

Date of Hearing: March 25, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 277 (Roger Hernández) – As Introduced February 11, 2015

**SUBJECT:** California Voting Rights Act of 2001.

**SUMMARY:** Provides that the California Voting Rights Act of 2001 (CVRA) applies to charter cities, charter counties, and charter cities and counties. Specifically, **this bill:**

- 1) Expressly provides that general law cities, general law counties, charter cities, charter counties, and charter cities and counties are "political subdivisions" that are subject to the CVRA.
- 2) Makes the following findings and declarations:
  - a) The dilution of votes of a protected class is a matter of statewide concern.
  - b) The provisions of the CVRA are reasonably related to the issue of vote dilution and constitute a narrowly-drawn remedy that does not unnecessarily interfere with municipal governance.
  - c) It is the intent of the Legislature that the CVRA shall apply to charter cities, charter counties, and charter cities and counties.
  - d) It is further the intent of the Legislature in enacting this bill to codify the holding in *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781.

**EXISTING LAW:**

- 1) Prohibits, pursuant to the CVRA, an at-large method of election from being imposed or applied in a political subdivision in a manner that impairs the ability of a protected class of voters to elect a candidate of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.
- 2) Defines "political subdivision," for the purposes of the CVRA, as a geographic area of representation created for the provision of government services, including, but not limited to, a city, a school district, a community college district, or other district organized pursuant to state law.
- 3) Defines "protected class," for the purposes of the CVRA, to mean a class of voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act (52 U.S.C. Sec. 10301 et seq.) (VRA).

- 4) Requires a court, upon finding that an at-large method of election violates the CVRA, to implement appropriate remedies, including the imposition of district-based elections, which are tailored to remedy the violation.
- 5) Permits any voter who is a member of a protected class and who resides in a political subdivision where a violation of the CVRA is alleged to file an action in the superior court of the county in which the political subdivision is located.
- 6) Permits a county or a city to provide for its own governance through the adoption of a charter by a majority vote of its electors voting on the question.
- 7) Requires a county charter to provide for a governing body of five or more members, elected by district, at-large, or at-large with a requirement that members reside in a district.
- 8) Permits a city charter to provide for the conduct of city elections. Grants plenary authority, subject to limited restrictions, for a city's charter to provide for the manner in which and the method by which municipal officers are elected.
- 9) Provides that a legally adopted city charter supersedes all laws inconsistent with that charter with respect to municipal affairs.
- 10) Permits a county and all cities within it to consolidate as a charter city and county. Provides that a charter city and county is both a charter city and a charter county, and provides that its charter city powers supersede conflicting charter county powers.

**FISCAL EFFECT:** None. This bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS:**

- 1) **Purpose of the Bill:** According to the author:

Assembly Bill 277 ensures that voters in charter cities are granted their fundamental rights and protections as guaranteed under Section 7 of Article I and Section 2 of Article II of the California Constitution.

There are 121 charter cities in California. Charter cities have authority over “municipal affairs,” (California Constitution, Article 11, Section 5) which supersedes state law in some areas, known as “municipal affairs.” This generally includes the conduct of municipal elections. However, when a matter is deemed to be of statewide concern, then state law may be applicable.

The recent case of *Jauregui v. Palmdale* determined that integrity in the municipal electoral process is a matter of statewide concern, therefore, state law that addresses an issue such as racially polarized voting applies regardless of charter status. AB 277 would codify that decision and clarify all residents of California have the same fundamental rights and protections.

- 2) **California Voting Rights Act of 2001:** SB 976 (Polanco), Chapter 129, Statutes of 2002, enacted the CVRA to address racial block voting in at-large elections for local office in California. In areas where racial block voting occurs, an at-large method of election can dilute the voting rights of minority communities if the majority typically votes to support candidates that differ from the candidates who are preferred by minority communities. In such situations, breaking a jurisdiction up into districts can result in districts in which a minority community can elect the candidate of its choice or otherwise have the ability to influence the outcome of an election. Accordingly, the CVRA prohibits an at-large method of election from being imposed or applied in a political subdivision in a manner that impairs the ability of a protected class of voters to elect the candidate of its choice or to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class.

The first case brought under the CVRA was filed in 2004, and the jurisdiction that was the target of that case—the City of Modesto—challenged the constitutionality of the law. Ultimately, the City of Modesto appealed that case all the way to the United States Supreme Court, which rejected the city's appeal in October 2007. The legal uncertainty surrounding the CVRA may have limited the impacts of that law in the first five years after its passage.

Since the case in Modesto was resolved, however, many local jurisdictions have converted or are in the process of converting from an at-large method of election to district-based elections due to the CVRA. In all, more than 140 local government bodies have transitioned from at-large to district-based elections since the enactment of the CVRA. While some jurisdictions did so in response to litigation or threats of litigation, other jurisdictions proactively changed election methods because they believed they could be susceptible to a legal challenge under the CVRA, and they wished to avoid the potential expense of litigation.

- 3) **Charter City and Charter County Autonomy & the City of Palmdale:** As noted above, the California Constitution gives cities and counties the ability to adopt charters, which give those jurisdictions greater autonomy over local affairs.

The Constitution provides that a county's charter may provide for members of the governing board of the county (commonly known as the board of supervisors) to be elected by district, at-large, or at-large with a requirement that members reside in a district. Notwithstanding these options, all 58 California counties currently elect members to the boards of supervisors by district. As a result, this bill is unlikely to have a significant effect on the governance of counties, although it could make a county subject to liability under the CVRA if a charter county chose to move to an at-large method of election for county supervisors in the future.

The Constitution also gives a great deal of autonomy to charter cities over the rules governing the election of municipal officers, granting "plenary authority," subject to limited restrictions, for a city charter to provide "the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees... shall be elected or appointed." The Constitution further provides that properly adopted city charters "shall supersede all laws inconsistent" with the charter.

Given the autonomy granted by the California Constitution to charter cities and charter

counties, questions have been raised concerning whether the CVRA is applicable to those jurisdictions.

In July 2013, the Superior Court of the State of California for the County of Los Angeles, Central District, found that the City of Palmdale's at-large method for electing city council members violated the CVRA (*Jauregui v. City of Palmdale* (2013) Case BC 483039). In the case, in addition to denying that its elections violated the CVRA, the City of Palmdale argued that the CVRA was unconstitutional as applied to the city because it is a charter city, and Article XI, Section 5(b) of the California Constitution gives charter cities plenary authority to determine the manner and method in which their voters elect municipal officers. The court disagreed, finding that "state law regulating a matter of statewide concern preempts a conflicting local ordinance if the state law is narrowly tailored to limit its incursion into local interest," and concluding that "[t]here can be no question that the dilution of minority voting rights is a matter of statewide concern."

The City of Palmdale appealed to the California Court of Appeals, Second District, Division Five. In its appeal, Palmdale again argued that, as a charter city, it was not subject to the provisions of the CVRA. The appellate court disagreed, finding that the CVRA addresses an issue of statewide concern, is narrowly tailored to avoid unnecessary interference in municipal governance, and is reasonably related to the resolution of statewide concerns of the right to vote, equal protection, and the integrity of elections (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781). Palmdale appealed to the California Supreme Court, and in August of last year, the Supreme Court denied Palmdale's request to hear the case.

By explicitly providing that charter cities, charter counties, and charter cities and counties are subject to the provisions of the CVRA, this bill would codify the appellate court's ruling in *Jauregui v. City of Palmdale*.

4) **Arguments in Support:** In support of this bill, Californians for Electoral Reform writes:

By codifying [the] holding [in *Jauregui v. City of Palmdale*], [AB 277] will make it easier for plaintiffs in CVRA lawsuits to achieve timely settlements with defendant jurisdictions, and not have time wasted on needless litigation as to whether or not the CVRA applies in such cases.

In addition, by making it clearer that the CVRA applies to charter cities, counties, and cities and counties, it is our hope that they will be more likely to consider proportional and semi-proportional non-district remedies, such as single transferrable vote, cumulative voting, and limited voting, as settlement options.

5) **Technical Amendments Suggested:** Last summer, the federal Office of the Law Revision Counsel reorganized various provisions of federal law relating to voting and elections pursuant to an "editorial reclassification" under which provisions of law are relocated from one place to another in the code without substantive change. As part of that reorganization, the provisions of the federal VRA were moved to a different area of federal law.

This bill amends an existing provision of state law that includes outdated cross-references to

the federal VRA. In order to correct those outdated cross-references, committee staff recommends the following technical amendments to this bill:

On page 3, lines 9-10, strike out "42 U.S.C. Sec. 1973 et seq." and insert:

52 U.S.C. Sec. 10301 et seq.

On page 3, line 13, strike out "42 U.S.C. Sec. 1973 et seq." and insert:

52 U.S.C. Sec. 10301 et seq.

On page 3, line 19, strike out "42 U.S.C. Sec. 1973 et seq." and insert:

52 U.S.C. Sec. 10301 et seq.

- 6) **Related Legislation:** AB 182 (Alejo), which is pending in this committee, expands the CVRA to allow challenges to district-based elections to be brought under the CVRA, as specified.

AB 278 (Roger Hernández), which is also being heard in this committee today, requires cities with a population of 100,000 or more, as specified, to elect members of the legislative body by district.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Californians for Electoral Reform

**Opposition**

None on file.

**Analysis Prepared by:** Ethan Jones / E. & R. / (916) 319-2094