



Overview of the California Voting Rights Act

Background and Overview of Potential
Process for Changing to District-Based
Elections

10.3.18

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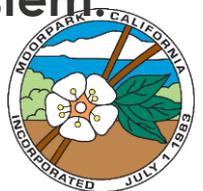
Background

- Since the City's incorporation in 1983, Councilmembers have been elected through "at-large" election system.
- Council candidates can reside anywhere in the City and are elected by the registered voters of the entire City.
- Office of Mayor is a separate, directly elected office.
- Office of Mayor became directly elected in Moorpark in 1988.



Background

- On August 29, 2018, City received a letter dated August 27, 2018 from an attorney on behalf of the “Southwest Voter Registration Project.”
- The letter claims the City's “at-large” elections violates the California Voting Rights Act (“CVRA”).
- Letter alleges that voting within Moorpark is racially polarized, resulting in minority vote dilution.
- The letter highlights the electoral losses of City Council candidates Ernesto Acosta in 1998, Bernardo Perez in 2002, and Jose Magdalano in 2008 as evidence of the inability of Latino voters to elect their chosen candidates.
- Threatens a lawsuit against the City if the City does not change from an “at-large” election system to a “district-based” election system.



Public Policy Implications of “district-based” versus “at-large” elections

- **Asserted benefits of a “district-based” election system:**
 - Each geographic area of the City is represented
 - Viewpoints that might not be citywide can be represented
 - Minority candidates (racial or political) may have a better opportunity to be elected
 - Running for City Council could be less expensive than a city-wide campaign
 - Each voter has a specific Councilmember to contact for assistance
 - Voter choice may be simplified with fewer offices and fewer candidates to choose from



Public Policy Implications (Cont.)

- **Asserted disadvantages of “district-based” election system:**
 - Councilmembers may represent only the interests of their district and not the whole City
 - Candidates may be elected with few votes
 - Councilmembers may have more divergent views, resulting in greater conflict with each other
 - District lines have to be reviewed and redrawn after each census potentially disrupting established Councilmember-constituent relationships
 - “Best qualified” or “interested” candidates may be concentrated in one district



Background about Law

- Despite these valid public policy implications, there are legal standards the City must consider that will affect the decision to transition or not transition to a “district-based” election system.
- Federal Voting Rights Act of 1965 ("FVRA")
 - Designed to address a variety of state actions designed to deny or abridge the right of citizens to vote and to have an opportunity to elect representatives of their choice.
 - Originally designed to protect minority voters and candidates in states and localities with a history of racial discrimination and barriers to voting.



Background about Law

- Successful FVRA plaintiff must prove THREE basic elements:
 1. Sufficiently large/geographically compact minority group to form a majority of the eligible voters in a single-member district;
 2. Minority group is politically cohesive; and
 3. “White bloc voting” is sufficient usually to prevent minority voters from electing candidates of their choice.
- If FVRA plaintiff proves these 3 basic elements:

Court then considers “totality of circumstances” to determine if minority voters have an equal opportunity to elect their chosen candidate in an at-large election system.



Background about Law

■ The CVRA:

- Expressly intended to make it easier for California plaintiffs to prove their case (historically California plaintiffs had a losing record under the FVRA).
- Eliminates "geographically compact" element.
- Purports to make proof under the "totality of the circumstances" test optional.
- Focus becomes on whether there has been "racially polarized voting."



What is “Racially Polarized” Voting?

- **“Racially polarized voting” is:**
 - Voting in which there is a difference in the choices of candidates preferred by voters in a protected minority class and the choices of candidates in the rest of the electorate.
 - Evidence as to whether the racially predominant voting group submerges the voting strength and preferences of a politically cohesive racial minority group.



What is “Racially Polarized” Voting? (Cont.)

- **The occurrence of racially polarized voting is determined by several factors including:**
 - **The extent to which candidates who are members of a protected class and who are preferred by the voters of the protected class, as determined by an analysis of voting behavior, have been elected.**
 - **Results of city elections in which at least one candidate is a member of a protected class.**
 - **Elections involving ballot measures or other electoral choices that affect the rights of the members of the protected class.**
 - **Proof of intent on the part of the voters or elected officials to discriminate against a protected class is not required.**



Effect of the CVRA

- Accordingly, a CVRA lawsuit is substantially more difficult to defend.
- Lower standards for a plaintiff to prevail in CVRA litigation.
- Every public entity defendant since the CVRA was enacted has either lost in court or settled.
 - Exception: one case dismissed after voters enacted district-based elections during the pending litigation
- Every government defendant ultimately forced to pay at least some portion of the plaintiffs attorney fees and costs.
- Range of awards: approximately \$400,000 to over \$4.5M.



Why is this issue coming up now?

- August 27, 2018 letter threatens costly litigation if City does not implement a district-based election system.
- Too late to affect 2018 election for City Council.
- If the City moves to district-based elections, it would only affect Council elections in 2020 and thereafter.
- Law provides a limited 45-day clock from the City's receipt of the letter to begin process and review options.
- There are alternatives to “district-based” elections such as cumulative voting that have been attempted by other cities.



Discussion

- If the City initiates the process of moving to “district-based” elections, the CVRA provides a limited “safe harbor” against litigation and a cap on plaintiffs attorneys fees if the City accomplishes steps in specified time periods.
- To take advantage of the safe harbor and attorneys fee cap, City Council would need to adopt the Resolution of Intent to initiate the transition to a district-based election system.
- This initial step (Resolution of Intention) has a deadline: needs to be done on or before October 13, 2018.



Limited Time Periods

- 45-day period to Initiate process or not by the adoption of the Resolution of Intention
- 90-day period to come up with plan, maps and adopt the ordinance establishing district-based elections
- During the 90-day period, there would be a multi-step process:
 - Two “public hearings” (community meetings) over a period of no more than 30 days;
 - Public invited to provide input regarding district composition;
 - One (or more) draft map(s) by City’s demographer;



Limited Time Periods (Cont.)

- Consideration of potential sequence of elections so that City Councilmembers would be elected in their districts at different times to provide for staggered terms of office;
- Then, City Council is required to hold at least two additional public hearings over a period of no more than 45 days; and
- Public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections.



Potential for Extension of Time

- **AB 2123 (effective 1/1/2019) provides opportunity for an additional 90-day extension.**
- **Extension is dependent on whether prospective plaintiff and the City reach an agreement.**
- **The extension is to the 90-day period for holding public hearing and drawing and adopting maps and not to the initial 45-day period to decide or not decide to initiate the process.**



Summary

- City has until October 13, 2018 to decide to take advantage of litigation safe harbor and attorneys fee cap.
- If it desires to do so, then by that date it must hold a special meeting and consider adoption of a Resolution to initiate the process of transitions of “district-based” elections.
- At that special meeting, City Council will need to weigh policy implications against legal risks.



Staff Recommendations

- Obtain direction from the City Council on whether a Special Meeting should be scheduled to further consider these issues.
- Special Meeting is recommended to be held on October 11, 2018.
- At the Special Meeting, the City Council will consider further information, hear from the public, and consider the adoption of a Resolution of Intent to transition to district-based elections.





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Moorpark City Council Meeting