class voters in the hypothetical district would be sufficient to enable them to elect their preferred candidate.
- Note again: Latinos can constitute approximately 28% of eligible voters in a six-district plan.

Alternative Electoral System

- Protected class voters may be able to elect chosen candidates with far less than a majority of voters in an “alternative” electoral system.
- The California Supreme Court mentioned
 - Cumulative Voting
 - Limited Voting
 - Ranked Choice Voting

Threshold of Exclusion

- The percentage of the vote that will guarantee the winning under the most unfavorable circumstances.
- Formula: $1/(1 + \text{number of seats available})$:
 - vote-for-3, the threshold is $1/(1+3) = 25\%$
 - Vote-for-5, the threshold is $1/(1+5) = 16.7\%$
 - vote-for-7, the threshold of is $1/(1+7) = 12.5\%$

Lawful Alternative Electoral System

- All are “at-large” systems.
- **The Supreme Court did not hold one of the alternative systems protects from a CVRA lawsuit.**
- The Supreme Court did hold that undiluted voting strength could be measured by potential to elect in an alternative system.

Lawful Alternative Electoral System

- If implementation of an alternative system impairs the ability of protected class voters to elect candidates of choice, the City remains exposed under the CVRA.
 - Threshold of Exclusion Challenge: In Glendale, Latinos constitute ~ 17% of eligible voters.
- Not so with single-member districts: the CVRA does not apply even if protected class voters are unsuccessful in electing chosen candidates .

Questions?