

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 1365 (Padilla) – As Amended: June 16, 2014

SENATE VOTE: 23-11

SUBJECT: California Voting Rights Act of 2001.

SUMMARY: Expands the California Voting Rights Act of 2001 (CVRA) to allow challenges to district-based elections to be brought under the CVRA, as specified. Specifically, this bill:

- 1) Prohibits, pursuant to the CVRA, district-based elections from being imposed or applied in a manner that impairs the ability of a protected class of voters to elect candidates of its choice, or its ability to influence the outcome of an election, as the result of the dilution or abridgement of the rights of voters who are members of a protected class.
- 2) Provides that the fact that a district-based election was imposed on a political subdivision as a result of an action filed pursuant to the CVRA shall not be a defense to an action alleging that the district-based elections violate the provisions of this bill.
- 3) Requires a court, upon finding that a political subdivision's district-based elections violate this bill, to implement appropriate remedies that are tailored to remedy the violation and that are guided in part by the views of the protected class.
 - a) Requires the court to implement an effective district-based elections system that provides the protected class the opportunity to elect candidates of its choice from single-member districts. Provides that if no such system is possible, the court shall implement a single-member district-based election system that provides the protected class the opportunity to join in a coalition of groups to elect candidates of their choice. Permits a court to implement additional remedies, including those outlined below.
 - b) Requires a court, if the remedies outlined above in (a) are not legally viable, to implement other appropriate remedies, including increasing the size of the governing body; issuing an injunction to delay an election; or requiring an election to be held on the same day as a statewide election.
- 4) Provides that if the parties to an action brought under this bill agree to settle a dispute, the parties shall consider the remedies provided for in this bill when negotiating a settlement agreement. Provides that this provision does not limit the remedies available in out-of-court settlements.
- 5) States that the intent of the Legislature in enacting this bill is to address ongoing vote dilution and discrimination in voting as matters of statewide concern, in order to enforce the fundamental rights guaranteed to California voters under the California Constitution. Requires the provisions of this bill to be liberally construed in furtherance of this legislative

intent to eliminate minority vote dilution.

- 6) Contains a severability clause.

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 "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 (42 U.S.C. Sec. 1973 et seq.) (VRA).
- 3) Provides that a violation of the CVRA may be 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. Provides that elections conducted prior to the filing of an action are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.
- 4) Provides that 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. Provides that one circumstance that may be considered when determining whether a violation of the CVRA exists 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.
- 5) Provides that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, but may be a factor in determining an appropriate remedy.
- 6) Provides that proof of intent on the part of voters or elected officials to discriminate against a protected class is not required to find a violation of the CVRA.
- 7) 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.
- 8) 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.

- 9) Permits a prevailing plaintiff party in an action brought pursuant to the CVRA to recover reasonable attorney's fees and litigation expenses, including, but not limited to, expert witness fees and expenses as part of the costs. Prohibits a prevailing defendant party from recovering any costs unless the court finds the action to be frivolous, unreasonable, or without foundation.

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

COMMENTS:

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

California is blessed to have the most diverse population in US. One-quarter of California's population are immigrants who come from across the globe. In addition, 200 unique languages are spoken here. The 2010 census made it clear – diversity will continue to be a trend far into California's future.

Our diversity is an asset that comes with great responsibility for policymakers. Protecting the rights of minorities and ensuring equal and equitable opportunities, must be a priority. Thirteen years ago, California took the lead in protecting the voting rights of our diverse population with passage of the California Voting Rights Act. The Act sought to end the negative impact that at-large elections have on voter turnout and equitable representation.

The result is that dozens of school districts, community college districts and cities have moved or are moving to district based elections. However, once a local government adopts district based elections, voters lose the protections of the California Voting Rights Act.

Nothing in state law protects minority voters from poorly drawn districts. Poorly drawn districts can have the same negative impact on voter turnout and equitable representation as at-large elections. Dividing up minority populations or cramming them into only one district can weaken their ability to even influence an election. SB 1365 will create a process, building on the current California Voting Rights Act, for the public to challenge poorly drawn district elections.

- 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, approximately 130 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.

This bill expands the CVRA to permit challenges to be brought to district-based election systems that impair the ability of a protected class of voters to elect the candidates 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. Challenges to district-based election systems under the CVRA would be subject to the same standards and procedures that currently apply to challenges to at-large election systems that are brought under the CVRA. As is the case with challenges to at-large election systems under the CVRA, prevailing plaintiff parties that bring successful challenges to district-based election systems under this bill would be able to recover attorney's fees, including expert witness fees and expenses. Prevailing defendant parties are not able to recover costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

The primary difference between challenges brought under the CVRA to at-large elections and challenges brought to district-based elections under this bill are the remedies that would be available when a court finds that a violation exists. While existing law does not explicitly limit the remedies that a court may consider in response to an at-large election system that violates the CVRA, it does state that the imposition of district-based elections may be an appropriate remedy for such a violation. By contrast, if a district-based election system were found to violate the CVRA under the provisions of this bill, the court would be required to implement a single-member district-based election system as a remedy, unless such a remedy was not legally viable. In situations where the court finds that such a remedy is not viable, this bill requires the court to consider other appropriate remedies, including increasing the size of the governing body, delaying an election, or changing the dates of elections in the political subdivision.

- 3) Federal Voting Rights Act of 1965 & Shelby County v. Holder: The 15th Amendment to the U.S. Constitution provides, in part, that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous conditions of servitude." Additionally, the 15th Amendment authorizes Congress to enact legislation to enforce its provisions. The 15th Amendment was ratified in February 1870.

In 1965, Congress determined that state officials were failing to comply with the provisions

of the 15th Amendment. Congressional hearings found that litigation to eliminate discriminatory practices was largely ineffective because state and local jurisdictions would institute new discriminatory practices to replace any such practices that were struck down in court. As a result, Congress passed and President Johnson signed the VRA. The VRA, among other provisions, prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure" from being imposed by any "State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color."

Section 2 of the VRA is a nationwide prohibition against voting practices and procedures, including redistricting plans and at-large election systems, poll worker hiring, and voting registration procedures, that discriminate on the basis of race, color, or membership in a language minority group. Section 2 allows the U.S. Attorney General (AG), as well as affected private citizens, to bring lawsuits in federal court to challenge practices that may violate the VRA. Section 4 of the VRA sets the criteria for determining whether a jurisdiction is covered under certain provisions of the VRA, including the requirement for review of changes affecting voting under Section 5. Section 5 of the VRA requires certain states and covered jurisdictions to receive approval for any changes to law and practices affecting voting from the U.S. Department of Justice (DOJ) or the U.S. District Court of the District of Columbia to ensure that the changes do not have the purpose or effect of "denying or abridging the right to vote on account of race or color." The requirement to obtain approval under Section 5 is commonly referred to as a "preclearance" requirement.

While much of the VRA is permanent, certain special provisions of the VRA are temporary, including Section 5. When the VRA was enacted, Section 5 was scheduled to expire in five years. Subsequently, Congress extended those provisions for another five years in 1970, an additional seven years in 1975, and an additional 25 years in 1982, and again for an additional 25 years in 2006. As a result, Section 5 currently is scheduled to expire in 2031.

In April 2010, Shelby County in Alabama filed suit in the U.S. District Court for the District of Columbia challenging the constitutionality of Section 5 of the VRA, and of the coverage formulas contained in Section 4(b) of the VRA. Because the State of Alabama was covered under the preclearance requirements of Section 5, Shelby County was also covered as a political subdivision of Alabama. In the lawsuit, Shelby County contends that Congress exceeded its authority under the 15th Amendment and thus violated the 10th Amendment and Article IV of the U.S. Constitution when it voted to reauthorize Section 5 without changing or updating the formulas that determined which jurisdictions were covered under Section 5. The District Court rejected Shelby County's arguments, and upheld the constitutionality of the Section 5 reauthorization and the coverage formulas contained in Section 4(b). On appeal, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the ruling of the District Court, and Shelby County subsequently appealed to the U.S. Supreme Court.

On June 25, 2013, the U.S. Supreme Court, in Shelby County v. Holder, held that the coverage formula in Section 4(b) of the VRA is unconstitutional and can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5 of the VRA. The Court stated that although the formula was rational and necessary at the time of its enactment, it is no longer responsive to current conditions. The Court, however, did not strike down Section 5, which contains the preclearance conditions. Without Section 4(b), however, no

jurisdiction will be subject to Section 5 preclearance unless Congress enacts a new coverage formula.

The effect of the Shelby County decision is that the jurisdictions identified by the coverage formula in Section 4(b) no longer need to seek preclearance from the U.S. AG or the U.S. District Court for the District of Columbia before implementing new voting changes, unless they are covered by a separate court order entered under Section 3(c) of the VRA.

All or specific portions of the following states were required to have their voting changes precleared before the U.S. Supreme Court decision in Shelby: Alabama, Alaska, Arizona, Florida, Georgia, Louisiana, Michigan, Mississippi, New Hampshire, New York, North Carolina, South Carolina, South Dakota, Texas, and Virginia. Also included were the California counties of Kings, Monterey, and Yuba. Merced County previously was subject to the preclearance requirement, but it successfully bailed out from Section 5 coverage in 2012 through a court approved consent decree negotiated with the U.S. DOJ.

According to the U.S. DOJ, the ruling in Shelby County does not affect Section 3(c) of the VRA. Jurisdictions covered by a preclearance requirement pursuant to court orders under Section 3(c) remain subject to the terms of those court orders. Additionally, the Supreme Court's decision states that Section 2 of the VRA, which prohibits discrimination in voting based on race or language minority status, and which applies on a permanent nationwide basis, is unaffected by the decision. Likewise, other provisions of the VRA that prohibit discrimination in voting remain in full force and effect, as do other federal laws that protect voting rights, including the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act, and the Help America Vote Act.

- 4) Consolidation Issues and Los Angeles County: Existing law requires all state, county, municipal, district, and school district elections that are held on a statewide election date to be consolidated with the statewide election, except that the Los Angeles County Board of Supervisors is allowed to deny a request for consolidation of an election with the statewide election if the voting system used by the county cannot accommodate the additional election. This unique provision allowing Los Angeles County to deny consolidation requests was created through the passage of SB 693 (Robbins), Chapter 897, Statutes of 1985, in response to attempts by a number of cities in Los Angeles to move their municipal elections to the same day as statewide elections. Los Angeles County sought the ability to deny consolidation requests because its voting system could accommodate only a limited number of contests at each election, and the county was concerned that the move by cities to hold their elections at the same time as the statewide election would exceed the capacity of their voting system. Los Angeles County still uses a variant of the voting system that it used in 1985, though the county is currently in the planning and design stage for developing and transitioning to a new voting system. One of the principles that the county has articulated to guide the development of its new voting system is having a system that has "sufficient technical and physical capacity to accommodate...consolidation of elections with local districts and municipalities." That voting system, however, is not expected to be available for use countywide before 2018.

Because of the capacity limitations of Los Angeles County's voting system, the county has denied requests from various local governmental bodies in the county that have sought to

hold their elections at the same time as—and to have their elections consolidated with—statewide elections. In fact, in April 2013, Los Angeles County denied requests from six school districts and a water district in the Santa Clarita Valley to hold their elections at the same time as statewide elections. According to an article in the Los Angeles Times, those districts were seeking to move the dates of their elections in an attempt to improve voter participation and to avoid possible liability under the CVRA.

This bill provides, as one potential remedy for a violation of its provisions, that a court may require a jurisdiction to hold its elections on the same day as a statewide election. Until Los Angeles County replaces its voting system and is able to accommodate a larger number of requests to consolidate elections with the statewide election, such a court order could force a local jurisdiction in Los Angeles County to hold its elections on the same day as a statewide election, but not have that election be consolidated with the statewide election. When two elections are held on the same day, but are not consolidated, those elections are commonly referred to as "concurrent" elections. When concurrent elections are conducted, voters who are voting in both elections have separate ballots for each election, and can have separate polling locations for each election. As a result, concurrent elections can cause voter confusion, and otherwise can create challenges for voters, candidates, and election officials.

If this bill results in local jurisdictions in Los Angeles being ordered to hold their elections on the same day as a statewide election, those jurisdictions could be forced to hold concurrent elections, rather than having their elections consolidated with the statewide election. Such a result may minimize the benefits of changing the election date.

- 5) Potential Conflicts with Existing Law: This bill permits a court, upon finding that a district-based election system violates the provisions of the CVRA, to implement remedies in addition to implementing a redistricting plan, including increasing the size of the governing body, issuing an injunction to delay an election, and requiring an election to be held on the same day as a statewide election. Depending on the type of jurisdiction in question, some or all of these options may conflict with other existing provisions of state law governing these subjects. For instance, existing law prescribes the number of city council members that may be elected by or from districts.
- 6) Coalition of Groups and Author's Amendment: This bill permits a court to implement, as an appropriate remedy, a single-member district-based election system that provides a protected class the opportunity to join with a coalition of groups to elect candidates of their choice. Neither this bill nor existing law defines "coalition of groups" for the purpose of implementing this provision. To address this issue, the author proposes to amend this bill to replace the phrase "coalition of groups" with the phrase "coalition of two or more protected classes."
- 7) Related Legislation: AB 280 (Alejo), which is pending in the Senate Elections & Constitutional Amendments Committee, prohibits specified changes to elections practices and procedures from being made in certain jurisdictions unless those jurisdictions demonstrate to the Secretary of State or the superior court that the changes are not likely to result in a discriminatory effect on the participation of voters from any racial or ethnic group that constitutes at least 20 percent of the total citizen voting-age population in the jurisdiction. AB 280 was gutted-and-amended in the Senate, so the current contents of that

bill have not been considered by this committee or the Assembly.

AB 2715 (Hernández), which was approved by this committee on a 5-2 vote, requires cities with a population of 100,000 or more to elect city council members by district, instead of at-large, beginning January 1, 2017. AB 2715 was held on the Assembly Appropriations Committee's suspense file.

AB 1440 (Campos), which was approved by this committee on a 7-0 vote and by the Assembly on a 77-0 vote, requires any political subdivision that is switching from an at-large method of election to a district-based method of election to hold at least two public hearings on the proposed district boundaries prior to adopting those boundaries, among other provisions. AB 1440 is pending in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (co-sponsor)
Asian Americans Advancing Justice—Los Angeles (co-sponsor)
Lawyers' Committee for Civil Rights of the San Francisco Bay Area (co-sponsor)
Mexican American Legal Defense and Educational Fund (co-sponsor)
National Association of Latino Elected and Appointed Officials Educational Fund (co-sponsor)
California Latino Legislative Caucus
League of Women Voters of California
Secretary of State Debra Bowen
Service Employees International Union, California State Council

Opposition

None on file.

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