No. S263972

In the

Supreme Court

of the

State of California

Pico Neighborhood Association, *et al.,*
Plaintiffs and Petitioners,
v.
City of Santa Monica,
Defendant and Respondent,

PETITIONERS' MOTION FOR JUDICIAL NOTICE; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KEVIN SHENKMAN; AND [PROPOSED] ORDER THEREON

After a Decision of the Court of Appeal
Second Appellate District, Division Eight
Case No. BC295935 (DEPUBLISHED)

Appeal from the Superior Court of Los Angeles
Case No. BC616804
Honorable Yvette M. Palazuelos

Morris J. Baller, Of Counsel (SBN 048928)
mballer@gbdhlegal.com
Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
Anne P. Bellows (SBN 293722)
abellows@gbdhlegal.com
Ginger L. Grimes (SBN 307168)
ggrimes@gbdhlegal.com
GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
Oakland, CA 94612
Tel: (510) 763-9800 | Fax: (510) 835-1417

Kevin I. Shenkman (SBN 223315)
kshenkman@shenkmanhughes.com
Mary R. Hughes (SBN 222662)
mrhughes@shenkmanhughes.com
Andrea A. Alarcon (SBN319536)
aalarcon@shenkmanhughes.com
SHENKMAN & HUGHES
28905 Wright Road
Malibu, CA 90265
Tel: (310) 457-0970

Robert Rubin (SBN 85084)
robertrubinsf@gmail.com
LAW OFFICE OF ROBERT RUBIN
237 Princeton Avenue
Mill Valley, CA 94941-4133
Tel: (415) 298-4857

R. Rex Parris (SBN 96567)
Ellery S. Gordon (SBN 316655)
PARRIS LAW FIRM
43364 10th Street West
Lancaster, California 93534
Tel: (661) 949-2595

Milton C. Grimes (SBN 59437)
LAW OFFICES OF MILTON C. GRIMES
3774 West 54th Street
Los Angeles, California 90043
Tel: (323) 295-3023

Attorneys for Petitioners

MOTION FOR JUDICIAL NOTICE

Petitioners Pico Neighborhood Association and Maria Loya respectfully request that this Court take judicial notice, pursuant to Evidence Code Sections 452 and 459, and California Rules of Court, rules 8.520(g) and 8.252(a), of the legislative record of the California Voting Rights Act ("CVRA"), compiled by LRI History LLC. The legislative record is attached as Exhibit A to the accompanying declaration of Kevin Shenkman, and the authenticity of that exhibit is established through that same declaration.

The Court may take judicial notice of the legislative record of the CVRA, pursuant to California Rules of Court 8.520(g) and 8.252(a). That legislative record:

(A) is relevant to the interpretation of the CVRA, and specifically what must be shown to establish vote dilution under the CVRA;

(B) was not presented to the trial court; however, portions of the legislative record were referenced in arguments to the trial court and ultimately in the trial court's Statement of Decision, and the legislative record was presented to the Court of Appeal below, though that court does not appear to have ruled on the request to take judicial notice of the legislative record even though it was unopposed;

(C) is subject to judicial notice under Evidence Code 452(a), (c) and (h), as confirmed by the many courts that have taken judicial notice of legislative records, including those compiled by LRI History LLC (See, e.g., *Planning and Conservation League v. Dept. of Water Resources* (1998) 17 Cal.4th 264, 271 fn. 4; *Pacific Gas & Electric Co. v. Hart High-Voltage Apparatus Repair & Testing Co., Inc.* (2017) 18 Cal.App.5th 415, 425-26 [taking judicial notice of LRI History materials].; *People v. Snyder* (2000) 22 Cal.4th 304, 315, n. 5; *People v. Ansell* (2001) 25 Cal.4th 868, 881 fn. 20; and,

(D) does not relate to proceedings occurring after the judgment that is the subject of this appeal.

Dated: May 12, 2021

Respectfully submitted,

Shenkman & Hughes

/s/ Kevin Shenkman

Kevin Shenkman

Attorneys for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

As this Court has recognized in several cases, the legislative history of a statute can inform the proper interpretation of that statute. (See, e.g. *People v. Snyder* (2000) 22 Cal.4th 304, 308 ["neither the language of section 83116.5 nor its legislative history supports the Court of Appeal's interpretation."]; *Meza v. Portfolio Recovery Associates LLC* (2019) 6 Cal.5th 844, 859 ["The legislative history of section 98 corroborates that the statute's language ..."].) Through this motion, Petitioners seek to have this Court take judicial notice of the legislative record of Senate Bill 976 (2001-02), which was signed into law and became known as the California Voting Rights Act ("CVRA," Elec. Code §§ 14025-14032). Amici Curiae Senator Richard Polanco (Ret.) and Palmdale Councilmembers Juan Carrillo, Richard Loa and Austin Bishop requested that the Court of Appeal below take judicial notice of that legislative record. Though that request was unopposed, it appears that court never actually ruled on the request for judicial notice. Therefore, while it may already be part of the record before this Court, Petitioners seek judicial notice of the legislative record now out of an abundance of caution.[1]

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[1] On page 36 of their Opening Brief, Petitioners cite to, and quote from, the July 1, 2002 Enrolled Bill Memorandum of SB 976, which was part of Exhibit A to the Motion for Judicial Notice of Amici Curiae Senator Polanco, et al. That Enrolled Bill Memorandum can be found at page 74 of the legislative record compiled by LRI History LLC and attached as Exhibit

LRI History LLC, a respected source for California legislative history, has scanned 489 pages of files from a dozen file folders. They contain not only staff reports for the various committees, but statements by the principal legislative author of Senate Bill 976, Senator Richard Polanco, committee worksheets and other materials, committee and roll call votes, endorsement letters by outside organizations, and drafts of the bill and amendments to it.

California courts have taken judicial notice of legislative records compiled by LRI History LLC. (See, e.g., *Pacific Gas & Electric Co. v. Hart High-Voltage Apparatus Repair & Testing Co., Inc*. (2017) 18 Cal.App.5th 415, 425-26 [taking judicial notice of LRI History materials].) Likewise, this Court has repeatedly recognized that legislative records are subject to judicial notice. (See, e.g., *Planning and Conservation League v. Dept. of Water Resources* (1998) 17 Cal.4th 264, 271 fn. 4 ["We take judicial notice of the legislative history materials supplied by DWR."], citing Evid. Code, §§ 452, 459; *People v. Snyder* (2000) 22 Cal.4th 304, 315, fn. 5 ["We take judicial notice of … the legislative history material of section 83116.5, documents we typically consult as interpretive aids in these circumstances."] and fn. 9 ["We grant the FPPC's request to take

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A to the accompanying declaration of Kevin Shenkman. For ease of reference, page numbers have been added to Exhibit A to the declaration of Kevin Shenkman in the bottom right corner of each page – "Ex. A - ###."

judicial notice of this legislative history material."], citing Evid. Code § 452 subd. (c); *People v. Ansell* (2001) 25 Cal.4th 868, 881 fn. 20.)

As more fully discussed in Petitioners' Opening Brief (pp. 13, 20-21, 36-37, 39), the legislative record is relevant to the proper interpretation of the CVRA. Specifically, the legislative record supports Petitioners' view that the Legislature intended what it said in the text of the CVRA: 1) that a violation of the CVRA "is established if it is shown that racially polarized voting occurs in [specified] elections"; and 2) "[t]he fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of [the CVRA]." (Elec. Code 14028(a) and (c).) The legislative record also squarely contradicts the view of the Court of Appeal below (and now Defendant) that to establish "dilution" under the CVRA a plaintiff must show that a minority community is geographically compact enough to comprise the majority (or "near-majority") of voters in a single-member district.

The legislative record of Senate Bill 976 is properly subject to judicial notice, and bears significantly on the issue certified for review. Therefore, this Court should grant judicial notice of the legislative record compiled by LRI History.

Dated: May 12, 2021

Respectfully submitted,

Shenkman & Hughes

/s/ Kevin Shenkman
Kevin Shenkman

Attorneys for Petitioners

DECLARATION OF KEVIN SHENKMAN

I, Kevin Shenkman, declare as follows:

I am a partner with the law firm Shenkman & Hughes, counsel for the Pico Neighborhood Association and Maria Loya in this case. I am authorized to practice law in the State of California and submit this declaration in support of the Petitioners' motion for judicial notice. What I have set out in this declaration is based on my personal knowledge, unless stated on information and belief. If called to testify about the facts set out below, I could and would do so competently.

1. Attached to this declaration as **Exhibit A** is the legislative record of Senate Bill 976, introduced in 2001 and signed into law by Governor Davis in 2002. The attached legislative record was compiled by LRI History LLC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Malibu, California on this 12th day of May 2021.

/s/ Kevin Shenkman
Kevin Shenkman

EXHIBIT A

LEGISLATIVE HISTORY

CALIFORNIA

STATUTES OF 2002

CHAPTER 129

SENATE BILL 976

LRI HISTORY LLC

LRI HISTORY LLC
PO BOX 2166, PLACERVILLE, CA 95667
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM

Bill Versions

SOURCE:
OFFICIAL LEGISLATIVE ONLINE DATABASE

SENATE BILL No. 976

Introduced by Senator Polanco

February 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as introduced, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass municipal areas of representation within the state. With respect to these municipal areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that a municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of a registered voter to vote on account of membership in a minority race, color or language group.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a municipal political subdivision. It would provide that an intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) ''At-large method of election'' means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.

(b) ''District-based election'' means a method of electing members to the governing body of a municipal political subdivision in which the candidate must reside within an election district that is a divisible part of the municipal political subdivision and is elected only by voters residing within that election district.

(c) ''Minority language group'' means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage.

(d) ''Municipal political subdivision'' means a geographic area of representation created for the provision of municipal government services, including, but not limited to, a city, a school district, a community college district, or other local district.

(e) ''Protected class'' means a class of voters who are members of a minority race, color or language group.

(f) ''Racially polarized voting'' means voting in which there is a consistent difference in the way voters of an identifiable class based on a minority race, color or language group vote and the way the rest of the electorate vote in a municipal political subdivision.

14027. A municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of any registered voter to vote on account of membership in a minority race, color or language group.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of a municipal political subdivision.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a municipal political subdivision that is the subject of an action based upon Section 14027.

(c) 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.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

14029. Upon a finding of a violation of Section 14027, the court shall implement appropriate remedies, including the imposition of district-based elections in place of at-large districts, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, at pages 48 and 49, as part of the costs. Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.

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AMENDED IN SENATE MAY 1, 2001

SENATE BILL No. 976

Introduced by Senator Polanco

February 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as amended, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass ~~municipal~~ areas of representation within the state. With respect to these ~~municipal~~ areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that ~~a municipal political subdivision may not be subdivided~~ *an at-large method of election, as defined, may not be imposed or applied* in a manner that results in ~~a denial~~ *the dilution* or abridgment of the right of ~~a registered voter to vote on account of membership in a minority race, color or language group~~ *registered voters who are members of a protected class, as defined, by impairing their ability to elect candidates of their choice or to influence the outcome of an election*.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a ~~municipal~~ political subdivision*, among other things*. It would provide that an

intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

~~(a) "At-large method of election" means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.~~

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) "District-based election" means a method of electing members to the governing body of a ~~municipal~~ political subdivision in which the candidate must reside within an election district that is a divisible part of the ~~municipal~~ political subdivision and is elected only by voters residing within that election district.

~~(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage.~~

~~(d) "Municipal political~~

(c) "Political subdivision" means a geographic area of representation created for the provision of ~~municipal~~ government services, including, but not limited to, a city, a school district, a community college district, or other~~ local district~~ *district organized pursuant to state law.*

~~(e)~~

(d) "Protected class" means a class of voters who are members of a minority race, color or language group, *as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).*

~~(f) "Racially polarized voting" means voting in which there is a consistent difference in the way voters of an identifiable class based on a minority race, color or language group vote and the way the rest of the electorate vote in a municipal political subdivision.~~

~~14027. A municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of any registered voter to vote on account of membership in a minority race, color or language group.~~

(e) "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgment of the rights of registered voters who are members of the protected class, as provided in Section 14028, by impairing their ability to elect candidates of their choice of their ability to influence the outcome of an election.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for

members of the governing body of ~~a municipal political subdivision~~ *political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.*

~~(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a municipal political subdivision that is the subject of an action based upon Section 14027.~~

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

(c) 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.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in

political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

14029. Upon a finding of a violation of Section 14027 *and Section 14028*, the court shall implement appropriate remedies, including the imposition of district-based elections ~~in place of at-large districts~~, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~at~~ *including* pages 48 and 49, as part of the costs. Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section of Article II of the California Constitution.

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98

AMENDED IN ASSEMBLY MARCH 18, 2002

AMENDED IN SENATE MAY 1, 2001

SENATE BILL No. 976

Introduced by Senator Polanco

February 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as amended, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that an at-large method of election, as defined, may not be imposed or applied in a manner that results in the dilution or abridgment of the right of registered voters who are members of a protected class, as defined, by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a political subdivision, among other things. It would provide that an intent to

Corrected 3-20-02—See last page. 97

discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees *and expenses* consistent with specified case law as part of the costs.

This bill would permit a member of a protected class to file an action pursuant to this bill under specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) ''At-large method of election'' means any of the following methods of electing members to the governing body of a political subdivision~~, and does not include any method of district-based elections~~:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) ''District-based ~~election''~~ *elections*'' means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) ''Political subdivision'' means 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.

(d) ''Protected class'' means a class of voters who are members of a ~~minority~~ 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.).

(e) ''Racially polarized voting'' means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgment of the rights of ~~registered~~ voters who are members of the protected class, as provided in Section 14028, by impairing their ability to elect candidates of their choice ~~of~~ *or* their ability to influence the outcome of an election.

14028. (a) A violation of Section 14027 is 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. *Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.*

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered *in determining a violation of Section 14027 and this section* 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 based on Section 14027 and this section. In multiseat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting*, or a violation of Section 14027 and this section*, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in ~~political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.~~ *political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.*

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 *and Section 14028*, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, including pages 48 and 49, *and litigation expenses including, but not limited to, expert witness fees and expenses* as part of the costs. ~~Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.~~ *Prevailing*

defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section *2* of Article II of the California Constitution.

14032. Any voter who is a member of the protected class and who resides in a political subdivision that is the subject of an action filed pursuant to Sections 14027 and 14028 may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

CORRECTIONS

Text — Page 3.

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AMENDED IN ASSEMBLY APRIL 9, 2002

AMENDED IN ASSEMBLY MARCH 18, 2002

AMENDED IN SENATE MAY 1, 2001

SENATE BILL No. 976

Introduced by Senator Polanco

February 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as amended, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that an at-large method of election, as defined, may not be imposed or applied in a manner that results in the dilution or abridgment of the right of registered voters who are members of a protected class, as defined, by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a political

subdivision, among other things. It would provide that an intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees and expenses consistent with specified case law as part of the costs.

This bill would permit a member of a protected class to file an action pursuant to this bill under specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) ''At-large method of election'' means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) ''District-based elections'' means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) ''Political subdivision'' means 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.

(d) ''Protected class'' means 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.).

(e) ''Racially polarized voting'' means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgment of the rights of voters who are members of the protected class, as ~~provided in Section 14028~~ *defined in Section 14026*, by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

14028. (a) A violation of Section 14027 is 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. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section 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 based on Section 14027 and this section. ~~In~~ *Elections in* multiseat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, including pages 48 and 49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of the protected class and who resides in a political subdivision that is the subject of an action filed pursuant to Sections 14027 and 14028 may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

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AMENDED IN ASSEMBLY JUNE 11, 2002

AMENDED IN ASSEMBLY APRIL 9, 2002

AMENDED IN ASSEMBLY MARCH 18, 2002

AMENDED IN SENATE MAY 1, 2001

SENATE BILL No. 976

Introduced by Senator Polanco

February 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as amended, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that an at-large method of election, as defined, may not be imposed or applied in a manner that results in the dilution or abridgment of the right of registered voters who are members of a protected class, as defined, by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

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This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a political subdivision, among other things. It would provide that an intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees and expenses consistent with specified case law as part of the costs.

This bill would permit a member of a protected class to file an action pursuant to this bill under specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) ''At-large method of election'' means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) ''District-based elections'' means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) ''Political subdivision'' means 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.

(d) ''Protected class'' means 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.).

(e) ''Racially polarized voting'' means voting in which there is a difference*, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.),* in the choice of candidates or other electoral choices that are preferred by voters in ~~the~~ *a* protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or ~~applied in a manner that results in the dilution or the abridgment of the rights of voters who are members of the protected class, as defined in Section 14026, by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.~~ *applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.*

14028. (a) A violation of Section 14027 is 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. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which

~~candidates are members~~ *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 ~~the~~ *a* protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section 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 based on Section 14027 and this section~~. Elections in multiseat at-large~~ *In multi-seat at-large election* districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of ~~the~~ *a* protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of ~~the~~ *a* protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable

attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~including pages 48 and 49~~ *48-49*, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of ~~the~~ *a* protected class and who resides in a political subdivision ~~that is the subject of an action filed pursuant to~~ *where a violation of* Sections 14027 and 14028 *is alleged* may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

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LRI HISTORY LLC
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM
(916) 442-7660

California Session Laws

SOURCE:
CALIFORNIA ASSEMBLY OFFICE OF THE CHIEF CLERK
OFFICIAL ONLINE DATABASE

Volume 1

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

2002

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, March 5, 2002
and General Election, November 5, 2002

General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature

2001–02 Regular Session
2001–02 Second Extraordinary Session
2001–02 Third Extraordinary Session

Compiled by
DIANE F. BOYER-VINE
Legislative Counsel

personal health records, shall apply to test results under this section and shall prevail over federal law if federal law permits.

(e) The test results to be reported to the patient pursuant to this section shall be recorded in the patient's medical record, and shall be reported to the patient within a reasonable time period after the test results are received at the offices of the health care professional who requested the test.

(f) Notwithstanding subdivisions (a) and (b), none of the following clinical laboratory test results and any other related results shall be conveyed to a patient by Internet posting or other electronic means:

(1) HIV antibody test.

(2) Presence of antigens indicating a hepatitis infection.

(3) Abusing the use of drugs.

(4) Test results related to routinely processed tissues, including skin biopsies, Pap smear tests, products of conception, and bone marrow aspirations for morphological evaluation, if they reveal a malignancy.

(g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code.

(h) Any third party to whom laboratory test results are disclosed pursuant to this section shall be deemed a provider of administrative services, as that term is used in paragraph (3) of subdivision (c) of Section 56.10 of the Civil Code, and shall be subject to all limitations and penalties applicable to that section.

(i) A patient may not be required to pay any cost, or be charged any fee, for electing to receive his or her laboratory results in any manner other than by Internet posting or other electronic form.

(j) A patient or his or her physician may revoke any consent provided under this section at any time and without penalty, except to the extent that action has been taken in reliance on that consent.

CHAPTER 129

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

[Approved by Governor July 9, 2002. Filed with Secretary of State July 9, 2002.]

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) ''At-large method of election'' means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) ''District-based elections'' means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) ''Political subdivision'' means 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.

(d) ''Protected class'' means 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.).

(e) ''Racially polarized voting'' means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

14028. (a) A violation of Section 14027 is 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. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) 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. One circumstance that may be considered in determining a violation of Section 14027 and this section 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 based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not

necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

CHAPTER 130

An act to amend Section 32657 of the Streets and Highways Code, relating to parking authorities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 9, 2002. Filed with
Secretary of State July 9, 2002.]

The people of the State of California do enact as follows:

SECTION 1. Section 32657 of the Streets and Highways Code is amended to read:

32657. (a) Three of the members first appointed shall be designated by the mayor, with the approval of the legislative body, to serve for terms of one, two, and three years, respectively, from a date specified by the mayor in their appointments, and two shall be designated to serve for terms of four years from that date. Thereafter, members shall be appointed for a term of four years. All vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his or her successor has been appointed and has qualified.

LRI HISTORY LLC
PO BOX 2166, PLACERVILLE, CA 95667
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM

Final History

SOURCE:
OFFICIAL LEGISLATIVE ONLINE DATABASE

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 976
AUTHOR : Polanco
TOPIC : Elections: rights of voters.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY
2002
July 9 Chaptered by Secretary of State. Chapter 129, Statutes of 2002.
July 9 Approved by Governor.
June 27 Enrolled. To Governor at 1 p.m.
June 24 Senate concurs in Assembly amendments. (Ayes 22. Noes 13. Page 4916.) To enrollment.
June 20 In Senate. To unfinished business.
June 20 Read third time. Passed. (Ayes 47. Noes 25. Page 6921.) To Senate.
June 12 Read second time. To third reading.
June 11 Read second time. Amended. To second reading.
June 10 From committee: Do pass as amended. (Ayes 8. Noes 4.)
Apr. 17 From committee: Do pass, but first be re-referred to Com. on JUD. (Ayes 5. Noes 1.) Re-referred to Com. on JUD.
Apr. 9 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Mar. 18 From committee with author's amendments. Read second time. Amended. Re-referred to committee. (Corrected March 20.)
Mar. 7 Hearing postponed by committee.
Feb. 15 To Coms. on E.,R. & C.A. and JUD.
Jan. 30 In Assembly. Read first time. Held at Desk.
Jan. 30 Read third time. Passed. (Ayes 24. Noes 7. Page 3313.) To Assembly.
2001
Aug. 28 Read second time. To third reading.
Aug. 27 From inactive file to second reading file.
June 6 Placed on inactive file on request of Senator Polanco.
May 30 Read third time. Refused passage. (Ayes 16. Noes 10. Page 1272.) Motion to reconsider made by Senator Polanco. Reconsideration granted.
May 7 Read second time. To third reading.
May 3 From committee: Do pass. (Ayes 5. Noes 3. Page 895.)
May 1 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Apr. 16 Hearing postponed by committee. Set for hearing May 2.
Apr. 11 Set for hearing April 18.
Mar. 15 To Com. on E. & R.
Feb. 26 Read first time.
Feb. 25 From print. May be acted upon on or after March 27.
Feb. 23 Introduced. To Com. on RLS. for assignment. To print.

LRI HISTORY LLC
PO BOX 2166, PLACERVILLE, CA 95667
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM

Online Materials

SOURCE:
OFFICIAL LEGISLATIVE ONLINE DATABASE

BILL ANALYSIS

SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT
Senator Don Perata, Chair

BILL NO: SB 976 HEARING DATE: 5/2/01
AUTHOR: POLANCO ANALYSIS BY: Darren Chesin
AMENDED: 5/1/01
FISCAL: NO

SUBJECT :

At large and district elections: rights of voters

BACKGROUND :

Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

The minority community was politically cohesive, in that minority voters usually supported minority candidates.

There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

PROPOSED LAW :

This bill would establish criteria in state law through which the validity of local at-large election systems can be challenged in court. Specifically, this bill does all of the following:

(a)Provides that a local political jurisdiction may not employ an at-large method of election if it results in the dilution or the abridgement of the rights of any registered voter who is a member of a minority race, color or language group, by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.

(b)Provides that a violation of this prohibition is established if it is shown that racially polarized voting occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the same jurisdiction.

(c)Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by the voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

(d)Specifies the methodology by which racially polarized

voting may be established.

(e)Specifies 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.

(f)States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(g)Delineates other factors that may be introduced as evidence in order to establish a violation.

(h)Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

COMMENTS :

1. According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

2. This bill establishes criteria when met, that would serve to prohibit the use of at-large elections in local jurisdictions. Unlike the preconditions established by the Supreme Court in Thornburg v. Gingles , this bill does not require that the minority community be geographically compact or concentrated. If a minority community is not sufficiently geographically compact to ensure that it can elect one of their members from a district, what is gained by eliminating the at-large election system?

3. Several bills seeking to promote the use of district-based elections over at-large elections have been pursued in the past. Last year, AB 8 (Cardenas) which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member trustee areas is best made at the local level, not by the state. AB 172 (Firebaugh) of 1999, which would have prohibited at-large elections for specified K-12 school districts, passed this committee but died in the Senate Committee on Education.

POSITIONS :

Sponsor: Joaquin Avila, former President, MALDEF; public interest attorney

Support: Mexican American Legal Defense and Educational Fund

Oppose: None received

BILL ANALYSIS

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

SB 976

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE : 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SUBJECT : Elections: rights of voters

SOURCE : Author

DIGEST : This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS : Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

CONTINUED

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the

federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the

dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

7. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a

prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

   C. One which combines at-large elections with district-based elections.

1. "District-based election" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

2. "Political subdivision" 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. "Protected class" as a class of voters who are members of a minority race, color or language group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

4. "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and

electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

Comments :

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

DLW:jk 5/8/01 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

BILL ANALYSIS

SENATE RULES COMMITTEE	SB 976
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE : 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR : 16-10, 5/30/01
AYES: Alarcon, Chesbro, Dunn, Escutia, Figueroa, Karnette, Kuehl, Murray, Peace, Polanco, Romero, Scott, Soto, Speier, Torlakson, Vincent
NOES: Ackerman, Brulte, Haynes, Johannessen, Knight, McClintock, McPherson, Morrow, Oller, Poochigian

SUBJECT : Elections: rights of voters

SOURCE : Author

DIGEST : This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS : Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

CONTINUED

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election

system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

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6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political

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4."Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

Comments :

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

DLW:jk 6/1/01 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** END ****

BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	SB 976

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE : 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
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3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political

process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

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Comments :

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

SUPPORT : (Verified 1/8/02)

Mexican American Legal Defense and Educational Fund

DLW:jk 1/8/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

BILL ANALYSIS

Date of Hearing: April 2, 2002

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS
John Longville, Chair
SB 976 (Polanco) - As Amended: March 18, 2002

SENATE VOTE : 24-10

SUBJECT : Elections: rights of voters.

SUMMARY : Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill :

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7)Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8)Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9)Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10)Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW :

1)Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2)Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT : None

COMMENTS :

1)Purpose of the Bill : According to the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

2)Legal History : In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

a) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

b) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

c) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles .

3)Impact of this Bill : In Gingles , the Supreme Court established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

4)Previous Legislation : AB 8 (Cardenas) of 1999, which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by this committee, but was amended to an unrelated subject in the Senate Education Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

None on file.

Opposition

None on file.

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

BILL ANALYSIS

Date of Hearing: April 16, 2002

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS
John Longville, Chair
SB 976 (Polanco) - As Amended: April 9, 2002

SENATE VOTE : 24-10

SUBJECT : Elections: rights of voters.

SUMMARY : Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill :

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7)Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8)Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9)Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10)Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW :

1)Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2)Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT : None

COMMENTS :

1)Purpose of the Bill : According to the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

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REGISTERED SUPPORT / OPPOSITION :

Support

None on file.

Opposition

None on file.

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

BILL ANALYSIS

Date of Hearing: June 4, 2002

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 976 (Polanco) - As Amended: April 9, 2002

SENATE VOTE : 24-10

SUBJECT : DISCRIMINATION: VOTING RIGHTS

KEY ISSUE : SHOULD THE STATE ENACT A VOTING RIGHTS ACT IN ORDER TO PROHIBIT AND REMEDY RACIALLY POLARIZED VOTING THAT ABRIDGES OR DILUTES THE RIGHT TO VOTE IN AT-LARGE ELECTION SYSTEMS?

SYNOPSIS

This bill, which was previously heard by the Elections, Reapportionment and Constitutional Amendments Committee, enacts a state voting rights act comparable to the federal voting rights act in order to address racial block voting in at-large elections. Unlike prior unsuccessful measures concerned with at-large election methods, this bill would not mandate that any political subdivision convert an at-large election system to a single-member district system. Rather, this bill simply prohibits the abridgement or dilution of minority voting rights.

SUMMARY : Prohibits discrimination in at-large election districts. Specifically, this bill :

1) Provides that an at-large method of election may not be employed by a political subdivision of the state in a manner that results in the dilution or the abridgment of the rights of voters who are members of a protected race, color or language class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Prohibits racially polarized voting, as defined, in elections for members of the governing body of a political subdivision or in elections incorporating other electoral choices by the voters of a political subdivision.

3) Provides that a voter may sue to enforce and a court may remedy violations of the act.

EXISTING LAW :

1) Provides for political subdivisions and the election of public officials by all of the voters (at-large), or from districts formed within the political subdivision (district-based), or by some combination thereof. (Elections Code sections 10505, 10508, and 10523; Government Code Sections 58000-58200.)

2) Allows voters of the entire political subdivision to determine by local initiative whether public officials are elected by

divisions or by the entire political subdivision. (Elections Code Section 9102.)

FISCAL EFFECT : As currently in print, this bill is keyed non-fiscal.

COMMENTS : The author states that SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

This Bill Addresses Racially Polarized Voting if it Impairs the Right of Protected Groups to Influence the Outcome of an Election . This bill establishes a state Voting Rights Act much like the federal Voting Rights Act. Accordingly, it provides protections against the dilution or abridgement of the right to vote by members of the race, color and language groups recognized by the federal act. Restrictive interpretations given to the federal act, however, have put the cart before the horse by requiring that a plaintiff show that the protected class is geographically compact enough to permit the creation of a single-member district in which the protected class could elect its own candidate. This bill would avoid that problem.

In Thornburg v. Gingles, 478 U.S. 30 (1986), the court created three requirements that a plaintiff must establish to prove that an election system diluted the voting strength of a protected

minority group: (1) the minority community was politically cohesive, in that minority voters usually supported minority candidates; (2) there was racially polarized voting among the majority community, which usually voted for majority candidates rather than for minority candidates; and (3) the minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate. Prior to the Thornburg decision, there had been no requirement to show geographical compactness in order to show a violation of the federal voting rights act.

This bill would allow a showing of dilution or abridgement of minority voting rights by showing the first two Thornburg requirements without an additional showing of geographical compactness. Under other decisions of the U.S. Supreme Court, the geographical compactness or concentration of the protected class within a political subdivision is a factor in determining whether a district may be drawn to allow that class of voters to elect the candidate of their choice. This bill recognizes that geographical concentration is an appropriate question at the remedy stage. However, geographical compactness would not appear to be an important factor in assessing whether the voting rights of a minority group have been diluted or abridged by an at-large election system. Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).

This Bill Does Not Mandate the Abolition of At-large Election

Systems . Unlike prior legislation regarding at-large methods of election, discussed below, this bill does not mandate that any political subdivision convert at-large districts to single-member districts. Instead, this bill simply prohibits at-large election systems from being used to dilute or abridge the rights of voters in protected classes.

Author's Technical Amendments. To clarify that there is more than one protected class, the author properly wishes to change references to "the protected class" to "a protected class."

Similarly, to avoid confusion regarding the definition of racially polarized voting, the author appropriately suggests language referencing the standard under the federal voting rights act.
Thus, proposed section 14025(3) on page 3, line 7 ff, should

read as follows: (e) ''Racially polarized voting'' means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

In addition, to correct awkward syntax, the author prudently desires to reword section 14027 as follows: "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined in Section 14026."

To clarify the intention of section 14028(b), the author properly proposes that the bill be amended as follows: (b) The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate ~~s are~~ is a member ~~s~~ of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section 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 based on Section 14027 and this section. ~~In Elections~~ In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

The author also desires to correct the citation format in section 14030 to read: In any action to enforce Section 14027

and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~including pages~~ 48 ~~and~~ -49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Finally, to clarify the syntax of section 14032, the author wisely suggests that it should read as follows: "Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located."

Prior Related Legislation. AB 8 (Cardenas) of 1999 sought to eliminate the at-large election system within the Los Angeles Community College District. That bill was vetoed by the Governor, who stated in his veto message that the decision to create single-member districts was best made at the local level. AB 172 (Firebaugh) of 1999 proposed to prohibit at-large elections for specified K-12 school districts. After passing the Assembly, that bill was amended to an unrelated subject in the Senate.

REGISTERED SUPPORT / OPPOSITION :

Support

ACLU
Joaquin Avila, Esq.
Mexican American Legal Defense and Educational Fund (MALDEF)

Opposition

None on file

Analysis Prepared by : Kevin G. Baker / JUD. / (916) 319-2334

BILL ANALYSIS

SENATE THIRD READING
SB 976 (Polanco)
As Amended June 11, 2002
Majority vote

SENATE VOTE :24-10

ELECTIONS	5-1	JUDICIARY	8-4
Ayes:	Longville, Cardenas, Steinberg, Keeley, Shelley	Ayes:	Corbett, Dutra, Jackson, Longville, Shelley, Steinberg, Vargas, Wayne
Nays:	Ashburn	Nays:	Harman, Bates, Robert Pacheco, Rod Pacheco

SUMMARY : Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill :

1) Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting

behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6)Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7)Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8)Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9)Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10)Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW :

1)Provides for political subdivisions that encompass areas of

representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2)Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT : None

COMMENTS : According to the author, this bill "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

1)The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2)The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3)There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in Watsonville, California had diluted the voting strength of the

minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles .

As noted above, the Supreme Court in Gingles established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, which was vetoed, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by the Assembly, but was amended to an unrelated subject in the Senate Education Committee.

Analysis Prepared by : Willie Guerrero / E., R. & C. A. / (916) 319-2094

FN: 0005396

BILL ANALYSIS

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	SB 976

UNFINISHED BUSINESS

Bill No: SB 976
Author: Polanco (D)
Amended: 6/11/02
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE : 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR : 24-10, 1/30/02
AYES: Alarcon, Alpert, Bowen, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Karnette, Kuehl, Machado, Murray, O'Connell, Ortiz, Perata, Polanco, Romero, Sher, Soto, Speier, Torlakson, Vasconcellos, Vincent
NOES: Ackerman, Battin, Brulte, Johannessen, Johnson, Knight, McClintock, McPherson, Morrow, Poochigian

ASSEMBLY FLOOR : 47-25, 6/20/02 - See last page for vote

SUBJECT : Elections: rights of voters

SOURCE : Author

DIGEST : This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

Assembly Amendment allows a member of a protected class to file a court action pursuant to the bill under specified conditions and makes clarifying changes.

CONTINUED

ANALYSIS : Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot

measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always),

voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

3. Establishes that voter rights have been abridged 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.

4. Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

5. Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

6. Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by

racially polarized voting.

7. Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

8. Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

9. Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

10. Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

11. Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision.

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

C. One which combines at-large elections with district-based elections.

1. "District-based elections" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

2. "Political subdivision" 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. "Protected class" as 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.).

4. "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state.

Comments :

According to the author, this bill "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

FISCAL EFFECT : Appropriation: No Fiscal Com.: No
Local: No

SUPPORT : (Verified 6/20/02)

Mexican American Legal Defense and Educational Fund
American Civil Liberties Union

ASSEMBLY FLOOR :
AYES: Alquist, Aroner, Calderon, Canciamilla, Cardenas, Cardoza, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Firebaugh, Florez, Frommer, Goldberg, Havice, Hertzberg, Jackson, Keeley, Kehoe, Koretz, Longville, Lowenthal, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Reyes, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wiggins, Wright, Wesson
NOES: Aanestad, Ashburn, Bates, Bogh, Briggs, Bill Campbell, John Campbell, Cogdill, Cox, Daucher, Harman, Hollingsworth, La Suer, Leach, Leonard, Leslie, Mountjoy, Robert Pacheco, Rod Pacheco, Pescetti, Richman, Runner, Strickland, Wyland, Zettel

DLW:jk 6/21/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

LRI HISTORY LLC
PO BOX 2166, PLACERVILLE, CA 95667
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM

Governor's Chaptered Bill File

SOURCE:
CALIFORNIA STATE ARCHIVES

ENROLLED BILL MEMORANDUM TO GOVERNOR

129

BILL NO: SB 976 **AUTHOR:** Polanco **DATE:** 07/01/02 **DATE DUE:** 07/09/02

SENATE: 24-10 **ASSEMBLY:** 47-25 **CONCURRENCE:** 22-13

REVIEWED BY: **RECOMMENDATION:** Sign ☐ Veto ☐

SUMMARY: This bill enacts the California Voting Rights Act of 2001 and establishes criteria to further ensure that the rights of protected classes of voters are not diluted or polarized by the use of at-large elections.

SPONSOR: Author

SUPPORT: Office of Planning and Research

OPPOSITION: None received.

FISCAL IMPACT: No fiscal impact.

ARGUMENTS IN SUPPORT: This is a progressive voting rights measure that will help ensure that all of California's voters have equal and meaningful voting rights and that at-large elections are not used to dilute or polarize the voting populous. California is now a state of minorities and it is only fitting that our laws reflect this and provide reasonable legal recourse for addressing violations of our voting rights.

ARGUMENTS IN OPPOSITION: No substantive arguments in opposition.

BACKGROUND INFORMATION: This bill enacts the California Voting Rights Act of 2001 that is very similar to the federal Voting Rights Act but with one key exception. In 1985, the Supreme Court imposed three pre-conditions (Gingles factors) for determining if a protected class' voting rights have been/are being diluted. One of the three conditions is that the plaintiff must show that the protected class is geographically compact enough that it would be a majority in a single district (and presumably elect its own candidate.) This bill provides that such a finding is not necessary and that a protected class need only demonstrate the other two Gingle factors – i.e., that the minority community is politically cohesive and usually supports minority candidates and that there is racially polarized voting in the majority community. According to the author, "Block voting, particularly when associated with racial or ethnic groups, is harmful to a state like California due to its diversity. This bill provides a judicial process and criteria to determine if the problem of block voting can be established. Then, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. After the 2000 census, in California, we are facing a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open."

GOVERNOR GRAY DAVIS

JUL - 9 2002

To Members of the California State Senate:

I am signing SB 976. This measure provides voters with a cause of action to challenge at-large elections when it can be shown that a minority's voting rights have been abridged or diluted. Upon a determination that a violation has occurred, the court shall fashion appropriate remedies, including but not limited to single district elections.

While this legislation is far from perfect, it does provide state courts with the ability to fashion remedies for minorities when their votes are unfairly diluted by the use of at-large election. Given the diverse make up of California voters, this legislation will help to ensure that California's electoral system is fair, open to, and representative of all California voters.

Sincerely,

Gray Davis

GRAY DAVIS

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841

OFFICE OF LEGISLATIVE COUNSEL
State Capitol, Suite 3021
Sacramento, California 95814-3702

TELEPHONE (916) 341-8000
FACSIMILE (916) 341-8020
INTERNET www.legislativecounsel.ca.gov
EMAIL admin@legislativecounsel.ca.gov

July 5, 2002

Honorable Gray Davis
Governor of California
Sacramento, CA 95814

SENATE BILL NO. 976

Dear Governor Davis:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Polanco and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
Michael B. Salerno
Principal Deputy

MBS:clr

Two copies to Honorable Richard Polanco, pursuant to Joint Rule 34.

Educational Fund empowering Latinos to participate fully in the American political process

July 3, 2002

The Honorable Gray Davis
Governor
1st Floor, State Capitol
Sacramento, CA 95814

Dear Governor Davis:

On behalf of the National Association of Latino Elected and Appointed Officials (NALEO), I am writing to urge your approval of SB 976, the "California Voting Rights Act of 2001." The Act enhances the ability of Latino and other minority communities to challenge local at-large election systems that dilute their voting strength in a discriminatory manner.

SB 976 does not mandate the elimination of at-large elections; rather, the Act permits a local minority community to prove the existence of racial bloc voting in accordance with well-established case law by filing an action in a local Superior Court. Once a violation is established, the Superior Court can implement an appropriate remedy to provide the minority community with greater access to the political process.

Given the demographic changes in California, it is important that the governing boards of local jurisdictions reflect the communities they serve. Discriminatory election systems diminish the vitality and responsiveness of our state's democracy. By approving the California Voting Rights Act of 2001, you will help ensure that all California voters have a fair opportunity to have their voices heard in the electoral process.

Sincerely,

Arturo Vargas
Executive Director

cc: The Honorable Richard Polanco

WWW.NALEO.ORG

5800 S. Eastern Ave., Suite 365
Los Angeles, CA 90040
(323) 720-1932
Fax (323) 720-9519

311 Massachusetts Avenue, NE
Washington, D.C. 20002
(202) 546-2536
Fax (202) 546-4121

4920 Irvington Blvd., #B
Houston, TX 77009
(713) 697-6400
Fax (713) 694-2229

60 East 42nd St., Suite 2223
Lincoln Building
New York, NY 10165
(646) 227-0797
Fax (646) 227-0897

Ch. 121

NALEO Educational Fund empowering Latinos to participate fully in the American political process

July 3, 2002

The Honorable Gray Davis
Governor
1st Floor, State Capitol
Sacramento, CA 95814

Dear Governor Davis:

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Sincerely,

Arturo Vargas
Executive Director

cc: The Honorable Richard Polanco

WWW.NALEO.ORG

5800 S. Eastern Ave., Suite 365
Los Angeles, CA 90040
(323) 720-1932
Fax (323) 720-9519

311 Massachusetts Avenue, NE
Washington, D.C. 20002
(202) 546-2536
Fax (202) 546-4121

4920 Irvington Blvd., #B
Houston, TX 77009
(713) 697-6400
Fax (713) 694-2229

60 East 42nd St., Suite 2222
Lincoln Building
New York, NY 10165
(646) 227-0797
Fax (646) 227-0897

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 06/24/02
LOCATION: SEN. FLOOR
MOTION: Unfinished Business SB976 Polanco
(AYES 22. NOES 13.) (PASS)

AYES
****

Alarcon	Alpert	Bowen	Burton
Chesbro'	Costa	Dunn	Figueroa
Karnette	Kuehl	Machado	Murray
O'Connell	Ortiz	Perata	Polanco
Romero	Scott	Soto	Speier
Torlakson	Vasconcellos		

NOES
****

Ackerman	Battin	Brulte	Haynes
Johannessen	Johnson	Knight	Margett
McClintock	Monteith	Morrow	Oller
Poochigian			

ABSENT, ABSTAINING, OR NOT VOTING
****

Escutia	McPherson	Peace	Sher
Vincent			

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 06/20/02
LOCATION: ASM. FLOOR
MOTION: SB 976 Polanco Senate Third Reading By Keeley
(AYES 47. NOES 25.) (PASS)

AYES
****

Alquist	Aroner	Calderon	Canciamilla
Cardenas	Cardoza	Chan	Chavez
Chu	Cohn	Corbett	Correa
Diaz	Dutra	Firebaugh	Florez
Frommer	Goldberg	Havice	Hertzberg
Jackson	Keeley	Kehoe	Koretz
Longville	Lowenthal	Matthews	Migden
Nakano	Nation	Negrete McLeod	Oropeza
Papan	Pavley	Reyes	Salinas
Shelley	Simitian	Steinberg	Strom-Martin
Thomson	Vargas	Washington	Wayne
Wiggins	Wright	Wesson	

NOES
****

Aanestad	Ashburn	Bates	Bogh
Briggs	Bill Campbell	John Campbell	Cogdill
Cox	Daucher	Harman	Hollingsworth
La Suer	Leach	Leonard	Leslie
Mountjoy	Robert Pacheco	Rod Pacheco	Pescetti
Richman	Runner	Strickland	Wyland
Zettel			

ABSENT, ABSTAINING, OR NOT VOTING
****

Cedillo	Dickerson	Horton	Kelley
Liu	Maddox	Maldonado	Wyman

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 01/30/02
LOCATION: SEN. FLOOR
MOTION: Senate 3rd Reading SB976 Polanco
(AYES 24. NOES 10.) (PASS)

AYES
****

Alarcon	Alpert	Bowen	Burton
Chesbro	Costa	Dunn	Escutia
Figueroa	Karnette	Kuehl	Machado
Murray	O'Connell	Ortiz	Perata
Polanco	Romero	Sher	Soto
Speier	Torlakson	Vasconcellos	Vincent

NOES
****

Ackerman	Battin	Brulte	Johannessen
Johnson	Knight	McClintock	McPherson
Morrow	Poochigian		

ABSENT, ABSTAINING, OR NOT VOTING
****

Haynes	Margett	Monteith	Oller
Peace	Scott		

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

ENROLLED BILL REPORT

CONFIDENTIAL-Government Code §6254(l)		
Department/Board Office of Planning and Research	Bill Number/Author: SB 976/Polanco	LAV: 6/11/02
Sponsor: Author ☐ Admin Sponsored Proposal No.	Related Bills None	Chaptering Order (if known) ☐ Attachment
Subject: Elections; rights of voters		

SUMMARY

SB 976 would enact the California Voting Rights Act of 2001 and establish criteria to further ensure that the rights of protected classes of voters are not diluted or polarized by the use of at-large elections.

PURPOSE OF THE BILL

According to the author, "Block voting, particularly when associated with racial or ethnic groups, is harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Then, the bill provides courts with the authority to fashion appropriate legal remedies for the problem.

After the 2000 census, in California, we are facing a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move in that direction, it identifies the problem and gives us tools to deal with the problem, and provides a solution."

RECOMMENDATION AND SUPPORTING ARGUMENTS

SIGN – this is a progressive voting rights measure that will help ensure that all of California's voters have equal and meaningful voting rights and that at-large elections are not used to dilute or polarize the voting populous. California is now a state of minorities and it is only fitting that our laws reflect this and provide reasonable legal recourse for addressing violations of our voting rights -- SB 976 would do this.

Departments That May Be Affected None				
☐ New / Increased Fee	☐ Governor's Appointment	☐ Legislative Appointment	☐ State Mandate	☐ Urgency Clause
OPR Position XX Sign ☐ Veto ☐ Defer to:				
Legislative Director Date Tara Mesick		OPR Director Date Tal Finney 7/1/02		

BACKGROUND/EXISTING LAW

Federal: The United States Voting Rights Act (Act) was enacted in 1965 to help put an end to discriminatory election practices (such as literacy tests) and the total resistance of some states in enforcing the 15th Amendment of the U.S. Constitution. Among its many qualities and protections, Section 2 of the Act holds that a state or political subdivision cannot impose any procedures or practices upon a voter that will abridge or deny that person the right to vote because of their race, color, or language ("protected class"). (42 USC 1973(a))

Section 2 of the Act was expanded in 1982 to address 14th Amendment issues and provided that an individual's rights would be deemed violated, "based on the totality of circumstances", if it is shown that the election/political processes were not equally open or available to members of a protected class. (42 USC 1973(b))

The "totality of circumstances" test consists of seven factors that the courts may consider when determining a Section 2 violation – i.e., the extent of discrimination in that state/subdivision/district; the extent of facially polarized voting in that state/subdivision/district; the extent of racial slurs in campaigns, etc. These factors were put forward in a report by the Senate Judiciary Committee when amending Section 2 as a guide to some of the variables that should/could be considered when weighing these cases -- it was intended that these factors be illustrative, not exhaustive, and that other factors may also be relevant depending upon the claim and the case facts.

Prior to the 1982 amendments, the court's standard for proving a violation under the Act required the plaintiff to demonstrate that the activity had a discriminatory dilutive effect and that the responsible officials had done this intentionally. Congress disagreed with this logic, and according to the sponsor (Senator Dole), the new subsection would make it unequivocally clear that plaintiffs could pursue a Section 2 violation by showing a discriminatory result ("results standard"), and that intent was not required or even relevant. In other words, did the totality of circumstances result in a protected class being denied equal access in electing representatives?

In 1985, the Supreme Court was presented with a case involving voter dilution litigation under the expanded Section 2. The Court affirmed the "results standard" and the "totality of circumstances" test, but went on to create three new conditions for determining a Section 2 violation. These conditions have become known as the "Gingles factors" and hold that: (1) the minority group must be "sufficiently large and geographically compact enough to constitute a majority in a single-member district"; (2) the minority group must be "politically cohesive" (minority voters support minority candidates); and (3) a " bloc voting majority must usually be able to defeat candidates supported by a politically cohesive, geographically insular minority group." (Thornburg v. Gingles, 1986, 478 U.S. 30)

In 1988, the Ninth Circuit Court of Appeal reversed a District Court decision and ruled that the City of Watsonville's "...at-large system is an impermissible obstacle to the ability of Hispanics to participate effectively in the political process." The case was remanded back to the District Court which was ordered to draw up a plan that would address the violations in their entirety – i.e., the creation of appropriate districts. (Gomez v. City of Watsonville, 1988, 863 F.2d 1407) The significance of this case is that it was the first time in the Ninth Circuit that a protected class was permitted to challenge the process and prevailed.

State: Existing law governs the manner in which political/government subdivisions may be established and local officials elected. Elections are either at-large (all the voters in one subdivision) or by district (the subdivision is divided into districts and people vote by district) or a combination. Specifically,

- The Uniform District Election Law provides that the "principal act" governs whether members of a governing body of a district are elected by divisions or by the district at large. (A "principal act" is the law creating a particular district, agency, or type of district or agency; if there is no "principal act" then the state's general election laws govern. (Elections Code Section 10503-8) This law stipulates that if there are fewer than 100 voters in a district, the election will be at-large. (Elections Code Section 10523)
- The District Organization Law provides a procedure for the organization, operation and government of districts. (Government Code Section 58000 et seq.)

ANALYSIS

SB 976 would enact the California Voting Rights Act of 2001 and do the following:

- Define "at-large election," "district based election," and political subdivision.
- Define "protected class" as a class of voters who are members of a race, color or language minority group pursuant to the Federal Voting Rights Act.
- Define "racially polarized voting" as voting when there is a "difference" (as defined by case law enforcing the Federal Voting Rights Act) in the choice of candidates or other electoral choices that are preferred by voters in a protected class and in the choice of candidates or other electoral choices preferred by voters in the rest of the electorate. (The methods for estimating group voting behavior (as approved in cases enforcing the Federal Voting Rights Act) may be used to determine whether an election is racially polarized.)
- Provide that an at-large election may not be imposed or applied if it impairs the ability of a protected class to elect candidates of its choice or to influence an election because their rights have been diluted or abridged (racially polarized).
- Provide that racially polarized voting shall be determined by examining the 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. One circumstance that may be considered in determining a violation is the extent to which protected class candidates are elected to the governing body of a subdivision that is under question.

- Stipulate that proof of an intent by the voters or elected officials to discriminate against a protected class is not required to demonstrate racially polarized voting.
  Comments: This is the same as federal law.

- Stipulate that the members of a protected class do NOT have to be geographically compact or concentrated to demonstrate racially polarized voting BUT this may be a factor in determining an appropriate remedy.
  Comments: This is one of the three conditions that the Supreme Court added in 1985 for purposes of demonstrating racially polarized voting.

- Specify that other factors (such as the history of discrimination, the use of electoral devices that enhance racial polarization of at large-elections, the use of racial appeals in political campaigns, etc.) are probative, but not necessary to establish violation of a protected class' voting rights.
  Comments: These factors are among those used in assessing the "totality of circumstances" to establish a results standard in federal cases.

- Provide that if there is a finding of racially polarized voting, the court shall implement appropriate remedies, including the imposition of district-based elections that would be tailored to remedy the violation.

- Provide that the court shall allow the prevailing plaintiff with a reasonable attorney's fee and litigation expenses, including expert witness fees and expenses. The prevailing defendant would NOT be entitled to recover any costs unless the court found that the action was without foundation, frivolous or unreasonable.

- Provide that any voter who is a member of a protected class may file an action in the county superior court if they reside in a political subdivision where voting violations under this Act are taking place.

COMMENTS

SB 976 would enact the California Voting Rights Act of 2001 that is very similar to the federal Voting Rights Act but with one key exception. As noted previously, the Supreme Court imposed three pre-conditions (Gingles factors) for determining if a protected class' voting rights have been/are being diluted. One of the three conditions is that the plaintiff must show that the protected class is geographically compact enough that it would be a majority in a single district (and presumably elect its own candidate.)

SB 976 would provide that such a finding is NOT necessary and that a protected class need only demonstrate the other two Gingle factors – i.e., that the minority community is politically cohesive and usually supports minority candidates and that there is racially polarized voting in the majority community.

Seemingly, the central issue here is whether one's voting rights are being abridged or violated, not whether the voters are geographically compact enough that they could elect their own representative if they were in a single district. To that end, the Assembly Judiciary Committee analysis provides a very effective visual when it refers to the geographic compactness requirement as "... putting the cart before the horse ... this bill recognizes that geographical concentration is an appropriate question at the remedy stage ... and ... puts the voting rights horse back where it sensibly belongs -- in front of the cart (i.e., what type of remedy is appropriate once racially polarized voting has been shown.")

OTHER STATES' INFORMATION

A representative of the ACLU Voting Rights Project Office in Atlanta is not aware of any states enacting a voting rights act such as this nor are two attorneys at the U.S. Department of Justice (Civil Rights Division, Voting Section).

A Westlaw search failed to reveal any states enacting their own voting rights act. Several states refer to the federal Voting Rights Act (42 USC 1973) but do so as reference and requiring compliance.

LEGISLATIVE HISTORY

AB 8 (Cardenas, 1999, vetoed). This bill would have required the Board of Trustees of the Los Angeles Community College District to establish seven trustee areas in the district and require members of the governing board to be elected by trustee area. Governor Davis vetoed this measure stating that "the decision to create single-member trustee areas is best made at the local level, not by the state. Furthermore, current law allows registered voters residing in the Los Angeles Community College District to petition for the creation of trustee areas." (Note: SB 976 does not mandate district elections.)

FISCAL IMPACT – none to the state

ECONOMIC IMPACT – none to the state

LEGAL IMPACT

SB 976 could have a significant legal impact on the voting rights of protected classes in California for it may help prevent the dilution of their vote and lead to the possible creation of more districts that would be truly representative of the protected classes of voters.

SUPPORT/OPPOSITION

Support:
American Civil Liberties Union
Mexican American Legal Defense and Education Fund
Joaquin Avila, Esq.

Opposition:
None on file

ARGUMENTS

Pro:

- California is now a state of minorities and it is only fitting that our laws reflect this and provide protected classes with reasonable legal recourse to address violations of the voting rights act -- SB 976 would do this.

- SB 976 would make it less onerous for protected classes to challenge the fairness of at-large elections and, if successful, the courts could then provide an appropriate remedy to ensure representation. A more equitable, representative system may encourage more people to participate and vote.

- The American Civil Liberties Union writes: "Statewide, the underrrepresentation of minority groups on those (governing) boards has been dismally and consistently low for decades ... where racially polarized voting has led to the exclusion of minority preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction."

- This bill does not mandate district elections, but does prohibit at-large elections if they are compromising or diluting the voting rights and processes of a protected class.

- There are 58 counties, 476 cities, 1055 school districts and more than 3800 special districts in California -- we have been unable to get exact figures, but Joaquin Avila (an attorney who specializes in voting rights/elections law) estimates that approximately 80 percent of these elections are at-large.

Con:

- Among other things, the Senate Republican Policy analysis holds that (1) the bill is unnecessary for the federal Voting Rights Act already protects minorities and (2) "the language of the bill presents very real problems in the areas of increased litigation and probative findings ... not to mention the overall policy question of creating a new body of law separate from the established federal standard."

- It is unreasonable to award attorney fees and litigation expenses to prevailing plaintiffs but NOT to prevailing defendants.

LEGISLATIVE STAFF CONTACT

Saeed Ali, Chief of Staff to Senator Polanco, 445-3456.

OTHER CONTACTS FOR VOTER RIGHTS:

Professor Laughlin McDonald, ACLU Voting Rights Project, 404/523-2721
John Greenbaum and Tamara Hagler, U.S. Dept of Justice, Civil Rights Division, Voting Section, 202/307-3113
Joaquin Avila, Esq. (specializes in voting rights law/redistricting/elections) 310/562-4505

VOTES

DATE & LOCATION		AYES	NOES
3/15/01	Senate Committee on Elections & Reapportionment	5	3
1/30/02	Senate Floor	24	10
4/17/02	Assembly Committee on Elections, Reapportionment and Constitutional Amendments	5	1
6/10/02	Assembly Committee on the Judiciary	8	4
6/20/02	Assembly Floor	47	25
6/24/02	Senate Floor - concurrence in Assembly amendments	22	13

Note: All of the negative votes were cast by Republican members.

	Work	Home	Cell	Pager
Tal Finney, Acting Director, OPR	322-5009	562/301-2074	425-0081	800-421-2921
Tara Mesick, Legislative Director	324-6662	483-9629	524-8667	800-800-9456
Sherry Williams, Legislative Analyst	324-6667	452-1831	xxxxxxx	800-800-9456

DRAFT VETO MESSAGE

To Member of the California Legislature:

I am returning SB 976 without my signature. This bill would create the California Voting Rights Act of 2001.

The Federal Voting Rights Act of 1965 is more than adequate to protect the voting rights of Californians and I see no need to add yet another layer of law covering the same issue.

Sincerely,

Gray Davis
Governor

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

SB 976

UNFINISHED BUSINESS

Bill No: SB 976
Author: Polanco (D)
Amended: 6/11/02
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE : 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR : 24-10, 1/30/02
AYES: Alarcon, Alpert, Bowen, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Karnette, Kuehl, Machado, Murray, O'Connell, Ortiz, Perata, Polanco, Romero, Sher, Soto, Speier, Torlakson, Vasconcellos, Vincent
NOES: Ackerman, Battin, Brulte, Johannessen, Johnson, Knight, McClintock, McPherson, Morrow, Poochigian

ASSEMBLY FLOOR : 47-25, 6/20/02 - See last page for vote

SUBJECT : Elections: rights of voters

SOURCE : Author

DIGEST : This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

Assembly Amendment allows a member of a protected class to file a court action pursuant to the bill under specified conditions and makes clarifying changes.

CONTINUED

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always),

voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

3. Establishes that voter rights have been abridged 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.

4. Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

5. Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

6. Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by

racially polarized voting.

7. Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

8. Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

9. Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

10. Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action

to be frivolous, unreasonable, or without foundation.

11. Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision.

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

   C. One which combines at-large elections with district-based elections.

1. "District-based elections" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

2. "Political subdivision" 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. 'Protected class' as 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.).

4. 'Racially polarized voting' means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state.

Comments :

According to the author, this bill 'addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure

gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/20/02)

Mexican American Legal Defense and Educational Fund
American Civil Liberties Union

ASSEMBLY FLOOR:

AYES: Alquist, Aroner, Calderon, Canciamilla, Cardenas, Cardoza, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Firebaugh, Florez, Frommer, Goldberg, Havice, Hertzberg, Jackson, Keeley, Kehoe, Koretz, Longville, Lowenthal, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Reyes, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wiggins, Wright, Wesson

NOES: Aanestad, Ashburn, Bates, Bogh, Briggs, Bill Campbell, John Campbell, Cogdill, Cox, Daucher, Harman, Hollingsworth, La Suer, Leach, Leonard, Leslie, Mountjoy, Robert Pacheco, Rod Pacheco, Pescetti, Richman, Runner, Strickland, Wyland, Zettel

DLW:jk 6/21/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

SB 976 (Polanco) **Oppose**
File Item # 59
Senate Floor: 24-10
(NO: All Republicans except; ABS: Haynes, Margett, Monteith, Oller)
Assembly Floor: 47-25
(NO: All Republicans except; ABS: Dickerson, Kelley, Maddox, Maldonado, Wyman)
Vote requirement: 21
Version Date: 6/11/02

Quick Summary

Assembly amendments would permit a member of a protected class to file an action pursuant to this bill under specified circumstances.

Creates a new state Voting Rights Act that goes far beyond current Supreme Court interpretations of the federal Voting Rights law. It will unnecessarily increase voting rights litigation in the state. As currently drafted, this bill is not supportable, however, the author has expressed a desire to work on a bipartisan approach to this issue.

Digest

Enacts the California Voting Rights Act of 2001.

This bill would provide that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgment of the right of registered voters who are members of a protected class, as defined, by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

It would provide that a violation of its provisions shall be established if it is shown that racially polarized voting occurs in elections for governing board members of a political subdivision. It would provide that an intent to discriminate against a protected class is not required to establish a violation of this bill.

It would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees and expenses consistent with specified case law as part of the costs.

It would permit a member of a protected class to file an action pursuant to this bill under specified circumstances.

Background

Existing law provides for public officials in political subdivisions are generally elected in at large elections.

Existing law generally permits the voters of the entire political subdivision to decide the manner of election for the entire district.

Most school boards and city councils are elected in at-large elections.

Using the federal Voting Rights Act, several lawsuits have forced local jurisdictions to change their voting procedures. In *Thornburg v. Gingles,* the U.S. Supreme Court set out a three-part test to determine whether at-large elections violated the Voting Rights Act:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.
2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.
3. There was racially polarized voting among the majority community, which usually voted for majority candidates rather than for the minority candidates.

Applying the *Gingles* test in *Gomez v. City of Watsonville,* the United States Supreme Court affirmed that the at-large elections for city council violated the Voting Rights Act by diluting Hispanic voting strength. The Court ordered single-member district elections.

Analysis

This bill is unnecessary. The federal Voting Rights Act already protects minorities from harm created by at-large elections.

This bill does not require geographic concentration for a finding of racially polarized voting. If a minority group is not geographically concentrated, how will single-member districts change the results?

It also permits other factors to be considered including use of electoral devices or other voting practices or procedures; the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.

Add those factors to the provisions permitting attorneys' fees and this bill is the full-employment act for voting rights act lawyers and creates a whole new area for trial lawyers to have a field day.

Support & Opposition Received

Support: ACLU, Joaquin Avila, Esq., Mexican American Legal Defense and Educational Fund (MALDEF)

Oppose: None

Senate Republican Office of Policy/Consultant: *Mike Pettengill/Cynthia Bryant*

Whip Comments

Last year, Governor Davis hit the nail on the head when he vetoed AB 8 (Cardenas), a similar measure that changed the voting methodology of the LA Community College District Board of Trustees from at-large to 7 trustee districts. In his veto message, the Governor cited local control.

This bill seeks to exceed federal Voting Rights law (both statutory and case law) in a manner which is currently unnecessary to address the real issues of voter access. The language of the bill presents very real problems in the areas of increased litigation and probative findings written into the statutory law, not to mention the overall policy question of creating a body of law separate from the established federal standard.

First, the provisions of the bill which provide that "Any voter of the protected class...may file an action...in the superior court" and which state that "In any action...the court shall allow the prevailing plaintiff party...a reasonable attorney's fee...and litigation expenses including, but not limited to, expert witness fees and expenses..." will invite litigation in virtually any conceivable circumstance.

CHAIR, BUDGET SUBCOMMITTEE NO. 4 GENERAL GOVERNMENT
CHAIR, LATINO LEGISLATIVE CAUCUS
CHAIR, JOINT COMMITTEE ON PRISON CONSTRUCTION & OPERATIONS
CHAIR, SUBCOMMITTEE ON PROFESSIONAL & VOCATIONAL STANDARDS
CHAIR, SUBCOMMITTEE ON THE AMERICAS

MEMBER
BANKING, COMMERCE AND INTERNATIONAL TRADE
BUDGET AND FISCAL REVIEW
BUSINESS AND PROFESSIONS
ELECTIONS AND REAPPORTIONMENT
HEALTH AND HUMAN SERVICES
LABOR & INDUSTRIAL RELATIONS
PUBLIC SAFETY

California State Senate

Senate Majority Leader

SENATOR RICHARD G. POLANCO
TWENTY-SECOND SENATORIAL DISTRICT

July 2, 2002

The Honorable Gray Davis
Governor of California
State Capitol, 1st Floor
Sacramento, CA 95814

RE: SENATE BILL 976

Dear Governor Davis:

I am writing to respectfully request your approval of SB 976.

Senate Bill 976 addresses the problem of racial bloc voting in California - a state without a majority racial or ethnic group.

SB 976 is necessary because the federal Voting Rights Act's remedy fails to redress California's problem of racial bloc voting. Federal case law requires that the minority community be geographically compact and sufficiently large to constitute a majority in a hypothetical election district. This geographic compactness standard requires that the minority population in such an election district constitute more than 50 percent of the eligible voter population. If the minority community were at 49 percent, then the federal courts cannot provide a remedy. Such a bright-line test establishes an artificial threshold which often serves to deny minority voting rights in California simply because the minority community is not sufficiently compact.

SB 976 addresses California's problem and lays out criteria and a judicial process to determine if the facts of block voting can be established. The court must use criteria that are well-established in law and in court decisions to establish the existence of the problem. The remedy is not prescribed in the measure but must be fashioned by the court and must be tailored to remedy the violation. Hence, SB 976 focuses the remedy on the problem but is permissive on the remedy that should be used.

Governor, after the 2000 Census, in California we are facing a unique situation where we are all minorities. We need statutes to ensure that our electoral

CAPITOL OFFICE: STATE CAPITOL, ROOM 313 • SACRAMENTO, CALIFORNIA 95814-4906 • (916) 445-3456 PHONE • (916) 445-0413 FAX
DISTRICT OFFICE: 300 SOUTH SPRING STREET, SUITE 8710 • LOS ANGELES, CALIFORNIA 90013 • (213) 620-2529 PHONE • (213) 617-0077 FAX

system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution.

There is no known opposition to the measure.

I request your approval of the measure and will be happy to provide any additional information you may require.

Sincerely,

RICHARD G. POLANCO
Senate Majority Leader
RGP: sma

ACLU
AMERICAN CIVIL LIBERTIES UNION

CALIFORNIA LEGISLATIVE OFFICE
Francisco Lobaco, *Legislative Director*
Valerie Small Navarro, *Legislative Advocate*
Rita M. Egri, *Legislative Assistant*

1127 Eleventh Street, Suite 533
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

July 2, 2002

The Honorable Gray Davis
State Capitol
Sacramento, CA 95814

Re: SB 976 (Polanco) -- Support

Dear Governor Davis:

We urge your approval of SB 976, the California State Voting Rights Act of 2001. This act provides an effective tool for minority communities to address the problem of racial bloc voting in the context of at-large elections. The Act permits a local minority community to file an action in a local Superior Court challenging an at-large election system that has a discriminatory effect on minority voting strength. The Act does not mandate the elimination of at-large election; rather, the Act permits a local minority community to prove the existence of racial bloc voting in accordance with well-established case law. Once a violation is established, the Superior Court can implement an appropriate remedy to provide the minority community with greater access to the political process.

Given the demographic changes occurring in California, it is important that the governing boards of local government be reflective of the communities they serve. This Act provides an opportunity to create a political leadership that is both diverse and responsive to the ever increasing demands of our local communities.

For these reasons we urge your approval of the California Voting Rights Act of 2001.

Sincerely,

FRANCISCO LOBACO
Legislative Director

VALERIE SMALL NAVARRO
Legislative Advocate

cc: The Honorable Richard Polanco

ACLU OF NORTHERN CALIFORNIA
Dorothy M. Ehrlich, *Executive Director*
1663 Mission Street • Suite 460
San Francisco • CA 94103
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Ramona Ripston, *Executive Director*
1616 Beverly Blvd
Los Angeles • CA 90026
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Linda Hills, *Executive Director*
P.O. Box 87131
San Diego • CA 92138-7131
(619) 232-2121

MALDEF
Mexican American Legal Defense and Educational Fund

National Headquarters
Los Angeles Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213 629 2512
Fax: 213 629 0266

Chicago Regional Office
188 W. Randolph Street
Suite 1405
Chicago, IL 60601
Tel: 312 782 1422
Fax: 312 782 1428

San Antonio Regional Office
140 E. Houston Street
Suite 300
San Antonio, TX 78205
Tel: 210 224 5476
Fax: 210 224 5382

Washington, D.C. Regional Office
1717 K Street, NW
Suite 311
Washington, DC 20036
Tel: 202 293 2828
Fax: 202 293 2849

San Francisco Redistricting Office
915 Cole Street
Suite 351
San Francisco, CA 94117
Tel: 415 504 8001
Fax: 415 504 8001

Sacramento Satellite Office
926 J Street
Suite 422
Sacramento, CA 95814
Tel: 916 443 7531
Fax: 916 443 1541

Albuquerque Program Office
1006 Central Avenue, SE
Suite 201
Albuquerque, NM 87106
Tel: 505 843 8888
Fax: 505 243 9161

Houston Program Office
Ripley House
4410 Navigation
Suite 229
Houston, TX 77011
Tel: 713 315-6404
Fax: 713 315-6401

Phoenix Program Office
202 E. McDowell Road
Suite 170
Phoenix, AZ 85004
Tel: 602 307-5615
Fax: 602 307-5928

Atlanta Census Office
3355 Lenox Road
Suite 750
Atlanta, GA 30326
Tel: 404 504 7020
Fax: 404 504 7021

July 3, 2002

Via Facsimile and First Class Mail

The Honorable Gray Davis
Governor of California
State Capitol, 1st Floor
Sacramento, California 95814

RE: *Senate Bill 976*

Dear Governor Davis:

The Mexican American Legal Defense and Educational Fund (MALDEF) urges your approval of Senate Bill 976, the California State Voting Rights Act of 2001. This Act provides the tools necessary for Latinos and other protected minority communities to combat the problems of disfranchisement and unequal access to the political process caused by at-large elections. At-large elections, along with racial bloc voting patterns, can operate to suppress the ability of Latinos to elect the candidates of their choice – candidates that meaningfully represent them and their interests.

The California State Voting Rights Act of 2001 would permit a local minority community to file an action in a local Superior Court challenging an at-large election system that has a discriminatory effect on minority voting strength. While the Act does not mandate the elimination of at-large elections, it does permit a local minority community to prove the existence of racial bloc voting in accordance with well-established case law. Once a violation is established, the Superior Court can implement an appropriate remedy to provide the minority community with more meaningful political representation.

Although California has already become a majority-minority state, Latino political representation at the local level has not kept pace with the staggering growth of the Latino community over the past decade. In 2000, Latinos comprised 33% of California's population. Yet that same year, according to the 2000 National Association of Latino Elected Official's (NALEO) annual directory, Latinos represented only 2.8% of the total number of county elected officials in California (58/2,013), and only 10.5% of all municipal elected officials (308/2,913).

Celebrating Our 33rd Anniversary
Protecting and Promoting Latino Civil Rights
www.maldef.org

This stark disparity underscores the continued need for measures, legislative or otherwise, to help the governing bodies of local government better reflect the communities they serve. This Act provides an opportunity to create a political leadership that is both diverse and responsive to the needs and concerns of the Latino community.

For these reasons, we urge your approval of the California Voting Rights Act of 2001.

Sincerely,

Steven J. Reyes/KAM

Steven J. Reyes
Staff Attorney

cc: Senator Richard Polanco

Southwest Voter Registration Education Project

July 8, 2002

The Honorable Gray Davis
Governor of California
State Capitol, 1st Floor
Sacramento, California 95814

Dear Governor Davis:

On behalf of the Southwest Voter Registration Education Project, I am writing to urge your approval of SB 976, the California State Voting Rights Act of 2001.

This act provides an effective tool for minority communities to address the problem of racial bloc voting in the context of at-large elections. The Act permits a local minority community to file an action in a local Superior Court challenging an at-large election system that has a discriminatory effect on minority voting strength. The Act does not mandate the elimination of at-large elections; rather, the Act permits a local minority community to prove the existence of racial bloc voting in accordance with well-established case law. Once a violation is established, the Superior Court can implement an appropriate remedy to provide the minority community with greater access to the political process.

Given the demographic changes occurring in California, it is important that the governing boards of local government be reflective of the communities they serve. This Act provides an opportunity to create a political leadership that is both diverse and responsive to the ever- increasing demands of our local communities.

For these reasons we urge your approval of the California Voting Rights Act of 2001.

Sincerely,

Antonio Gonzalez,
President

CC: Cathryn Rivera
Lynn Schenk
Susan Kennedy

LRI HISTORY LLC
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM
(916) 442-7660

Author's File

SOURCE:
CALIFORNIA STATE ARCHIVES

ASSEMBLY JUDICIARY COMMITTEE
Tuesday, June 4, 2002, 9:00 a.m., Room 444
Sign-in Order

SB 976

STATEMENT

MADAM CHAIR AND MEMBERS:

SENATE BILL 976 ADDRESSES THE PROBLEM OF RACIAL BLOC VOTING.

MEMBERS, BLOCK VOTING, PARTICULARLY WHEN ASSOCIATED WITH RACIAL OR ETHNIC GROUPS IS HARMFUL TO A STATE LIKE CALIFORNIA DUE TO ITS DIVERSITY.

SB 976 PROVIDES A JUDICIAL PROCESS AND CRITERIA TO DETERMINE IF THE PROBLEM OF BLOCK VOTING CAN BE ESTABLISHED. THEN, THE BILL PROVIDES COURTS WITH THE AUTHORITY TO FASHION APPROPRIATE LEGAL REMEDIES FOR THE PROBLEM. (ONE OF THE REMEDIES IS ELECTION BY DISTRICT - BUT IT IS NOT A REQUIRED REMEDY).

MEMBERS, AFTER THE 2000 CENSUS, IN CALIFORNIA, WE ARE FACING A UNIQUE SITUATION WHERE WE ARE ALL MINORITIES. WE NEED STATUTES TO ENSURE THAT OUR ELECTORAL SYSTEM IS FAIR AND OPEN. THIS MEASURE GIVES US A TOOL TO MOVE US IN THAT DIRECTION: IT IDENTIFIES THE PROBLEM, GIVES TOOLS TO DEAL WITH THE PROBLEM AND PROVIDES A SOLUTION.

MEMBERS, THE ANALYSIS NOTES SIX TECHNICAL AMENDMENTS TO CLARIFY THE MEASURE. I SUBMIT THEM AS AUTHOR'S AMENDMENTS. THERE IS NO KNOWN OPPOSITION TO THE MEASURE.

I REQUEST AN AYE VOTE ON THE BILL, AS AMENDED.

BILL FEATURES:

1. PROVIDES THAT A LOCAL POLITICAL JURISDICTION MAY NOT DILUTE OR ABRIDGE THE RIGHTS OF ANY REGISTERED VOTER WHO IS A MEMBER OF A MINORITY RACE, COLOR OR LANGUAGE GROUP, BY IMPAIRING THEIR ABILITY TO ELECT CANDIDATES OF THEIR CHOICE OR BY IMPAIRING THEIR ABILITY TO INFLUENCE THE OUTCOME OF AN ELECTION.

2. PROVIDES THAT A VIOLATION OF THIS PROHIBITION IS ESTABLISHED IF IT IS SHOWN THAT RACIALLY POLARIZED VOTING OCCURS IN ELECTIONS FOR MEMBERS OF THE GOVERNING BODY OR IN ELECTIONS INCORPORATING OTHER ELECTORAL CHOICES BY THE VOTERS OF THE SAME JURISDICTION.

3. DEFINES "RACIALLY POLARIZED VOTING" AS VOTING IN WHICH THERE IS A DIFFERENCE IN THE CHOICE OF CANDIDATES OR OTHER ELECTORAL CHOICES THAT ARE PREFERRED BY THE VOTERS IN THE PROTECTED CLASS, AND IN THE CHOICE OF CANDIDATES AND ELECTORAL CHOICES THAT ARE PREFERRED BY VOTERS IN THE REST OF THE ELECTORATE.

4. SPECIFIES THE METHODOLOGY BY WHICH RACIALLY POLARIZED VOTING MAY BE ESTABLISHED.

5. SPECIFIES 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. AUTHORIZES A COURT TO IMPOSE APPROPRIATE REMEDIES, INCLUDING DISTRICT-BASED ELECTIONS, AND TO AWARD A PREVAILING NON-STATE OR NON-LOCAL GOVERNMENT PLAINTIFF PARTY REASONABLE ATTORNEY'S FEES CONSISTENT WITH SPECIFIED CASE LAW AS PART OF THE COSTS.

Wayne: experience in San Diego

(1) Computers: How do you fashion remedy w/o geography?

Avila: 50% standard is too high

(2) Violation: One election or a pattern?

Avila: Pattern

Pacheco:

How is discrimination established?

Avila: Statistical analysis procedures must be used.

Harmon: Shouldn't the methodologies be better defined?

Avila:

Harmon: Who would be the defendants in these cases?

Avila: The entity itself would be the defendant

Wayne: Gingles test

— any example of communities that are dispersed?

Avila: A lot of places

Defendants / single or districts

Avila: district elections are exempt from these tests.

SB 976

Senate Bill 976 addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity.

SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem.

In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution.

There is no known opposition to the measure.

ASSEMBLY ELECTIONS AND REAPPORTIONMENT COMMITTEE
Tuesday, April 2, 2002, 1:30 p.m., Room 444

SB 976

STATEMENT

CHAIRMAN LONGVILLE AND MEMBERS:

SENATE BILL 976 ADDRESSES THE PROBLEM OF RACIAL BLOC VOTING.

MEMBERS, BLOCK VOTING, PARTICULARLY WHEN ASSOCIATED WITH RACIAL OR ETHNIC GROUPS IS HARMFUL TO A STATE LIKE CALIFORNIA DUE TO ITS DIVERSITY.

SB 976 PROVIDES A JUDICIAL PROCESS AND CRITERIA TO DETERMINE IF THE PROBLEM OF BLOCK VOTING CAN BE ESTABLISHED. THEN, THE BILL PROVIDES COURTS WITH THE AUTHORITY TO FASHION APPROPRIATE LEGAL REMEDIES FOR THE PROBLEM. (ONE OF THE REMEDIES IS ELECTION BY DISTRICT)

MEMBERS, AFTER THE 2000 CENSUS, IN CALIFORNIA, WE ARE FACING A UNIQUE SITUATION WHERE WE ARE ALL MINORITIES. WE NEED STATUTES TO ENSURE THAT OUR ELECTORAL SYSTEM IS FAIR AND OPEN. THIS MEASURE GIVES US A TOOL TO MOVE US IN THAT DIRECTION: IT IDENTIFIES THE PROBLEM, GIVES TOOLS TO DEAL WITH THE PROBLEM AND PROVIDES A SOLUTION.

MEMBERS, I SUBMITTED AMENDMENTS TO CLARIFY THE DEFINITIONS IN THE MEASURE AS WELL CORRECT SOME GRAMMATICAL ERRORS. THE COMMITTEE ANALYSIS REFLECTS THE AMENDMENTS.

THERE IS NO KNOWN OPPOSITION TO THE MEASURE.

I REQUEST AN AYE VOTE ON THE BILL, AS AMENDED.

BILL FEATURES:

1. PROVIDES THAT A LOCAL POLITICAL JURISDICTION MAY NOT DILUTE OR ABRIDGE THE RIGHTS OF ANY REGISTERED VOTER WHO IS A MEMBER OF A MINORITY RACE, COLOR OR LANGUAGE GROUP, BY IMPAIRING THEIR ABILITY TO ELECT CANDIDATES OF THEIR CHOICE OR BY IMPAIRING THEIR ABILITY TO INFLUENCE THE OUTCOME OF AN ELECTION.

2. PROVIDES THAT A VIOLATION OF THIS PROHIBITION IS ESTABLISHED IF IT IS SHOWN THAT RACIALLY POLARIZED VOTING OCCURS IN ELECTIONS FOR MEMBERS OF THE GOVERNING BODY OR IN ELECTIONS INCORPORATING OTHER ELECTORAL CHOICES BY THE VOTERS OF THE SAME JURISDICTION.

3. DEFINES "RACIALLY POLARIZED VOTING" AS VOTING IN WHICH THERE IS A DIFFERENCE IN THE CHOICE OF CANDIDATES OR OTHER ELECTORAL CHOICES THAT ARE PREFERRED BY THE VOTERS IN THE PROTECTED CLASS, AND IN THE CHOICE OF CANDIDATES AND ELECTORAL CHOICES THAT ARE PREFERRED BY VOTERS IN THE REST OF THE ELECTORATE.

4. SPECIFIES THE METHODOLOGY BY WHICH RACIALLY POLARIZED VOTING MAY BE ESTABLISHED.

5. SPECIFIES 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. AUTHORIZES A COURT TO IMPOSE APPROPRIATE REMEDIES, INCLUDING DISTRICT-BASED ELECTIONS, AND TO AWARD A PREVAILING NON-STATE OR NON-LOCAL GOVERNMENT PLAINTIFF PARTY REASONABLE ATTORNEY'S FEES CONSISTENT WITH SPECIFIED CASE LAW AS PART OF THE COSTS.

ASSEMBLYMAN E & R COMMITTEE ANALYSIS

THE STAFF ANALYSIS POINTED OUT TWO ISSUES:

1. THE ANALYSIS ASKS: IF A MINORITY COMMUNITY IS NOT SUFFICIENTLY GEOGRAPHICALLY COMPACT TO MEET THE THORNBURG V GINGLES REQUIREMENT SO THAT THE COMMUNITY CAN ELECT ONE OF THEIR MEMBERS

FROM A DISTRICT, WHAT IS GAINED BY ELIMINATING THE AT-LARGE ELECTION SYSTEM?

RESPONSE

TWO POINTS:
FIRST, THORNBURG V GINGLES IS LIMITED IN ITS SCOPE. IT APPLIES ONLY TO APPLICATIONS OF THE FEDERAL VOTING RIGHTS ACT. ANY STATE LAWS THAT EXPAND VOTING RIGHTS BEYOND THE FEDERAL STATUTES ARE NOT IMPACTED BY THE CASE. THIS LEGISLATURE CAN AND DOES ENACT LAWS THAT PROVIDE CALIFORNIANS WITH BETTER AND MORE SPECIFIC STATUTES THAN THOSE IN SIMILAR FEDERAL LEGISLATION. FOR EXAMPLE, WE CREATED THE UNRUH CIVIL RIGHTS ACT AS WE NEEDED TO PROVIDE BETTER AND MORE SPECIFIC STATUTES SUITED TO OUR NEEDS THAN THOSE IN FEDERAL CIVIL RIGHTS STATUTES.

SECOND, ALTHOUGH A PARTICULAR GROUP MAY BE TOO SMALL TO ENSURE THAT ITS OWN CANDIDATE IS ELECTED, THE GROUP MAY STILL BE ABLE TO *FAVORABLY INFLUENCE* THE ELECTION OF A CANDIDATE. THIS INFLUENCE MAY ONLY COME ABOUT WITH DISTRICT RATHER THAN AT-LARGE ELECTIONS.

2. FINALLY, THE COMMITTEE ANALYSIS REFERENCES SEVERAL BILLS THAT DEALT WITH PROMOTING THE USE OF DISTRICT-BASED ELECTIONS OVER AT-LARGE ELECTIONS.

THIS MEASURE IS DIFFERENT: IT DOES NOT SAY THAT DISTRICT ELECTIONS ARE THE ONLY MEANS. THIS MEASURE SAYS THAT WE NEED TO ATTACK BLOCK VOTING AND, IF BLOCK VOTING IS ESTABLISHED IN A COURT OF LAW, THEN IT ALLOWS A COURT TO IMPOSE REMEDIES INCLUDING DISTRICT ELECTIONS. AS YOU CAN SEE, THIS BILL IS QUITE DIFFERENT.

SB 976
SENATE E&R COMMITTEE
WEDNESDAY, MAY 2, 2001, 9:30 A.M.
ROOM 3191

STATEMENT

MY NAME IS SAEED ALI AND, WITH THE CHAIR'S PERMISSION, I AM PRESENTING THIS MEASURE AT THE REQUEST OF SENATOR POLANCO WHO IS ABSENT TODAY.

THIS BILL ADDRESSES THE PROBLEM OF RACIAL BLOC VOTING. BLOCK VOTING, PARTICULARLY WHEN ASSOCIATED WITH RACIAL OR ETHNIC GROUPS IS HARMFUL TO A STATE LIKE CALIFORNIA DUE TO ITS DIVERSITY.

SN 976 PROVIDES A JUDICIAL PROCESS AND CRITERIA TO DETERMINE IF THE PROBLEM OF BLOCK VOTING CAN BE ESTABLISHED. THEN, THE BILL PROVIDES COURTS WITH APPROPRIATE LEGAL REMEDIES FOR THE PROBLEM. ONE OF THE REMEDIES IS ELECTION BY DISTRICT.

SPECIFICALLY, THIS BILL DOES ALL OF THE FOLLOWING:

1. PROVIDES THAT A LOCAL POLITICAL JURISDICTION MAY NOT DILUTE OR ABRIDGE THE RIGHTS OF ANY REGISTERED VOTER WHO IS A MEMBER OF A MINORITY RACE, COLOR OR LANGUAGE GROUP, BY IMPAIRING THEIR ABILITY TO ELECT CANDIDATES OF THEIR CHOICE OR BY IMPAIRING THEIR ABILITY TO INFLUENCE THE OUTCOME OF AN ELECTION.

2. PROVIDES THAT A VIOLATION OF THIS PROHIBITION IS ESTABLISHED IF IT IS SHOWN THAT RACIALLY POLARIZED VOTING OCCURS IN ELECTIONS FOR MEMBERS OF THE GOVERNING BODY OR IN ELECTIONS INCORPORATING OTHER ELECTORAL CHOICES BY THE VOTERS OF THE SAME JURISDICTION.

3. DEFINES "RACIALLY POLARIZED VOTING" AS VOTING IN WHICH THERE IS A DIFFERENCE IN THE CHOICE OF CANDIDATES OR OTHER ELECTORAL CHOICES THAT ARE PREFERRED BY THE VOTERS IN THE PROTECTED CLASS, AND IN THE CHOICE OF CANDIDATES AND ELECTORAL CHOICES THAT ARE PREFERRED BY VOTERS IN THE REST OF THE ELECTORATE.

4. SPECIFIES THE METHODOLOGY BY WHICH RACIALLY POLARIZED VOTING MAY BE ESTABLISHED.

5. SPECIFIES 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. AUTHORIZES A COURT TO IMPOSE APPROPRIATE REMEDIES, INCLUDING DISTRICT-BASED ELECTIONS, AND TO AWARD A PREVAILING NON-STATE OR NON-LOCAL GOVERNMENT PLAINTIFF PARTY REASONABLE ATTORNEY'S FEES CONSISTENT WITH SPECIFIED CASE LAW AS PART OF THE COSTS.

COMMITTEE ANALYSIS

THE STAFF ANALYSIS POINTS OUT TWO ISSUES (ITEMS 2 AND 3)

1. THE ANALYSIS ASKS: IF A MINORITY COMMUNITY IS NOT SUFFICIENTLY GEOGRAPHICALLY COMPACT TO MEET THE THORNBURG V GINGLES REQUIREMENT SO THAT THE COMMUNITY CAN ELECT ONE OF THEIR MEMBERS FROM A DISTRICT, WHAT IS GAINED BY ELIMINATING THE AT-LARGE ELECTION SYSTEM?

THERE ARE THREE ANSWERS TO THIS QUESTION.

FIRST, THORNBURG V GINGLES IS LIMITED IN ITS SCOPE. IT APPLIES TO APPLICATIONS OF THE FEDERAL VOTING RIGHTS ACT. ANY STATE LAWS THAT EXPAND VOTING RIGHTS BEYOND THE FEDERAL STATUTES ARE NOT IMPACTED BY THE CASE.

SECOND, ALTHOUGH A PARTICULAR GROUP MAY BE TOO SMALL TO ENSURE THAT ITS OWN CANDIDATE IS ELECTED, THE GROUP MAY STILL BE ABLE TO *FAVORABLY INFLUENCE* THE ELECTION OF A CANDIDATE. THIS INFLUENCE MAY ONLY COME ABOUT WITH DISTRICT RATHER THAN AT-LARGE ELECTIONS.

THIRD, AND FINALLY, THIS LEGISLATURE CAN AND DOES ENACT LAWS THAT PROVIDE CALIFORNIANS WITH BETTER AND MORE SPECIFIC STATUTES THAN THOSE IN SIMILAR FEDERAL LEGISLATION. FOR EXAMPLE, WE CREATED THE UNRUH CIVIL RIGHTS ACT AS WE NEEDED TO PROVIDE BETTER AND MORE SPECIFIC STATUTES SUITED TO OUR NEEDS THAN THOSE IN FEDERAL CIVIL RIGHTS STATUTES.

MEMBERS, AFTER THE 2000 CENSUS, IN CALIFORNIA, WE ARE FACING A UNIQUE SITUATION WHERE WE ARE ALL MINORITIES. WE NEED STATUTES TO ENSURE THAT OUR ELECTORAL SYSTEM IS FAIR AND OPEN. THIS MEASURE GIVES US A TOOL TO MOVE US IN THAT DIRECTION: IT IDENTIFIES THE PROBLEM, GIVES TOOLS TO DEAL WITH THE PROBLEM AND PROVIDES A SOLUTION.

2. FINALLY, THE COMMITTEE ANALYSIS REFERENCES SEVERAL BILLS THAT DEALT WITH PROMOTING THE USE OF DISTRICT-BASED ELECTIONS OVER AT-LARGE ELECTIONS.

* Block Voting should be proved, not assumed.

Other options: (1) Proportional Voting.

THIS MEASURE IS DIFFERENT: IT DOES NOT SAY THAT DISTRICT ELECTIONS ARE THE ONLY MEANS. THIS MEASURE SAYS THAT WE NEED TO ATTACK BLOCK VOTING AND, IF BLOCK VOTING IS ESTABLISHED IN A COURT OF LAW, THEN IT ALLOWS A COURT TO IMPOSE REMEDIES INCLUDING DISTRICT ELECTIONS. AS YOU CAN SEE, THIS BILL IS QUITE DIFFERENT.

I HAVE TWO WITNESSES: JOAQUIN AVILA, A DISTINGUISHED VOTING RIGHTS ATTORNEY, FORMER GENERAL COUNSEL AT MALDEF AND A MACARTHUR FELLOW AND ALAN CLAYTON, LA COUNTY CHICANO EMPLOYEES ASSOCIATION and the CALIFORNIA LATINO REDISTRICTING COALITION.

I REQUEST AN AYE VOTE.

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 976
Author: Polanco (D)
Amended: 6/11/02
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR: 24-10, 1/30/02
AYES: Alarcon, Alpert, Bowen, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Karnette, Kuehl, Machado, Murray, O'Connell, Ortiz, Perata, Polanco, Romero, Sher, Soto, Speier, Torlakson, Vasconcellos, Vincent
NOES: Ackerman, Battin, Brulte, Johannessen, Johnson, Knight, McClintock, McPherson, Morrow, Poochigian

ASSEMBLY FLOOR: 47-25, 6/20/02 - See last page for vote

SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

Assembly Amendment allows a member of a protected class to file a court action pursuant to the bill under specified conditions and makes clarifying changes.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are

CONTINUED

generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

CONTINUED

2. Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

3. Establishes that voter rights have been abridged 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.

4. Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

5. Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

6. Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

7. Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

8. Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

CONTINUED

9. Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

10. Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

11. Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision.

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

   C. One which combines at-large elections with district-based elections.

2. "District-based elections" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

3. "Political subdivision" 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.

CONTINUED

4. "Protected class" as 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.).

5. "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state.

Comments:

According to the author, this bill "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/20/02)

Mexican American Legal Defense and Educational Fund
American Civil Liberties Union

CONTINUED

ASSEMBLY FLOOR:

AYES: Alquist, Aroner, Calderon, Canciamilla, Cardenas, Cardoza, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Firebaugh, Florez, Frommer, Goldberg, Havice, Hertzberg, Jackson, Keeley, Kehoe, Koretz, Longville, Lowenthal, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Reyes, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wiggins, Wright, Wesson

NOES: Aanestad, Ashburn, Bates, Bogh, Briggs, Bill Campbell, John Campbell, Cogdill, Cox, Daucher, Harman, Hollingsworth, La Suer, Leach, Leonard, Leslie, Mountjoy, Robert Pacheco, Rod Pacheco, Pescetti, Richman, Runner, Strickland, Wyland, Zettel

DLW:jk 6/21/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

SENATE THIRD READING
SB 976 (Polanco)
As Amended June 11, 2002
Majority vote

SENATE VOTE :24-10

ELECTIONS	5-1	JUDICIARY	8-4
Ayes:	Longville, Cardenas, Steinberg, Keeley, Shelley	Ayes:	Corbett, Dutra, Jackson, Longville, Shelley, Steinberg, Vargas, Wayne
Nays:	Ashburn	Nays:	Harman, Bates, Robert Pacheco, Rod Pacheco

SUMMARY : Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill :

1) Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW :

1) Provides for political subdivisions that encompass areas of

representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT : None

COMMENTS : According to the author, this bill "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

1) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in Watsonville, California had diluted the voting strength of the

minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles .

As noted above, the Supreme Court in Gingles established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, which was vetoed, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by the Assembly, but was amended to an unrelated subject in the Senate Education Committee.

Analysis Prepared by : Willie Guerrero / E., R. & C. A. / (916) 319-2094

FN: 0005396

Date of Hearing: June 4, 2002

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 976 (Polanco) – As Amended: April 9, 2002

SENATE VOTE: 24-10

SUBJECT: DISCRIMINATION: VOTING RIGHTS

KEY ISSUE: SHOULD THE STATE ENACT A VOTING RIGHTS ACT IN ORDER TO PROHIBIT AND REMEDY RACIALLY POLARIZED VOTING THAT ABRIDGES OR DILUTES THE RIGHT TO VOTE IN AT-LARGE ELECTION SYSTEMS?

SYNOPSIS

This bill, which was previously heard by the Elections, Reapportionment and Constitutional Amendments Committee, enacts a state voting rights act comparable to the federal voting rights act in order to address racial block voting in at-large elections. Unlike prior unsuccessful measures concerned with at-large election methods, this bill would not mandate that any political subdivision convert an at-large election system to a single-member district system. Rather, this bill simply prohibits the abridgement or dilution of minority voting rights.

SUMMARY: Prohibits discrimination in at-large election districts. Specifically, this bill:

1) Provides that an at-large method of election may not be employed by a political subdivision of the state in a manner that results in the dilution or the abridgment of the rights of voters who are members of a protected race, color or language class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Prohibits racially polarized voting, as defined, in elections for members of the governing body of a political subdivision or in elections incorporating other electoral choices by the voters of a political subdivision.

3) Provides that a voter may sue to enforce and a court may remedy violations of the act.

EXISTING LAW:

1) Provides for political subdivisions and the election of public officials by all of the voters (at-large), or from districts formed within the political subdivision (district-based), or by some combination thereof. (Elections Code sections 10505, 10508, and 10523; Government Code Sections 58000-58200.)

2) Allows voters of the entire political subdivision to determine by local initiative whether public officials are elected by divisions or by the entire political subdivision. (Elections Code Section 9102.)

FISCAL EFFECT: As currently in print, this bill is keyed non-fiscal.

COMMENTS: The author states that SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

This Bill Addresses Racially Polarized Voting if it Impairs the Right of Protected Groups to Influence the Outcome of an Election. This bill establishes a state Voting Rights Act much like the federal Voting Rights Act. Accordingly, it provides protections against the dilution or abridgement of the right to vote by members of the race, color and language groups recognized by the federal act. Restrictive interpretations given to the federal act, however, have put the cart before the horse by requiring that a plaintiff show that the protected class is geographically compact enough to permit the creation of a single-member district in which the protected class could elect its own candidate. This bill would avoid that problem.

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the court created three requirements that a plaintiff must establish to prove that an election system diluted the voting strength of a protected minority group: (1) the minority community was politically cohesive, in that minority voters usually supported minority candidates; (2) there was racially polarized voting among the majority community, which usually voted for majority candidates rather than for minority candidates; and (3) the minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate. Prior to the *Thornburg* decision, there had been no requirement to show geographical compactness in order to show a violation of the federal voting rights act.

This bill would allow a showing of dilution or abridgement of minority voting rights by showing the first two *Thornburg* requirements without an additional showing of geographical compactness. Under other decisions of the U.S. Supreme Court, the geographical compactness or concentration of the protected class within a political subdivision is a factor in determining whether a district may be drawn to allow that class of voters to elect the candidate of their choice. This bill recognizes that geographical concentration is an appropriate question at the remedy stage. However, geographical compactness would not appear to be an important factor in assessing whether the voting rights of a minority group have been diluted or abridged by an at-large election system. Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).

This Bill Does Not Mandate the Abolition of At-large Election Systems. Unlike prior legislation regarding at-large methods of election, discussed below, this bill does not mandate that any political subdivision convert at-large districts to single-member districts. Instead, this bill simply prohibits at-large election systems from being used to dilute or abridge the rights of voters in protected classes.

Author's Technical Amendments. To clarify that there is more than one protected class, the author properly wishes to change references to "the protected class" to "a protected class."

Similarly, to avoid confusion regarding the definition of racially polarized voting, the author appropriately suggests language referencing the standard under the federal voting rights act. Thus, proposed section 14025(3) on page 3, line 7 *ff*, should read as follows: (e) ''Racially polarized voting'' means voting in which there is a difference, ***as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.),*** in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 *et seq.*) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

In addition, to correct awkward syntax, the author prudently desires to reword section 14027 as follows: "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined in Section 14026."

To clarify the intention of section 14028(b), the author properly proposes that the bill be amended as follows: (b) The occurrence of racially polarized voting shall be determined from examining results of elections in which ***at least one*** candidate~~s~~ ~~are~~ ***is a*** member~~s~~ of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section 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 based on Section 14027 and this section. ~~In~~ ~~***Elections***~~ In multiseat at-large ***election*** districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

The author also desires to correct the citation format in section 14030 to read: In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~**including pages**~~ 48 ~~and~~ -49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Finally, to clarify the syntax of section 14032, the author wisely suggests that it should read as follows: "Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located."

Prior Related Legislation. AB 8 (Cardenas) of 1999 sought to eliminate the at-large election system within the Los Angeles Community College District. That bill was vetoed by the Governor, who stated in his veto message that the decision to create single-member districts was best made at the local level. AB 172 (Firebaugh) of 1999 proposed to prohibit at-large elections

for specified K-12 school districts. After passing the Assembly, that bill was amended to an unrelated subject in the Senate.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU
Joaquin Avila, Esq.
Mexican American Legal Defense and Educational Fund (MALDEF)

Opposition

None on file

Analysis Prepared by: Kevin G. Baker / JUD. / (916) 319-2334

Date of Hearing: April 16, 2002

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS
John Longville, Chair
SB 976 (Polanco) – As Amended: April 9, 2002

SENATE VOTE: 24-10

SUBJECT: Elections: rights of voters.

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW:

1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS:

1) Purpose of the Bill: According to the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

2) Legal History: In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

   a) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

   b) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

   c) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

   In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in

Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

3) Impact of this Bill: In Gingles, the Supreme Court established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

4) Previous Legislation: AB 8 (Cardenas) of 1999, which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by this committee, but was amended to an unrelated subject in the Senate Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 2, 2002

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS
John Longville, Chair
SB 976 (Polanco) – As Amended: March 18, 2002

SENATE VOTE: 24-10

SUBJECT: Elections: rights of voters.

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to he frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW:

1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS:

1) Purpose of the Bill: According to the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

2) Legal History: In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

   a) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

   b) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

   c) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

   In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in

Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

3) Impact of this Bill: In Gingles, the Supreme Court established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

4) Previous Legislation: AB 8 (Cardenas) of 1999, which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by this committee, but was amended to an unrelated subject in the Senate Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

SB 976

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR: 16-10, 5/30/01
AYES: Alarcon, Chesbro, Dunn, Escutia, Figueroa, Karnette, Kuehl, Murray, Peace, Polanco, Romero, Scott, Soto, Speier, Torlakson, Vincent
NOES: Ackerman, Brulte, Haynes, Johannessen, Knight, McClintock, McPherson, Morrow, Oller, Poochigian

SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is

CONTINUED

elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

CONTINUED

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

7. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

The bill defines:

CONTINUED

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

   C. One which combines at-large elections with district-based elections.

2. "District-based election" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

3. "Political subdivision" 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.

4. "Protected class" as a class of voters who are members of a minority race, color or language group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

5. "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

Comments:

CONTINUED

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 1/8/02)

Mexican American Legal Defense and Educational Fund

DLW:jk 1/8/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT
Senator Don Perata, Chair

BILL NO:	**SB 976**	HEARING DATE:	**5/2/01**
AUTHOR:	**POLANCO**	ANALYSIS BY:	**Darren Chesin**
AMENDED:	**AS TO BE AMENDED**		
FISCAL:	**NO**		

SUBJECT:

At large and district elections: rights of voters

BACKGROUND:

Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

- The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.
- The minority community was politically cohesive, in that minority voters usually supported minority candidates.

- There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

PROPOSED LAW:

This bill would establish criteria in state law through which the validity of local at-large election systems can be challenged in court. Specifically, this bill does all of the following:

(a) Provides that a local political jurisdiction may not employ an at-large method of election if it results in the dilution or the abridgement of the rights of any registered voter who is a member of a minority race, color or language group, by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.

(b) Provides that a violation of this prohibition is established if it is shown that racially polarized voting occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the same jurisdiction.

(c) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by the voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

(d) Specifies the methodology by which racially polarized voting may be established.

(e) Specifies 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.

(f) States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(g) Delineates other factors that may be introduced as evidence in order to establish a violation.

(h) Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

COMMENTS:

1. According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

2. This bill establishes criteria when met, that would serve to prohibit the use of at-large elections in local jurisdictions. Unlike the preconditions established by the Supreme Court in Thornburg v. Gingles, this bill does not require that the minority community be geographically compact or concentrated. If a minority community is not sufficiently geographically compact to ensure that it can elect one of their members from a district, what is gained by eliminating the at-large election system?

3. Several bills seeking to promote the use of district-based elections over at-large elections have been pursued in the past. Last year, AB 8 (Cardenas) which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member trustee areas is best made at the local level, not by the state. AB 172 (Firebaugh) of 1999, which would have prohibited at-large elections for specified K-12 school districts, passed this committee but died in the Senate Committee on Education.

POSITIONS:

Sponsor: Joaquin Avila, former President, MALDEF; public interest attorney

Support: None received

Oppose: None received

Assembly Elections,
Reapportionment and Constitutional
Amendments Committee
John Longville, Chair

Bill No. SB 976
Intro /Amended Date: _____
Author Polanco

State Capitol, Room 3123
319-2094
319-2162 (fax)

Please note these important committee deadline dates:

April 26th last day for policy committees to hear and report Assembly fiscal bills for referral to fiscal committees.
May 10th last day for policy committees to hear and report to the floor nonfiscal Assembly bills.
May 24th last day for policy committees to meet prior to June 11th.
June 1st last day for fiscal committees to hear and report Assembly bills to the Floor
June 3th committee meetings may resume.
August 16th last day for policy committees to meet and report Senate bills.
August 31st end of session

1) NEED FOR BILL:

Please present all the relevant facts (BE SPECIFIC) that demonstrate the need for this bill. Please see attached note

2) SOURCE AND BACKGROUND OF BILL:

a) Who is the person in your office to contact regarding this bill? (Please provide telephone numbers.) Saeed Ali 445 3456

b) What, if any, person, organization, or governmental entity requested introduction of this bill? Joaquin Avila, Attorney

c) Has a similar bill been before either this Session or a previous Session of the Legislature? If so, please identify the Session, bill number, and disposition of this bill.

No

d) Have there been any interim hearings, a committee report, or issue in general on this bill? If so, please identify.

No

e) Please list likely support and opposition. Attach copies of letters of support and opposition you have received.

- MALDEF, ACLU — Support
- No known opposition

f) Please attach copies of all Senate analyses (policy, fiscal, floor), if applicable.

3) AMENDMENTS PRIOR TO HEARING:

a) Do you plan any substantive amendments to this bill prior to hearing?

YES ✓ NO _____

b) If the answer to question (a) is "YES" please explain briefly the substance of the amendments being prepared (or attach a copy of the draft language that has been sent to Legislative Counsel). Attached

c) Please send 8 copies of all amendments to the ER&CA Committee. **The original copy must be signed by the member.** — Will do

d) **No substantive amendments shall be accepted after 5:00 p.m. on Monday the week prior to the hearing, and the amendments must be in Legislative Counsel form.**

4) WITNESSES:

Please list the witnesses you plan to have testify on the day of the hearing:

Joaquin Avila

This form must be filled out and returned within 5 business days. The Chair may withhold the hearing of a bill if the worksheet and accompanying information is not received within the required five-day period. Please send this form and all supporting documentation to the attention of Patricia Hawkins, State Capitol, room 3123.

OFFICE OF LEGISLAT[illegible]UNSEL
State Capitol, Suite 3021
Sacramento, California 95814-3702

TELEPHONE (916) 341-8000
FACSIMILE (916) 341-8020
INTERNET www.legislativecounsel.ca.gov
EMAIL administration@legislativecounsel.ca.gov

July 5, 2002

Honorable Gray Davis
Governor of California
Sacramento, CA 95814

SENATE BILL NO. 976

Dear Governor Davis:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Polanco and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

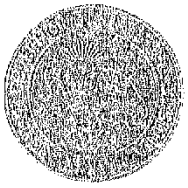
Diane F. Boyer-Vine
Legislative Counsel

By
Michael B. Salerno
Principal Deputy

MBS:clr

Two copies to Honorable Richard Polanco, pursuant to Joint Rule 34.

Polanco
Rm 313



GOVERNOR GRAY DAVIS

JUL - 9 2002

To Members of the California State Senate:

I am signing SB 976. This measure provides voters with a cause of action to challenge at-large elections when it can be shown that a minority's voting rights have been abridged or diluted. Upon a determination that a violation has occurred, the court shall fashion appropriate remedies, including but not limited to single district elections.

While this legislation is far from perfect, it does provide state courts with the ability to fashion remedies for minorities when their votes are unfairly diluted by the use of at-large election. Given the diverse make up of California voters, this legislation will help to ensure that California's electoral system is fair, open to, and representative of all California voters.

Sincerely,

Gray Davis

GRAY DAVIS

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841

SENATE BILL 976

Elections: rights of voters.

Status Sheet

Date	Committee	History/Notes
4/10	League of Cities	Amy Brown, League of Cities: Recommending Support & will work w/author on remediation
	CSAC	Karen Keen.
4/19	Darrow, Jouquin, Al-	(1) NAACP data @ Judges (2) Case Law (3) League of Cities! List of cities
5/7	Cynthia Bryant Rep. Committee 3235221	

OFFICE OF LEGISLATI[illegible]UNSEL
State Capitol, Suite 3021
Sacramento, California 95814-3702

TELEPHONE (916) 341-8000
FACSIMILE (916) 341-8020
INTERNET www.legislativecounsel.ca.gov
EMAIL administration@legislativecounsel.ca.gov

July 5, 2002

Honorable Gray Davis
Governor of California
Sacramento, CA 95814

SENATE BILL NO. 976

Dear Governor Davis:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Polanco and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
Michael B. Salerno
Principal Deputy

MBS:clr

Two copies to Honorable Richard Polanco, pursuant to Joint Rule 34.

Assembly Committee on Elections, Reapportionment and Constitutional Amendments
AUTHOR HEARING NOTICE

April 12, 2002

Senate Member Polanco:

Your bill no(s). SB 976

will be heard on Tuesday, April 16, 2002

Time and Location:

1:30 p.m. -- Room 444

From:

John Longville, Chair
Assembly Committee on Elections, Reapportionment and Constitutional Amendments
Sacramento, CA 95814 (916) 319-2094

League of United Latin American Citizens

July 3, 2002

The Honorable Gray Davis
Governor of California
State Capitol, 1st Floor
Sacramento, CA 95814

Governor Davis:

The California League of United Latin American Citizens, the largest and oldest latino civil rights organization in the nation is urging your support for SB 976, sponsored by Senator Richard Polanco.

We are writing to urge your approval of SB976, the California State Voting Rights Act of 2001. This act provides an effective tool for minority communities to address the problem of racial block voting in the contest of at-large elections. The Act permits a local minority community to file an action in a local Superior Court challenging an at-large election system that has a discriminatory effect on minority voting strength. The act does not mandate the elimination of at-large election, rather, the Act permits a local minority community to prove the existence of racial bloc voting in accordance with well established case law. Once a violation is established, the Superior Court can implement an appropriate remedy to provide the minority community with greater access to the political process.

Given the demographic changes occurring in California, it is important that the governing boards of local government be reflective on the communities they serve. This Act provides an opportunity to create a political leadership that is both diverse and responsive to the ever increasing demands of our local communities.

LULAC in it's on going efforts and work in assuring latinos are elected as representatives of their communities, hereby urges your approval of the California Voting Rights Act of 2001.

Sincerely,

Mrs. Mickie Solorio Luna,
State President,
California LULAC

1101 Homestead Avenue ♦ Hollister, California 95023
1-877-77LULAC • 831-637-1342 • Fax: 831-637-0146 • www.californialulac.org

AMERICAN CIVIL LIBERTIES UNION

CALIFORNIA LEGISLATIVE OFFICE
Francisco Lobaco, *Legislative Director*
Valerie Small Navarro, *Legislative Advocate*
Rita M. Figa, *Legislative Assistant*

1127 Eleventh Street, Suite 534
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

July 2, 2002

The Honorable Gray Davis
State Capitol
Sacramento, CA 95814

Re: SB 976 (Polanco) -- Support

Dear Governor Davis:

We urge your approval of SB 976, the California State Voting Rights Act of 2001. This act provides an effective tool for minority communities to address the problem of racial bloc voting in the context of at-large elections. The Act permits a local minority community to file an action in a local Superior Court challenging an at-large election system that has a discriminatory effect on minority voting strength. The Act does not mandate the elimination of at-large elections; rather, the Act permits a local minority community to prove the existence of racial bloc voting in accordance with well-established case law. Once a violation is established, the Superior Court can implement an appropriate remedy to provide the minority community with greater access to the political process.

Given the demographic changes occurring in California, it is important that the governing boards of local government be reflective of the communities they serve. This Act provides an opportunity to create a political leadership that is both diverse and responsive to the ever increasing demands of our local communities.

For these reasons we urge your approval of the California Voting Rights Act of 2001.

Sincerely,

FRANCISCO LOBACO
Legislative Director

VALERIE SMALL NAVARRO
Legislative Advocate

cc: The Honorable Richard Polanco

ACLU OF NORTHERN CALIFORNIA
Dorothy M. Ellis, *Executive Director*
1663 Mission Street, Suite 460
San Francisco, CA 94103
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Raquel Ejeson, *Executive Director*
1616 Beverly Blvd
Los Angeles, CA 90026
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Linda Gills, *Executive Director*
P.O. Box 87131
San Diego, CA 92138-7131
(619) 232-2121

MEXICAN-AMERICAN POLITICAL ASSOCIATION

State/National
"Making the Difference"

ASOCIACIÓN POLITICA MEXICO-AMERICANO

Naciónal/Estatal
"Haciendo La Diferencia"

July 6, 2002

The Honorable Gray Davis
Governor of California
State Capitol, 1st Floor
Sacramento, California 95814

Dear Governor Davis,

As the State/National President of the Mexican American Political Association (MAPA). We not only feel obligated to support this legislation, but its been my life's work to work under the constitution's - "One man, one vote and taxation with representation"- the most important sentences in the constitution because politics makes the world go round, our "Raza" can no longer sit still! We're on the move and we take only these that have walked the walk and not just talked the political talk. Ya basta! Remember Dinuba in the valley in "92".

"We are writing to urge your approval of SB976, the California State Voting Rights act of 2001. This act provides an effective tool for minority communities to address the problem of racial bloc voting in the context of at-large election; rather, the Act permits a local minority community proves the existence of racial bloc voting in accordance with well-established case law. Once a violation established, the Superior Court can implement an appropriate remedy to provide the minority community with greater access to the political process.

Given the demographic changes occurring in California (especially in the San Joaquin Valley, Napa Valley and Salinas School Board), it is important that the governing boards of local government be reflective of the communities they serve. This Act provides an opportunity to create a political leadership that is both diverse and responsive to the ver increasing demands of our local communities.

For these reasons we urge your approval of the California Voting Rights Act of 2001. Should you have any questions, please feel free to contact me at (559) 259-5812.

Respectfully yours,

Ben Benavidez
MAPA State/National President
559-259-5812

League of United Latin American Citizens

July 3, 2002

The Honorable Gray Davis
Governor of California
State Capitol, 1st Floor
Sacramento, CA 95814

Governor Davis:

The California League of United Latin American Citizens, the largest and oldest latino civil rights organization in the nation is urging your support for SB 976, sponsored by Senator Richard Polanco.

We are writing to urge your approval of SB976, the California State Voting Rights Act of 2001. This act provides an effective tool for minority communities to address the problem of racial block voting in the contest of at-large elections. The Act permits a local minority community to file an action in a local Superior Court challenging an at-large election system that has a discriminatory effect on minority voting strength. The act does not mandate the elimination of at-large election, rather, the Act permits a local minority community to prove the existence of racial bloc voting in accordance with well established case law. Once a violation is established, the Superior Court can implement an appropriate remedy to provide the minority community with greater access to the political process.

Given the demographic changes occurring in California, it is important that the governing boards of local government be reflective on the communities they serve. This Act provides an opportunity to create a political leadership that is both diverse and responsive to the ever increasing demands of our local communities.

LULAC in it's on going efforts and work in assuring latinos are elected as representatives of their communities, hereby urges your approval of the California Voting Rights Act of 2001.

Sincerely,

Mrs. Mickie Salorio Luna,
State President,
California LULAC

1101 Homestead Avenue • Hollister, California 95023
1-877-77LULAC • 831-637-1342 • Fax: 831-637-0146 • www.californialulac.org

NALEO Educational Fund empowering Latinos to participate fully in the American political process
20th Anniversary 1981 - 2001

July 3, 2002

The Honorable Gray Davis
Governor
1st Floor, State Capitol
Sacramento, CA 95814

Dear Governor Davis:

On behalf of the National Association of Latino Elected and Appointed Officials (NALEO), I am writing to urge your approval of SB 976, the "California Voting Rights Act of 2001." The Act enhances the ability of Latino and other minority communities to challenge local at-large election systems that dilute their voting strength in a discriminatory manner.

SB 976 does not mandate the elimination of at-large elections; rather, the Act permits a local minority community to prove the existence of racial bloc voting in accordance with well-established case law by filing an action in a local Superior Court. Once a violation is established, the Superior Court can implement an appropriate remedy to provide the minority community with greater access to the political process.

Given the demographic changes in California, it is important that the governing boards of local jurisdictions reflect the communities they serve. Discriminatory election systems diminish the vitality and responsiveness of our state's democracy. By approving the California Voting Rights Act of 2001, you will help ensure that all California voters have a fair opportunity to have their voices heard in the electoral process.

Sincerely,

Arturo Vargas
Executive Director

cc: The Honorable Richard Polanco

WWW.NALEO.ORG

5800 S. Eastern Ave., Suite 365
Los Angeles, CA 90040
(323) 720-1932
Fax (323) 720-9519

311 Massachusetts Avenue, NE
Washington, D.C. 20002
(202) 546-2536
Fax (202) 546-4121

4920 Irvington Blvd., #B
Houston, TX 77009
(713) 697-6400
Fax (713) 694-2229

60 East 42nd St., Suite 2222
Lincoln Building
New York, NY 10165
(646) 227-0797
Fax (646) 227-0897

DATE 7/1 TIME 1:05

TO Saeed

FROM Jennifer

REPRESENTING Gov.'s office

PHONE 445-4341

- ☐ URGENT
- ☒ Telephoned
- ☐ Returned Call
- ☒ Please Call
- ☐ Will Call Again
- ☐ Information
- ☐ Was In
- ☐ Wants To See You
- ☐ _____

MESSAGE/REMARKS

She needs a factsht. on SB 926.

Jennifer.Pelts@gov.ca.gov

Yolanda Tejeda

CHAIR, BUDGET SUBCOMMITTEE NO. 4 GENERAL GOVERNMENT

CHAIR, LATINO LEGISLATIVE CAUCUS

CHAIR, JOINT COMMITTEE ON PRISON CONSTRUCTION & OPERATIONS

CHAIR, SUBCOMMITTEE ON PROFESSIONAL & VOCATIONAL STANDARDS

CHAIR, SUBCOMMITTEE ON THE AMERICAS

California State Senate

Senate Majority Leader

SENATOR RICHARD G. POLANCO

TWENTY-SECOND SENATORIAL DISTRICT

MEMBER

BANKING, COMMERCE, AND INTERNATIONAL TRADE

BUDGET AND FISCAL REVIEW

BUSINESS AND PROFESSIONS

ELECTIONS AND REAPPORTIONMENT

HEALTH AND HUMAN SERVICES

LABOR & INDUSTRIAL RELATIONS

PUBLIC SAFETY

July 2, 2002

The Honorable Gray Davis
Governor of California
State Capitol, 1st Floor
Sacramento, CA 95814

RE: SENATE BILL 976

Dear Governor Davis:

I am writing to respectfully request your approval of SB 976.

Senate Bill 976 addresses the problem of racial bloc voting in California - a state without a majority racial or ethnic group.

SB 976 is necessary because the federal Voting Rights Act's remedy fails to redress California's problem of racial bloc voting. Federal case law requires that the minority community be geographically compact and sufficiently large to constitute a majority in a hypothetical election district. This geographic compactness standard requires that the minority population in such an election district constitute more than 50 percent of the eligible voter population. If the minority community were at 49 percent, then the federal courts cannot provide a remedy. Such a bright-line test establishes an artificial threshold which often serves to deny minority voting rights in California simply because the minority community is not sufficiently compact.

SB 976 addresses California's problem and lays out criteria and a judicial process to determine if the facts of block voting can be established. The court must use criteria that are well-established in law and in court decisions to establish the existence of the problem. The remedy is not prescribed in the measure but must be fashioned by the court and must be tailored to remedy the violation. Hence, SB 976 focuses the remedy on the problem but is permissive on the remedy that should be used.

Governor, after the 2000 Census, in California we are facing a unique situation where we are all minorities. We need statutes to ensure that our electoral

CAPITOL OFFICE: STATE CAPITOL, ROOM 313 • SACRAMENTO, CALIFORNIA 95814-4906 • (916) 445-3456 PHONE • (916) 445-0413 FAX
DISTRICT OFFICE: 300 SOUTH SPRING STREET, SUITE 8710 • LOS ANGELES, CALIFORNIA 90013 • (213) 620-2529 PHONE • (213) 617-0077 FAX

system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution.

There is no known opposition to the measure.

I request your approval of the measure and will be happy to provide any additional information you may require.

Sincerely,

RICHARD G. POLANCO
Senate Majority Leader
RGP: sma

MALDEF
Mexican American Legal Defense and Educational Fund

National Headquarters
Los Angeles Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512
Fax: 213.629.0266

Chicago Regional Office
188 W. Randolph Street
Suite 1405
Chicago, IL 60601
Tel: 312.782.1422
Fax: 312.782.1429

San Antonio Regional Office
140 E. Houston Street
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476
Fax: 210.224.5382

Washington, D.C. Regional Office
1717 K Street, NW
Suite 311
Washington, DC 20036
Tel: 202.293.2828
Fax: 202.293.2849

San Francisco Redistricting Office
915 Cole Street
Suite 381
San Francisco, CA 94117
Tel: 415.504.6901
Fax: 415.504.6901

Sacramento Satellite Office
926 J Street
Suite 422
Sacramento, CA 95814
Tel: 916.443.7581
Fax: 916.443.1541

Albuquerque Program Office
1606 Central Avenue, SE
Suite 201
Albuquerque, NM 87106
Tel: 505.843.8669
Fax: 505.246.9104

Houston Program Office
Ripley House
4410 Navigation
Suite 229
Houston, TX 77011
Tel: 713.315-6494
Fax: 713.315-6404

Phoenix Program Office
202 E. McDowell Road
Suite 170
Phoenix, AZ 85004
Tel: 602.307-5918
Fax: 602.307-5928

Atlanta Census Office
3355 Lenox Road
Suite 750
Atlanta, GA 30326
Tel: 404.504.7020
Fax: 404.504.7021

July 3, 2002

Via Facsimile and First Class Mail

The Honorable Gray Davis
Governor of California
State Capitol, 1st Floor
Sacramento, California 95814

RE: *Senate Bill 976*

Dear Governor Davis:

The Mexican American Legal Defense and Educational Fund (MALDEF) urges your approval of Senate Bill 976, the California State Voting Rights Act of 2001. This Act provides the tools necessary for Latinos and other protected minority communities to combat the problems of disfranchisement and unequal access to the political process caused by at-large elections. At-large elections, along with racial bloc voting patterns, can operate to suppress the ability of Latinos to elect the candidates of their choice – candidates that meaningfully represent them and their interests.

The California State Voting Rights Act of 2001 would permit a local minority community to file an action in a local Superior Court challenging an at-large election system that has a discriminatory effect on minority voting strength. While the Act does not mandate the elimination of at-large elections, it does permit a local minority community to prove the existence of racial bloc voting in accordance with well-established case law. Once a violation is established, the Superior Court can implement an appropriate remedy to provide the minority community with more meaningful political representation.

Although California has already become a majority-minority state, Latino political representation at the local level has not kept pace with the staggering growth of the Latino community over the past decade. In 2000, Latinos comprised 33% of California's population. Yet that same year, according to the 2000 National Association of Latino Elected Official's (NALEO) annual directory, Latinos represented only 2.8% of the total number of county elected officials in California (58/2,013), and only 10.5% of all municipal elected officials (308/2,913).

Celebrating Our 33rd Anniversary
Protecting and Promoting Latino Civil Rights
www.maldef.org

Governor Davis
July 3, 2002
Page Two

This stark disparity underscores the continued need for measures, legislative or otherwise, to help the governing bodies of local government better reflect the communities they serve. This Act provides an opportunity to create a political leadership that is both diverse and responsive to the needs and concerns of the Latino community.

For these reasons, we urge your approval of the California Voting Rights Act of 2001.

Sincerely,

Steven J. Reyes / KAM

Steven J. Reyes
Staff Attorney

cc: Senator Richard Polanco

ACLU
AMERICAN CIVIL LIBERTIES UNION

CALIFORNIA LEGISLATIVE OFFICE
Francisco Lobaco, *Legislative Director*
Valerie Small Navarro, *Legislative Advocate*
Rita M. Egri, *Legislative Assistant*

1127 Eleventh Street, Suite 534
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

May 31, 2002

The Honorable Richard Polanco
State Capitol, Room 5046
Sacramento, CA 95814

Re: SB 976 (Polanco) -- Support

Dear Senator Polanco:

The American Civil Liberties Union supports SB 976, your bill to provide state law protection against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of African-Americans, Latinos, and other protected groups on local governing boards. Statewide, the underrepresentation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction. Thus, we support SB 976 because it increases the opportunity to fully participate in the political process.

If you or your staff have any questions or comments, please call us.

Sincerely yours,

Francisco Lobaco

FRANCISCO LOBACO
Legislative Director

V. Small Navarro

VALERIE SMALL NAVARRO
Legislative Advocate

Cc: Members and Consultant, Assembly Judiciary Committee

ACLU OF NORTHERN CALIFORNIA
Dorothy M. Ehrlich, *Executive Director*
1663 Mission Street • Suite 460
San Francisco • CA 94103
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Ramona Ripston, *Executive Director*
1616 Beverly Blvd
Los Angeles • CA 90026
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Linda Hills, *Executive Director*
P.O. Box 87131
San Diego • CA 92138-7131
(619) 232-2121

Sacramento Satellite Office
[illegible]
Suite [illegible]
Sacramento, CA 95814
Tel: 916 443 7531
Fax: 916 443 1541

National Headquarters
Los Angeles Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213 629 2512
Fax: 213 629 0266

Chicago Regional Office
105 W. Randolph Street
Suite 1705
Chicago, IL 60601
Tel: 312 782 1422
Fax: 312 782 1128

San Antonio Regional Office
[illegible] E. Houston Street
Suite 300
San Antonio, TX 78205
Tel: 210 224 5476
Fax: 210 224 5785

Washington, D.C. Regional Office
1717 K Street, NW
Suite 311
Washington, DC 20006
Tel: 202 293 2828
Fax: 202 293 2849

San Francisco Redistricting Office
[illegible]
Suite 331
San Francisco, CA 94117
Tel: 415 361 8061
Fax: 415 361 3490

Albuquerque Program Office
1650 Central Avenue, SE
Suite 201
Albuquerque, NM 87106
Tel: 505 243 8848
Fax: 505 243 6161

Houston Program Office
Lopez Hosp
4410 S [illegible]
Suite 220
Houston, TX 77011
Tel: 713 315 5631
Fax: 713 315 6101

Phoenix Program Office
502 E. McDowell Road
Suite 150
Phoenix, AZ 85004
Tel: 602 307 8505
Fax: 602 307 8508

Atlanta Demo Office
2235 Lenox Road
Suite 760
Atlanta, GA 30324
Tel: 404 504 7030
Fax: 404 504 7001

May 31, 2002

The Honorable Ellen Corbett, Chair
Committee on the Judiciary
California State Assembly
1020 N Street, Room 104
Sacramento, CA 95814

Re: SB 976 (Polanco) - Support **VIA FACSIMILE**

Dear Assembly Member Corbett:

The Mexican American Legal Defense and Educational Fund (MALDEF) strongly supports Senate Bill 976, which would amend state law to protect against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of Latinos and other protected groups on local governing boards. Statewide, the representation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, SB 976 would provide for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction.

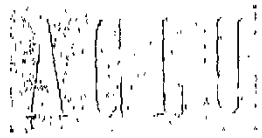
We hope that you will support this important legislation. If you have any questions about our position, please call me at 916-443-7531.

Sincerely,

Francisco Estrada
Senior Policy Analyst

cc: Senator Richard Polanco
Kevin Baker, Consultant, Assembly Committee on the Judiciary

Celebrating Our 33rd Anniversary
Protecting and Promoting Latino Civil Rights
www.maldef.org



AMERICAN CIVIL LIBERTIES UNION

CALIFORNIA LEGISLATIVE OFFICE
Francisco Lobaco, *Legislative Director*
Valerie Small Navarro, *Legislative Advocate*
Rita M. Figyi, *Legislative Assistant*
1127 Eleventh Street, Suite 531
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

May 31, 2002

The Honorable Richard Polanco
State Capitol, Room 5046
Sacramento, CA 95814

Re: SB 976 (Polanco) -- Support

Dear Senator Polanco:

The American Civil Liberties Union supports SB 976, your bill to provide state law protection against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of African-Americans, Latinos, and other protected groups on local governing boards. Statewide, the underrepresentation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction. Thus, we support SB 976 because it increases the opportunity to fully participate in the political process.

If you or your staff have any questions or comments, please call us.

Sincerely yours,

Francisco Lobaco

FRANCISCO LOBACO
Legislative Director

V. Small Navarro

VALERIE SMALL NAVARRO
Legislative Advocate

Cc: Members and Consultant, Assembly Judiciary Committee

ACLU OF NORTHERN CALIFORNIA
Dorothy M. Ehrlich, *Executive Director*
1663 Mission Street • Suite 460
San Francisco • CA 94103
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Ramona Ripston, *Executive Director*
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Los Angeles • CA 90026
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Linda Hills, *Executive Director*
P.O. Box 87131
San Diego • CA 92138-7131
(619) 232-2121

ACLU
AMERICAN CIVIL LIBERTIES UNION

CALIFORNIA LEGISLATIVE OFFICE
Francisco Lobaco, *Legislative Director*
Valerie Small Navarro, *Legislative Advocate*
Rita M. Egri, *Legislative Assistant*
1127 Eleventh Street, Suite 534
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

May 7, 2001

The Honorable Richard Polanco
State Capitol, Room 5046
Sacramento, CA 95814

Re: SB 976 (Polanco) -- Support

Dear Senator Polanco:

The American Civil Liberties Union supports SB 976, your bill to provide state law protection against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of African-Americans, Latinos, and other protected groups on local governing boards. Statewide, the underrepresentation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction. Thus, we support SB 976 because it increases the opportunity to fully participate in the political process.

If you or your staff have any questions or comments, please call us.

Sincerely yours,

FRANCISCO LOBACO
Legislative Director

VALERIE SMALL NAVARRO
Legislative Advocate

ACLU OF NORTHERN CALIFORNIA
Dorothy M. Ehrlich, *Executive Director*
1663 Mission Street • Suite 460
San Francisco • CA 94103
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Ramona Ripston, *Executive Director*
1616 Beverly Blvd
Los Angeles • CA 90026
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Linda Hills, *Executive Director*
P.O. Box 87131
San Diego • CA 92138-7131
(619) 232-2121

Sacramento
Satellite Office
926 J Street
Suite 408
Sacramento, CA 95814
Tel: 916.443.7301
Fax: 916.443.1541

National Headquarters
Los Angeles
Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512
Fax: 213.629.0266

Chicago
Regional Office
168 W. Randolph Street
Suite 1405
Chicago, IL 60601
Tel: 312.782.1422
Fax: 312.782.1528

San Antonio
Regional Office
140 E. Houston Street
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476
Fax: 210.224.5382

San Francisco
Regional Office
634 Market Street
Suite 206
San Francisco, CA 94104
Tel: 415.243.5000
Fax: 415.243.5816

Washington, D.C.
Regional Office
1717 K Street, NW
Suite 311
Washington, DC 20036
Tel: 202.293.2928
Fax: 202.293.2849

Albuquerque
Program Office
1006 Central Avenue, SE
Suite 201
Albuquerque, NM 87106
Tel: 505.843.8383
Fax: 505.243.9164

Houston
Program Office
Ripley House
4401 Lovejoy, Suite 23
Houston, TX 77003
Tel: 713.928.6780
Fax: 713.928.0506

Phoenix
Program Office
302 E. McDowell Road
Suite 170
Phoenix, AZ 85004
Tel: 602.307.5943
Fax: 602.307-5928

Atlanta
Campus Office
[illegible] Lenox Road
[illegible] 750
Atlanta, GA 30329
Tel: 404.504.7020
Fax: 404.504.7021

May 2, 2001

By Fax: (916) 445-2496

The Honorable Richard Polanco
Senate Committee on Elections and Reapportionment
California State Senate
State Capitol, Room 5046
Sacramento, CA 95814

Re: SB 976 (Polanco) - Support

Dear Senator Polanco:

The Mexican American Legal Defense and Educational Fund (MALDEF) supports SB 976, your bill to provide state law protection against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of Latinos and other protected groups on local governing boards. Statewide, the underrepresentation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction. Thus, SB 976 is consistent with our programmatic goal of increasing the opportunity to fully participate in the political process.

We appreciate the opportunity to lend our support to this bill. Please add our names to the list of supporting organizations, community leaders and legislators who view this bill as a positive step toward increasing political participation among full enfranchisement of all our citizens.

Sincerely,

Elizabeth E. Guillen

Elizabeth Guillen
Legislative Counsel

cc: Senate Committee on Elections and Reapportionment
Senator Don Perata, Chair
Darren Chesin, Consultant

Celebrating Our 32nd Anniversary
Protecting and Promoting Latino Civil Rights

CHAIR, BUDGET SUBCOMMITTEE NO. 4 GENERAL GOVERNMENT

CHAIR, LATINO LEGISLATIVE CAUCUS

CHAIR, JOINT COMMITTEE ON PRISON CONSTRUCTION & OPERATIONS

CHAIR, SUBCOMMITTEE ON PROFESSIONAL & VOCATIONAL BOARDS

CHAIR, SUBCOMMITTEE ON THE AMERICAS

California State Senate

Senate Majority Leader

SENATOR RICHARD G. POLANCO

TWENTY-SECOND SENATORIAL DISTRICT

MEMBER

BANKING, COMMERCE, AND INTERNATIONAL TRADE

BUDGET AND FISCAL REVIEW

BUSINESS AND PROFESSIONS

ELECTIONS AND REAPPORTIONMENT

HEALTH AND HUMAN SERVICES

LABOR & INDUSTRIAL RELATIONS

PUBLIC SAFETY

February 27, 2002

Legislative Counsel
State Capitol, Room 3021
Sacramento, CA 95814

RE: Senate Bill 976, R.N. 0205380

I am enclosing changes to the draft amendments. A mockup is also enclosed. Please provide me with new draft amendments reflecting the changes.

If you have any questions, please contact my Chief of Staff, Saeed Ali, at 445-3456.

Sincerely,

RICHARD G. POLANCO
Senate Majority Leader

RGP: sma

CAPITOL OFFICE: STATE CAPITOL, ROOM 313 • SACRAMENTO, CALIFORNIA 95814-4906 • (916) 445-3456 PHONE • (916) 445-0413 FAX
DISTRICT OFFICE: 300 SOUTH SPRING STREET, SUITE 8710 • LOS ANGELES, CALIFORNIA 90013 • (213) 620-2529 PHONE • (213) 617-0077 FAX

To: Saeed Ali
From: Joaquin G. Avila
Re: Changes to Proposed Amendments - SB 976
Date: February 26, 2002

Changes to February 18th Amendments

Amendments Nos. 1 - 7 No changes

Amendment 8 - In third line the word "that" should read "than" - the third line reads as follows: "existence of racially polarized voting than elections conducted"

Amendment 9 - Should read:
"On page 4, line 16, after "considered" insert:
in determining a violation of Section 14027 and this section"

Amendment 10 - Should read:
"On page 4, line 17, after "class" insert:
and who are preferred by voters of the protected class, as determined by an analysis of voting behavior,"

Amendment 11 - Should read:
"On page 4, line 27, after "voting," insert:
or a violation of Section 14027 and this section,"

Amendment 12 - 13 No changes

Amendment 14 - Should read:
"On page 5, line 9, after "fee" insert:
and litigation expenses, including but not limited to expert witness fees and expenses"

Amendment 15 - Should read:
"On page 5, line 11, strike out "Prevailing plaintiff" and strike out lines 12 and 13

Amendment 16 - Should read:
"On page 5, line 11, after "costs." insert:
Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation."

Amendment 17 - No change

Amendment 18 - Delete the word "registered" from the first line.
First line should read: "Section 14032. Any voter who is a member of the"

AMENDED IN SENATE MAY 1, 2001

SENATE BILL No. 976

Introduced by Senator Polanco

February 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as amended, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass ~~municipal~~ areas of representation within the state. With respect to these ~~municipal~~ areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that ~~a municipal political subdivision may not be subdivided~~ *an at-large method of election, as defined, may not be imposed or applied* in a manner that results in ~~a denial~~ *the dilution* or abridgment of the right of ~~a registered voter to vote on account of membership in a minority race, color or language group~~ *registered voters who are members of a protected class, as defined, by impairing their ability to elect candidates of their choice or to influence the outcome of an election.*

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a ~~municipal~~ political subdivision, *among other things*. It would provide that an

intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

~~(a) "At-large method of election" means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.~~

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision~~ and does not include any method of district-based elections.~~ :

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) "District-based elections ~~election~~" means a method of electing members to the governing body of a ~~municipal~~ political subdivision in which the candidate must reside within an election district that is a divisible part of the ~~municipal~~ political subdivision and is elected only by voters residing within that election district.

~~(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage.~~

~~(d) "Municipal political~~

(c) "Political subdivision" means a geographic area of representation created for the provision of ~~municipal~~ government services, including, but not limited to, a city, a school district, a community college district, or other ~~local district~~ *district organized pursuant to state law.*

~~(e)~~

(d) "Protected class" means a class of voters who are members of a [~~minority~~] race, color or language group, *as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).*

minority

~~(f) "Racially polarized voting" means voting in which there is a consistent difference in the way voters of an identifiable class based on a minority race, color or language group vote and the way the rest of the electorate vote in a municipal political subdivision.~~

~~14027. A municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of any registered voter to vote on account of membership in a minority race, color or language group.~~

(e) "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgment of the rights of [~~registered~~] *voters who are members of the protected class, as provided in Section 14028, by impairing their ability to elect candidates of their choice* [~~of~~] or *their ability to influence the outcome of an election.*

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for

members of the governing body [~~of~~ the] ~~a municipal political subdivision~~ *political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.*

Elections conducted prior to the filing of an action pursuant to Section 14027 or this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

~~(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a municipal political subdivision that is the subject of an action based on Section 14027.~~

(b) The occurrence of racially polarized voting [or a violation of section 14027 and this section] *shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered* in determining a violation of section 14027 and this section *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 based on Section 14027 and this section. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.*

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting or a violation of Section 14027 and this Section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in

1 ~~*political campaigns, may also be introduced as evidence but these*~~
2 ~~*factors are not necessary to establish a violation of this section.*~~
3 14029. Upon a finding of a violation of Section 14027 *and*
4 *Section 14028*, the court shall implement appropriate remedies,
5 including the imposition of district-based elections ~~in place of~~
6 ~~at-large districts~~, that are tailored to remedy the violation.
7 14030. In any action to enforce Section 14027, the court shall
8 allow the prevailing plaintiff party, other than the state or political
9 subdivision thereof, a reasonable attorney's fee consistent with the
10 standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~at~~
11 *including* pages 48 and 49, as part of the costs. ~~Prevailing plaintiff~~
12 ~~parties, other than the state or political subdivision thereof, shall~~
13 ~~recover their expert witness fees and expenses as part of the costs.~~
14 *14031. This chapter is enacted to implement the guarantees*
15 *of Section 7 of Article I and of Section of Article II of the California*
16 *Constitution.*

political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

and Section 14028

and litigation expenses, including but not limited to expert witness fees and expenses

Prevailing ~~plaintiff~~ defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

2

Amendment 18
On page 5, below line 16, insert:

14032. Any ~~registered~~ voter who is a member of the protected class and who resides in a political subdivision that is the subject of an action filed pursuant to Sections 14027 and 14028 may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

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AMENDMENTS TO SENATE BILL NO. 976
AS AMENDED IN SENATE MAY 1, 2001

Amendment 1

On page 2, lines 16 and 17, strike out ", and does not include any method of district-based elections"

Amendment 2

On page 2, line 25, strike out "election"" and insert:

elections"

Amendment 3

On page 3, line 12, strike out "minority"

Amendment 4

On page 3, line 12, after "language" insert:

minority

Amendment 5

On page 3, line 35, strike out "registered"

Amendment 6

On page 3, line 37, strike out the second "of" and insert:

or

Amendment 7

On page 4, line 1, after the second "of" insert:

the

Amendment 8

On page 4, line 3, after the period insert:

Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

Amendment 9
On page 4, line 16, after "considered" insert:

in determining a violation of Section 14027 and this section

Amendment 10
On page 4, line 17, after "class" insert:

and who are preferred by voters of the protected class, as determined by an analysis of voting behavior,

Amendment 11
On page 4, line 27, after the comma insert:

or a violation of Section 14027 and this section,

Amendment 12
On page 5, strike out lines 1 and 2 and insert:

political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

Amendment 13
On page 5, line 7, after "14027" insert:

and Section 14028

Amendment 14
On page 5, line 11, after the comma insert:

and litigation expenses including, but not limited to, expert witness fees and expenses

Amendment 15
On page 5, line 11, strike out "Prevailing plaintiff" strike out lines 12 and 13, and insert:

Prevailing defendant parties shall not recover any costs, unless the

court finds the action to be frivolous, unreasonable, or without foundation.

Amendment 16
On page 5, line 15, after the second "Section" insert:

2

Amendment 17
On page 5, below line 16, insert:

14032. Any voter who is a member of the protected class and who resides in a political subdivision that is the subject of an action filed pursuant to Sections 14027 and 14028 may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

- 0 -

AMENDMENTS TO SENATE BILL NO. 976
AS AMENDED IN SENATE MAY 1, 2001

Amendment 1
On page 2, lines 16 and 17, strike out ", and does not include any method of district-based elections"

Amendment 2
On page 2, line 25, strike out "election" and insert:

elections

Amendment 3
On page 3, line 12, strike out "minority"

Amendment 4
On page 3, line 12, after "language" insert:

minority

Amendment 5
On page 3, line 35, strike out "registered"

Amendment 6
On page 3, line 37, strike out the second "of" and insert:

or

Amendment 7
On page 4, line 1, after the second "of" insert:

the

Amendment 8
On page 4, line 3, after the period insert:

Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting that elections conducted after the filing of the action.

Amendment 9
On page 4, line 11, after "voting" insert:

or a violation of Section 14027 and this section

Amendment 10
On page 4, line 16, after "considered" insert:

in determining a violation of Section 14027 and this section

Amendment 11
On page 4, line 17, after "class" insert:

and who are preferred by voters of the protected class, as determined by an analysis of voting behavior,

Amendment 12
On page 5, strike out lines 1 and 2 and insert:

political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

Amendment 13
On page 5, line 7, after "14027" insert:

and Section 14028

Amendment 14
On page 5, line 9, after "fee" insert:

and expenses

Amendment 15
On page 5, line 12, after "shall" insert:

also

Amendment 16
On page 5, line 13, after the period insert:

Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Amendment 17
On page 5, line 15, after the second "Section" insert:

2

Amendment 18
On page 5, below line 16, insert:

14032. Any registered voter who is a member of the protected class and who resides in a political subdivision that is the subject of an action filed pursuant to Sections 14027 and 14028 may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

- 0 -

BILL NUMBER: SB 976 INTRODUCED

BILL TEXT

INTRODUCED BY Senator Polanco

FEBRUARY 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as introduced, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass ~~municipal~~ areas of representation within the state. With respect to these ~~municipal~~ areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that a ~~municipal~~ political subdivision may not ***may dilute or abridge*** ~~be subdivided in a manner that results in a denial or abridgment of~~ the right of a registered voter to vote on account of membership in a minority race, color or language group.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a municipal political subdivision. It would provide that an intent to

discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

~~(a) "At-large method of election" means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.~~

a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire political subdivision elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the political subdivision and the voters of the entire political subdivision elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) "District-based election" means a method of electing members to the governing body of a ~~municipal~~ political subdivision in which the candidate must reside within an election district that is a divisible part of the ~~municipal~~ political subdivision and is elected only by voters residing within that election district.

~~(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage"~~*~~, as these groups are referenced and defined in the federal Voting Rights Act, 42 U.S.C. 1973, et seq..~~*

~~(d)~~ *(c)* "~~Municipal p~~ *P*olitical subdivision" means a geographic area of representation created for the provision of ~~municipal~~ government services, including, but not limited to, a city, a school district, a community college district, or other ~~local~~ district *organized pursuant to the laws of the State of California.*

(e) "Protected class" means a class of voters who are members of a minority race, color or language group*, as this class is referenced and defined in the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et seq.*

(f) "Racially polarized voting" means voting in which there is ~~consistent difference in the way voters of an identifiable class based on a minority race, color or language group vote and the way the rest of the electorate vote in a municipal political subdivision.~~

a difference in the choice of candidates or other electoral choices ~~*between those who are members of a protected class*~~ *that are preferred by* ~~*the*~~ *voters in the protected class, and* ***in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.*** ~~*those who are not members of the protected class that are preferred by the rest of the electorate.*~~ *The methodologies* ***for estimating group voting behavior*** *as approved in applicable federal cases to enforce the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et. seq. to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.*

14027. ~~A municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of any registered voter to vote on account of membership in a minority race,~~

~~color or language group.~~ *An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of any registered voter who is a member of the protected class, as provided in section 14028,* ***by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.***

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of a ~~municipal~~ political subdivision *or in elections incorporating other electoral choices by the voters of the political subdivision.*

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class ***or elections involving ballot measures, or other electoral choices which affect the rights and privileges of members of the protected class.*** One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a ~~municipal~~ political subdivision that is the subject of an action based upon Section 14027 *and this section.* ***In multi-seat at-large elections, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by those candidate(s) from members of the protected class shall be the basis for the racial polarization analysis.***

(c) 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.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices ***or other voting practices or procedures that may*** ~~*which*~~ *enhance the dilutive effects of at-large elections, denial of access to* ***those processes determining which groups of candidates will receive financial or other support in a given election*** ~~*candidate slating groups*~~*, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.*

14029. Upon a finding of a violation of Section 14027 *and section 14028*, the court shall implement appropriate remedies, including the imposition of district-based elections ~~in place of at-large districts~~, that are

tailored to remedy the violation.

14030. In any action to enforce Section 14027, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~at~~ *including* pages 48 and 49, as part of the costs. Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.

14031 The California Voting Rights Act of 2001 is enacted to enforce Article 1, Section 7 and Article 2, Section 2 of the California State Constitution.

AMENDMENTS TO SENATE BILL NO. 976

Amendment 1

On page 2, strike out lines 9 to 13, inclusive, and insert:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

Amendment 2

On page 2, line 15, strike out "municipal"

Amendment 3

On page 2, line 17, strike out "municipal"

Amendment 4

On page 2, strike out lines 19 to 21, inclusive, in line 22, strike out "(d) "Municipal political" and insert:

(c) "Political

Amendment 5

On page 2, line 23, strike out "municipal"

Amendment 6

On page 2, line 25, strike out "local district" and insert:

district organized pursuant to state law

Amendment 7

On page 2, line 26, strike out "(e)" and insert:

(d)

Amendment 8

On page 2, line 27, after "group" insert:

, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.)

Amendment 9

On page 2, strike out lines 28 to 35, inclusive, and insert:

(e) "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgment of the rights of registered voters who are members of the protected class, as provided in Section 14028, by impairing their ability to elect candidates of their choice of their ability to influence the outcome of an election.

Amendment 10

On page 3, lines 3 and 4, strike out "municipal political subdivision" and insert:

political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision

Amendment 11

On page 3, strike out lines 5 to 11, inclusive, and insert:

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that

may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

Amendment 12
On page 3, between lines 17 and 18, insert:

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

Amendment 13
On page 3, line 18, after "14027" insert:

and Section 14028

Amendment 14
On page 3, line 20, strike out "in place of at-large districts"

Amendment 15
On page 3, line 25, strike out "at" and insert:

including

Amendment 16
On page 3, below line 28, insert:

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section of Article II of the California Constitution.

- 0 -

4/20/2001

BILL NUMBER: SB 976 INTRODUCED

BILL TEXT

INTRODUCED BY Senator Polanco

FEBRUARY 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as introduced, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass municipal areas of representation within the state. With respect to these municipal areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that a municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment

of the right of a registered voter to vote on account of membership in a minority race, color or language group.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a municipal political subdivision. It would provide that an intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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(b) "District-based election" means a method of electing members to the governing body of a ~~municipal~~ political subdivision in which the candidate must reside within an election district that is a divisible part of the ~~municipal~~ political subdivision and is elected only by voters residing within that election district.

(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage*", as these groups are referenced and defined in the federal Voting Rights Act, 42 U.S.C. 1973, et seq..*

(d) "~~Municipal p~~ *P*olitical subdivision" means a geographic area of representation created for the provision of ~~municipal~~ government services, including, but not limited to, a city, a school district, a community college district, or other ~~local~~ district *organized pursuant to the laws of the State of California.*

(e) "Protected class" means a class of voters who are members of a

minority race, color or language group, *as this class is referenced and defined in the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et seq..*

(f) "Racially polarized voting" means voting in which there is a

~~consistent difference in the way voters of an identifiable class~~

~~based on a minority race, color or language group vote and the way~~

~~the rest of the electorate vote in a municipal political subdivision.~~ *a difference in the choice of candidates or other electoral choices between those who are members of a protected class that are preferred by the voters in the protected class, and those who are not members of the protected class that are preferred by the rest of the electorate. The methodologies as approved in applicable federal cases to enforce the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et. seq. to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.*

14027. ~~A municipal political subdivision may not be subdivided in~~

~~a manner that results in a denial or abridgment of the right of any~~

~~registered voter to vote on account of membership in a minority race,~~

~~color or language group.~~ *An at-large method of election may ~~not be~~ imposed or applied in a manner that results in the dilution or the abridgement of the right of any registered voter who is a member of the protected class, as provided in section 14028.*

14028. (a) A violation of Section 14027 is established if it is

shown that racially polarized voting occurs in elections for members

of the governing body of a ~~municipal~~ political subdivision *or in elections incorporating other electoral choices by the voters of the political subdivision.*

(b) The occurrence of racially polarized voting shall be

determined from examining results of elections in which candidates

are members of a protected class. One circumstance that may be

considered is the extent to which candidates who are members of a

protected class have been elected to the governing body of a

~~municipal~~ political subdivision that is the subject of an action

based upon Section 14027 *and this section.*

(c) 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.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices which enhance the dilutive effects of at-large elections, denial of access to candidate slating groups, the extent to which members of the protected class bear the effects of past ~~discrimination in~~ areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

14029. Upon a finding of a violation of Section 14027 *and section 14028*, the court shall implement appropriate remedies, including the imposition of district-based elections ~~in place of at-large districts~~, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~at~~ *including* pages 48 and 49, as part of the costs. Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.

14031 The California Voting Rights Act of 2001 is enacted to enforce Article 1, Section 7 and Article 2, Section 2 of the California State Constitution.

976

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

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SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

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(a) "At-large method of election" means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.

(b) "District-based election" means a method of electing members to the governing body of a municipal political subdivision in which the candidate must reside within an election district that is a divisible part of the municipal political subdivision and is elected only by voters residing within that election district.

(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage.

(d) "Municipal political subdivision" means a

geographic area of representation created for the provision of municipal government services, including, but not limited to, a city, a school district, a community college district, or other local district.

(e) "Protected class" means a class of voters who are members of a minority race, color or language group.

(f) "Racially polarized voting" means voting in which there is a consistent difference in the way voters of an identifiable class based on a minority race, color or language group vote and the way the rest of the electorate vote in a municipal political subdivision.

14027. A municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of any registered voter to vote on account of membership in a minority race, color or language group.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of a municipal political subdivision.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class. One circumstance that may be considered is the extent to which

candidates who are members of a protected class have been elected to the governing body of a municipal political subdivision that is the subject of an action based upon Section 14027.

(c) 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.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

14029. Upon a finding of a violation of Section 14027, the court shall implement appropriate remedies, including the imposition of district-based elections in place of at-large districts, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, at pages 48 and 49, as part of the costs. Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.

- 0 -

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Polanco.

General Subject: Elections: rights of voters.

Existing law provides for political subdivisions that encompass municipal areas of representation within the state. With respect to these municipal areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that a municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of a registered voter to vote on account of membership in a

minority race, color or language group.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a municipal political subdivision. It would provide that an intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

4/5/2001

1. Jurisdiction: expand to other than municipal
   - Bill is okay
2. How do we subdivide an existing at large district?
   - See Sec 14027

VICE CHAIR:
ASSEMBLYMEMBER
CARL WASHINGTON

SENATORS:
BETTY KARNETTE
BRUCE McPHERSON
JOHN VASCONCELLOS

ASSEMBLYMEMBERS:
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DEAN FLOREZ
JOHN LONGVILLE

California Legislature

JOINT LEGISLATIVE COMMITTEE ON PRISON CONSTRUCTION AND OPERATIONS

SENATOR RICHARD G. POLANCO
CHAIRMAN

STATE CAPITOL
ROOM 400
SACRAMENTO, CA 95814
(916) 324-6175
(916) 327-8817 FAX

GWYNNAE BYRD
PRINCIPAL CONSULTANT

May 2, 2001

The Honorable Don Perata
Chair, Senate Elections & Reapportionment Committee
State Capitol
Sacramento, CA 95814

Re: Senate Bill 976 (Polanco)

Dear Senator Perata:

Due to a previous commitment in my district, I am unable to attend the Senate Elections & Reapportionment Committee hearing on May 2nd, 2001. I would like the Chair's permission for a member of my staff, Saeed Ali, to present my Senate Bill 976 before your committee.

Your favorable consideration is very much appreciated. Thank you.

Sincerely,

RICHARD G. POLANCO
Majority Leader

RGP:ib

US Code as of: 01/05/99

Sec. 1973b. Suspension of the use of tests or devices in determining eligibility to vote

- (a) Action by State or political subdivision for declaratory judgment of no denial or abridgement; three-judge district court; appeal to Supreme Court; retention of jurisdiction by three-judge court
  - (1) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the first two sentences of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. No citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under the third sentence of subsection (b) of this section or in any political subdivision of such State (as such subdivision existed on the date such determinations were made with respect to such State), though such determinations were not made with respect to such subdivision as a separate unit, or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia issues a declaratory judgment under this section. A declaratory judgment under this section shall issue only if such court determines that during the ten years preceding the filing of the action, and during the pendency of such action -
    - (A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section;
    - (B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency

of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

- (C) no Federal examiners under subchapters I-A to I-C of this chapter have been assigned to such State or political subdivision;
- (D) such State or political subdivision and all governmental units within its territory have complied with section 1973c of this title, including compliance with the requirement that no change covered by section 1973c of this title has been enforced without preclearance under section 1973c of this title, and have repealed all changes covered by section 1973c of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;
- (E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 1973c of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 1973c of this title, and no such submissions or declaratory judgment actions are pending; and
  (F) such State or political subdivision and all governmental units within its territory -
  - (i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process;
  - (ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under subchapters I-A to I-C of this chapter; and
    (iii) have engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process.

- (2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.
- (3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.
- (4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. Any

aggrieved party may as of right intervene at any stage in such action.

- (5) An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for ten years after judgment and shall reopen the action upon motion of the Attorney General or any aggrieved person alleging that conduct has occurred which, had that conduct occurred during the ten-year periods referred to in this subsection, would have precluded the issuance of a declaratory judgment under this subsection. The court, upon such reopening, shall vacate the declaratory judgment issued under this section if, after the issuance of such declaratory judgment, a final judgment against the State or subdivision with respect to which such declaratory judgment was issued, or against any governmental unit within that State or subdivision, determines that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision which sought a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision, or if, after the issuance of such declaratory judgment, a consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.
- (6) If, after two years from the date of the filing of a declaratory judgment under this subsection, no date has been set for a hearing in such action, and that delay has not been the result of an avoidable delay on the part of counsel for any party, the chief judge of the United States District Court for the District of Columbia may request the Judicial Council for the Circuit of the District of Columbia to provide the necessary judicial resources to expedite any action filed under this section. If such resources are unavailable within the circuit, the chief judge shall file a certificate of necessity in accordance with section 292(d) of title 28.
- (7) The Congress shall reconsider the provisions of this section at the end of the fifteen-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.
- (8) The provisions of this section shall expire at the end of the twenty-five-year period following the effective date of the amendments made by the Voting Rights Act Amendments of 1982.
- (9) Nothing in this section shall prohibit the Attorney General from consenting to an entry of judgment if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of subsection (a)(1) of this section. Any aggrieved party may as of right intervene at any stage in such action.

- (b) Required factual determinations necessary to allow suspension of compliance with tests and devices; publication in Federal Register
  The provisions of subsection (a) of this section shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964. On and after August 6, 1970, in addition to any State or political

subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous sentence, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1968, any test or device, and with respect to which

- (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On and after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) of this section pursuant to the previous two sentences, the provisions of subsection (a) of this section shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972.
  A determination or certification of the Attorney General or of the Director of the Census under this section or under section 1973d or 1973k of this title shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

- (c) "Test or device" defined
  The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

- (d) Required frequency, continuation and probable recurrence of incidents of denial or abridgement to constitute forbidden use of tests or devices
  For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in subsection (f)(2) of this section if
  - (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

- (e) Completion of requisite grade level of education in American-flag schools in which the predominant classroom language was other than English
  - (1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.
  - (2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant

classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

- (f) Congressional findings of voting discrimination against language minorities; prohibition of English-only elections; other remedial measures
  - (1) The Congress finds that voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections, and by prescribing other remedial devices.
  - (2) No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group.
  - (3) In addition to the meaning given the term under subsection (c) of this section, the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to subsection (b) of this section, the term "test or device", as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection.
  - (4) Whenever any State or political subdivision subject to the prohibitions of the second sentence of subsection (a) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language: Provided, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indians, if the predominate language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

Service: **LEXSEE®**
Citation: **20 Cal. 3d 25**

*20 Cal. 3d 25, *; 569 P.2d 1303, **;*
*1977 Cal. LEXIS 168, ***; 141 Cal. Rptr. 315*

JOHN SERRANO, JR., et al., Plaintiffs and Appellants, v. IVY BAKER PRIEST, * as State Treasurer, etc., et al., Defendants and Appellants

* Although the former state Treasurer (now deceased) is not a party to this appeal, we continue to use the title Serrano v. Priest for purposes of consistency and convenience.

L.A. No. 30398

Supreme Court of California

20 Cal. 3d 25; 569 P.2d 1303; 1977 Cal. LEXIS 168; 141 Cal. Rptr. 315; 7 ELR 20795

October 4, 1977

SUBSEQUENT HISTORY: [*1]**

The petition of the defendants and appellants for a rehearing was denied November 17, 1977, and the opinion was modified to read as printed above. Bird, C. J., and Manuel, J., did not participate therein. Sullivan, J., * and Wright, J., + participated therein. Clark, J., and Richardson, J., were of the opinion that the petition should be granted. Clark, J., did not concur in the modification.

* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

+ Retired Chief Justice of California sitting under assignment by the Acting Chairperson of the Judicial Council.

PRIOR HISTORY:

Superior Court of Los Angeles County, No. C 938254, Bernard S. Jefferson, Judge.

DISPOSITION: The order concerning attorneys' fees filed August 1, 1975 is affirmed. The cause is remanded to the trial court with directions to hear and determine plaintiffs' motions for attorneys' fees filed in this court on January 28, 1977, July 7, 1977, and October 31, 1977, in conformity with the views herein expressed and to make and enter all necessary and appropriate orders.

CASE SUMMARY

PROCEDURAL POSTURE: Appellants, state officials, and respondents, public interest groups, sought review of a decision of the Superior Court of Los Angeles County (California), which awarded attorney fees in favor of respondents regarding respondents' successful lawsuit that held California's public school system in violation of California's constitution.

OVERVIEW: Respondents, public interest groups, had previously successfully sued the state, which resulted in the court finding that the public school financing system was unconstitutional. Respondents filed their first of several motions for attorney fees. Based upon its equitable powers, the trial court awarded attorney fees to respondents' counsel based on the private attorney general theory. Appellants, state officials, and respondents, respectfully, sought review of the award and amount of the attorney fees. The court adopted the private attorney general theory for California as it applied to vindication of a strong state constitutional public policy. The court affirmed the award of attorney fees, articulating that the private attorney general theory encouraged suits effectuating a strong public policy by awarding substantial attorney fees to those who successfully brought such suits and thereby brought about benefits to a broad class of citizens. The court withheld judgment on the issue of whether the private attorney general theory could be applied to a strong statutory policy. The court remanded for the trial court to determine respondents' remaining motions for attorney fees.

OUTCOME: The court affirmed the award and amount of respondent's attorney fees under the private attorney general theory because the previous litigation vindicated a strong constitutional public policy and the result of the litigation benefited a broad class of persons. The court remanded to the trial court with directions to hear and determine respondents' remaining motions for attorney fees in conformity with the court's opinion.

CORE TERMS: private attorney, educational, substantial benefit, equitable, common fund, public policy, school children, constitutional rights, award of fees, funding, equal protection, public interest, vindicated, concrete, urge, grounded, italics, funded, charitable, bestowed, class action, sum of money, benefited, financing, allowance, awarding, saving, specifically provided, educational program, public education

CORE CONCEPTS - Hide Concepts

Civil Procedure : Costs & Attorney Fees : Attorney Fees

Cal. Code of Civ. Proc. § 1021 provides in relevant part except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties.

Civil Procedure : Costs & Attorney Fees : Attorney Fees

Appellate decisions in this state have created two nonstatutory exceptions to the general rule of Cal. Code of Civ. Proc. § 1021, each of which is based upon inherent equitable powers of the court. The first of these is the well-established common fund principle: when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund. The second principle, of more recent development, is the so-called substantial benefit rule: when a class action or corporate derivative action results in the conferral of substantial benefits, whether of a pecuniary or nonpecuniary nature, upon the defendant in such an action, that defendant may, in the exercise of the court's equitable discretion, be required to yield some of those benefits in the form of an award of attorney's fees.

Civil Procedure : Costs & Attorney Fees : Attorney Fees

Although American courts, in contrast to those of England, have never awarded counsels' fees as a routine component of costs, at least one exception to this rule has become as well established as the rule itself: that one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
Fees are awarded under this rationale out of a fund recovered or maintained by the plaintiff, on the theory that all who will participate in the fund should pay the cost of its creation or protection and that this is best achieved by taxing the fund itself for attorney's fees.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
The courts have fashioned another nonstatutory exception to the general rule on the award of attorneys fees. This exception, which may be viewed as an outgrowth of the common fund doctrine, permits the award of fees when the litigant, proceeding in a representative capacity, obtains a decision resulting in the conferral of a substantial benefit of a pecuniary or nonpecuniary nature. In such circumstance, the court, in the exercise of its equitable discretion, thereupon may decree that under dictates of justice those receiving the benefit should contribute to the costs of its production.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
The high court, choosing to treat the substantial benefit rule as a part of the common fund exception, had clearly indicated that fees could be awarded under this rationale only from the fund or property itself or directly from the other parties enjoying the benefit.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
Reimbursement of attorneys fees is proper in cases where the litigation has conferred a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
In spite of variations in emphasis, there are three basic factors to be considered in awarding fees on the private attorney general theory. These are in general: (1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, (3) the number of people standing to benefit from the decision.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
The starting point of every fee award, once it is recognized that the court's role in equity is to provide just compensation for the attorney, must be a calculation of the attorney's services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
While as the courts have indicated the fact of public or foundational support should not have any relevance to the question of eligibility for an award, it may properly be considered in determining the size of the award.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
Civil Procedure : Appeals : Standards of Review : Clearly Erroneous Review
The experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.

COUNSEL: Sidney M. Wolinsky, Daniel M. Luevano, Rosalyn Chapman, Philip E. Goar, John E. McDermott, **[***2]** Rose Matsui Ochi, David A. Binder, Harold W. Horowitz, Jerome L.

Levine, Michael H. Shapiro, E. Robert Wallach, Richard A. Rothschild, Mary S. Burdick and Diane Messer for Plaintiffs and Appellants.

Bayard F. Berman, William T. Rintala, Henry Shields, Robert G. Sproul, Jr., James J. Brosnahan, Jr., Edward W. Rosston, David M. Heilbron, Stuart C. Walker, Robert E. Cartwright, Edward I. Pollock, Arne Werchick, Sanford M. Gage, Leroy Hersh, Ned Good, David B. Baum, Robert G. Beloud, Roger H. Hedrick, Leonard Sacks, Stephen I. Zetterberg, Antonio Rossmann, Carlyle W. Hall, Jr., Brent N. Rushforth and John R. Phillips as Amici Curiae on behalf of Plaintiffs and Appellants.

Evelle J. Younger, Attorney General, N. Eugene Hill, Assistant Attorney General, John J. Klee, Jr., Ronald V. Thunen, Jr., Thomas E. Warriner and Richard M. Skinner, Deputy Attorneys General, for Defendants and Appellants.

JUDGES: Opinion by Sullivan, J., * with Tobriner, Acting C. J., Mosk, J., Wright, J., + and Kaus, J., ++ concurring. Separate dissenting opinion by Richardson, J., with Clark, J., concurring. Separate dissenting opinion by Clark, J.

* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council. **[***3]**

+ Retired Chief Justice of California sitting under assignment by the Acting Chairperson of the Judicial Council.

++ Assigned by the Chairperson of the Judicial Council.

OPINIONBY: SULLIVAN

OPINION: [*31] [1304]** In *Serrano* v. *Priest* (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929] (hereafter cited as *Serrano II*) we affirmed a judgment of the Los Angeles County Superior Court, entered on September 3, 1974, which held essentially (1) that the then-existing California public school financing system was invalid as in violation of state constitutional provisions guaranteeing equal protection of the laws, and (2) that the said system must be brought into constitutional compliance within a period of six years from the date of entry of judgment, the trial court retaining jurisdiction for the purpose of granting any necessary future relief. n1 That judgment is now final.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n1 A more complete summary of the trial court judgment was set forth in *Serrano II*: "The trial court held that the California public school financing system for elementary and secondary schools as it stood following the adoption of S.B. 90 and A.B. 1267, while not in violation of the equal protection clause of the Fourteenth Amendment to the federal Constitution, was invalid as in violation of former article I, sections 11 and 21, of the California Constitution (now art. IV, § 16 and art. I, § 7 respectively . . .), our state equal protection provisions. Indicating the respects in which the system before it was violative of our state constitutional standard, the court set a period of six years from the date of entry of judgment as a reasonable time for bringing the system into constitutional compliance; it further held and ordered that the existing system should continue to operate until such compliance had been achieved. The judgment specifically provided that it was not to be construed to require the adoption of any particular system of school finance, but only to require that the plan adopted comport with the requirements of state equal protection provisions. Finally, the trial court retained jurisdiction of the action and over the parties 'so that any of such parties may apply for appropriate relief in the event that relevant circumstances develop, such as a failure by the legislative and executive branches of the state government to take the necessary steps to design, enact into law, and place into operation, within a reasonable time from the date of entry of this Judgment, a California

Public School Financing System for public elementary and secondary schools that will fully comply with the said equal-protection-of-the-law provisions of the California Constitution.'" (*Serrano II* at pp. 748-750.)

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - **[***4]**

Within a month after the entry of the foregoing judgment and prior to the filing of defendants' appeals, plaintiffs' attorneys (Public Advocates, Inc. and Western Center on Law and Poverty) made separate motions for an award of reasonable attorneys fees "against defendants Priest [then the state Treasurer], Riles [then and presently the state Superintendent of Public Instruction] and Flournoy [then the state Controller] in their official capacities as officials of the State of California." The motions were not based upon statute but were instead addressed to the equitable powers of the court. Three theories, to be examined in detail by us below, were advanced in support of the award: the so-called "common **[*32]** **[**1305]** fund" theory, the "substantial benefit" theory, and the "private attorney general" theory.

A hearing on the issue of entitlement to fees was held on January 6, 1975, and on January 27 the trial court entered an interim order in which it announced its intention to award reasonable attorneys fees to plaintiffs' counsel on the private attorney general theory only, declining to apply the other two theories advanced. The matter was continued **[***5]** until April 14, 1975, for briefing and argument upon the issue of the amount of fees to be awarded. On that date the court received testimony and, upon stipulation of the parties, additional evidence by affidavit. At the conclusion of this hearing the court announced its intention to award $ 400,000 as reasonable attorneys fees to Public Advocates, Inc. and $ 400,000 as reasonable attorneys fees to Western Center on Law and Poverty. Upon timely request by Public Advocates, Inc. the court ordered the preparation of findings of fact and conclusions of law. On August 1, 1975, the court filed its "Order Concerning Attorneys' Fees," which was consistent in all relevant respects with its previous rulings, n2 as well as its "Findings of Fact and Conclusions of Law Concerning the Award of Attorneys' Fees" -- of which there were 219 of the former and 28 of the latter.

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n2 The order provided in relevant part: It Is Hereby Ordered that Public Advocates, Inc. and Western Center on Law and Poverty, attorneys for Plaintiffs, are each entitled under the private attorney general doctrine to receive reasonable attorneys' fees from the defendants, Jesse M. Unruh [present state Treasurer], Kenneth Cory [present state Controller], and Wilson C. Riles, in their representative capacities. [para.] It Is Further Ordered that $ 400,000 is a reasonable attorneys' fee for the representation by Public Advocates, Inc. of the plaintiffs from the beginning of the instant action through April 14, 1975. [para.] It Is Further Ordered that $ 400,000 is a reasonable attorneys' fee for the representation by Western Center on Law and Poverty of the plaintiffs from the beginning of the instant action through April 14, 1975."

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - **[***6]**

Two notices of appeal from the order were filed, one by Public Advocates, Inc. and Western Center on Law and Poverty, as "counsel for plaintiffs," and one by defendants Unruh, Cory, and Riles. On October 1, 1975, we transferred the appeal to this court and ordered it consolidated with the then-pending appeal in *Serrano II*. The latter appeal having been fully briefed, however, we proceeded to hear argument and render our decision in *Serrano II*, deferring our consideration of the instant appeal until the judgment in *Serrano II* had become final.

On January 28, 1977, after the rendition of our decision in *Serrano II* but prior to the issuance of the remittitur, a motion was filed in this court **[*33]** for reasonable attorneys'

fees in connection with the appeal of this cause. This motion was filed by "respondents" (designated in the caption as plaintiffs John Serrano, Jr. et al.) by their attorneys, Public Advocates, Inc. and Western Center on Law and Poverty. Prior to issuance of the *Serrano II* remittitur we modified our judgment to reserve jurisdiction for the purpose of passing upon this motion in conjunction with the instant appeal.

I

We summarize the **[***7]** contentions advanced in the briefs of the parties: n3

Defendants contend that the award of attorneys fees was improper on any of the grounds considered. Thus, they urge that whereas the trial court was correct in determining that such an award cannot be sustained on either the common fund theory or **[**1306]** the substantial benefit theory, it erred in concluding that an award should be made on the private attorney general theory. Additionally they argue that even if such an award based on any of these theories were proper in a case in which the prevailing litigant had incurred an obligation to pay for legal services, it could not be justified in a case in which, as here, the plaintiffs had incurred no obligation for such services which were provided without charge by organizations receiving public or tax-exempt charitable funding. n4 In any event, defendants urge, the award in this case is excessive. Finally, defendants also oppose the granting of the motion for attorneys fees on appeal.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n3 In addition to the briefs of the parties, briefs amicus curiae have been filed by the Bar Association of San Francisco and the San Francisco Lawyers' Committee for Urban Affairs (joint brief); the Los Angeles County Bar Association; the Woodland Hills Residents Association; Robert E. Cartwright, Edward I. Pollock, Arne Werchick, Sanford M. Gage, Leroy Hersh, Ned Good, David B. Baum, Robert G. Beloud, Roger H. Hedrick, Leonard Sacks and Stephen I. Zetterberg (joint brief); and Center for Law in the Public Interest. **[***8]**

n4 Public Advocates, Inc. is a nonprofit legal corporation supported by tax-exempt charitable funds. Western Center on Law and Poverty is a public interest law center funded by the Legal Services Corporation. (See 42 U.S.C. § 2996 et seq.) Neither may accept fees from clients.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -

Plaintiffs and their attorneys, while agreeing with the trial court's award of fees on the private attorney general theory, contend that the court erred in refusing to base its award additionally on the common fund and substantial benefit theories. The fact that plaintiffs are represented by organizations receiving public or other tax-exempt funding, they urge, should have no effect upon their eligibility for the **[*34]** award. Public Advocates, Inc., in an argument in which Western Center on Law and Poverty does not join, also urges that the award is inadequate. Finally, plaintiffs and their attorneys contend that their motion for attorneys fees on appeal should be granted on each of the three theories here in question.

II

Recently in *D'Amico* v. *Board of Medical Examiners* (1974) 11 Cal.3d 1 [112 Cal.Rptr. **[***9]** 786, 520 P.2d 10], we had occasion to point out: "Section 1021 of the Code of Civil Procedure provides in relevant part: 'Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . . .' No state statute provides for the award of attorney's fees in a case of this nature, and there has been no express or implied agreement concerning attorney's fees in this case. However, appellate decisions in this state have created two nonstatutory exceptions to the general rule of section 1021, each of which is based upon inherent equitable powers of the court. The first of these is the well-

established 'common fund' principle: when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund. (See, e.g., *Estate of Stauffer* (1959) 53 Cal.2d 124, 132 [346 P.2d 748]; *Estate of Reade* (1948) 31 Cal.2d 669, 671-672 [191 P.2d 745]; see generally **[***10]** 4 Witkin, Cal. Procedure (2d ed. 1971) Judgment, §§ 129-133, pp. 3278-3283.) The second principle, of more recent development, is the so-called 'substantial benefit' rule: when a class action or corporate derivative action results in the conferral of substantial benefits, whether of a pecuniary or nonpecuniary nature, upon the defendant in such an action, that defendant may, in the exercise of the court's equitable discretion, be required to yield some of those benefits in the form of an award of attorney's fees. (See, e.g., *Knoff v. City etc. of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 [81 Cal.Rptr. 683]; *Fletcher v. A. J. Industries, Inc.* (1968) 266 Cal.App.2d 313, 318-325 [72 Cal.Rptr. 146]; see also *Sprague v. Ticonic Bank* (1939) 307 U.S. 161 [83 L.Ed. 1184, 59 S.Ct. 777]; see generally 4 Witkin, Cal. Procedure, *supra*, Judgment, § 134, pp. 3283-3284.)" (*Id.*, at p. 25.) Mindful of these observations, we proceed first to determine whether the trial court was correct in concluding that an award of reasonable attorneys **[**1307]** fees could not be supported in the instant case under either of the aforementioned exceptions to the rule **[***11]** of section 1021.

[*35] (a) *The Common Fund Theory*

"Although American courts, in contrast to those of England, have never awarded counsels' fees as a routine component of costs, at least one exception to this rule has become as well established as the rule itself: that one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State of California* (1975) 15 Cal.3d 162, 167 [124 Cal.Rptr. 1, 539 P.2d 761]; fns. omitted.) This, the so-called "common fund" exception to the American rule regarding the award of attorneys fees (i.e., the rule set forth in section 1021 of our Code of Civil Procedure), is grounded in "the historic power of equity to permit the trustee of a fund or property, or a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund of property itself or directly from the other parties enjoying the benefit." (*Alyeska Pipeline Co. v. Wilderness Society* (1975) 421 U.S. 240, 257 [44 L.Ed.2d 141, **[***12]** 153, 95 S.Ct. 1612]; fn. omitted.)

First approved by this court in the early case of *Fox v. Hale & Norcross S. M. Co.* (1895) 108 Cal. 475 [41 P. 328], the "common fund" exception has since been applied by the courts of this state in numerous cases. (See, e.g., *Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 341, fn. 19 [124 Cal.Rptr. 513, 540 P.2d 609]; *Estate of Reade, supra*, 31 Cal.2d 669, 671-672; *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 277 [153 P.2d 714]; *Farmers etc. Nat. Bank v. Peterson* (1936) 5 Cal.2d 601, 607 [55 P.2d 867]; *Estate of Kann* (1967) 253 Cal.App.2d 212, 223 [61 Cal.Rptr. 122]; see generally Dawson, *Lawyers and Involuntary Clients: Attorney Fees from Funds* (1974) 87 Harv.L.Rev. 1597.) In all of these cases, however, the activities of the party awarded fees have resulted in the preservation or recovery of a certain or easily calculable sum of money -- out of which sum or "fund" the fees are to be paid. n5 We can find no such "fund" in this case.

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n5 "Fees are awarded under this rationale out of a fund recovered or maintained by the plaintiff, on the theory that all who will participate in the fund should pay the cost of its creation or protection and that this is best achieved by taxing the fund itself for attorney's fees." (Comment, *Court Awarded Attorney's Fees and Equal Access to the Courts* (1974) 122 U.Pa.L.Rev. 636, 694-695 [cited hereafter as Comment, *Equal Access*].)

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In relevant findings of fact the trial court found that plaintiffs "have proven that the sum of money available for public education in California is not being spent in accordance with the California Constitution" **[*36]** and "have protected the sum of money available for public education" in the state. Plaintiff urges that these findings are tantamount to a determination that a fund of money for educational use was created by their efforts. The trial court, however, concluded otherwise, reasoning that whatever additional monies are made available for public education as a result of the *Serrano* judgment will flow from legislative implementation of the judgment, not from the judgment itself. That judgment requires substantial equality in educational opportunity for the school children of this state without regard to the taxable wealth per student in the particular district in which a student lives. It does not require any particular level of expenditure. n6 Accordingly, it cannot be said that the efforts of plaintiffs **[**1308]** have created or preserved any "fund" of money to which they should be allowed recourse for their fees.

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n6 In footnote 28 of our *Serrano II* opinion we quoted the following passage from the trial court's memorandum opinion: "What the *Serrano* [I] court imposed as a California constitutional requirement is that there must be uniformity of treatment between the children of the various school districts in the State because all the children of the State in public schools are persons similarly circumscribed. The equal-protection-of-the-laws provisions of the California Constitution mandate nothing less than that all such persons shall be treated alike. If such uniformity of treatment were to result in all children being provided a low-quality educational program, or even a clearly *inadequate* educational program, the California Constitution would be satisfied. This court does not read the *Serrano* [I] opinion as requiring that there is any constitutional mandate for the State to provide funds for each child in the State at some magic level to produce either an adequate-quality educational program or a high-quality educational program. It is only a disparity in treatment between equals which runs afoul of the California constitutional mandate of equal protection of the laws." As our opinion in *Serrano II* makes clear, this is a correct characterization.

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Plaintiffs place great emphasis on the trial court's finding that under the 1972 and 1973 legislation which we have referred to in our *Serrano II* opinion as "S.B. 90 and A.B. 1267" (see *Serrano II* at pp. 736-737, 741-744), passed in response to our decision in *Serrano I*, an annual pool of some $ 550 million has come into existence for purposes of education and property tax relief. Moreover, they point out, it is quite likely that under subsequent legislation substantial further sums of money will become available for these purposes. Again, however, we point out that any such increases in the total educational budget, while they may be termed a "*response*" to our *Serrano* decisions, are by no means *required* by them. It is for the Legislature to determine, in its conjoined political wisdom, whether the achievement of that degree of equality of educational opportunity which is required by the state Constitution is to be accompanied by an overall increase in educational funding.

[*37] Finally, even if it were determined that the monies to become available for education in the wake of *Serrano* should be considered a "fund" for these purposes, **[***15]** plaintiffs and their attorneys nowhere suggest that payment should be made to them out of such monies. n7 Instead they seem to indicate, with perhaps intentional vagueness, that their fees should be paid by "the State." Apparently their primary authority in this respect is the case of *Brewer v. School Board of City of Norfolk, Virginia* (4th Cir. 1972) 456 F.2d 943 (cert. den. (1972) 406 U.S. 933 [32 L.Ed.2d 136, 92 S.Ct. 1778]), in which the Court of Appeals ordered the award of reasonable attorneys fees against a school district after determining that its desegregation plan was inadequate insofar as it failed to provide a practical method of free

transportation for students assigned to schools beyond normal walking distance from their homes. There the court, stating that this was a case for "at least a quasi-application of the 'common fund' doctrine" (456 F.2d at p. 951), reasoned that whereas each of the students involved had secured a right worth approximately $ 60 per year to each of them, it would "defeat the basic purpose of the relief provided" to impose a charge against them for a proportionate share of the attorneys fees (*id.*, at p. 952). "The only feasible **[***16]** solution in this particular situation," the court held, "would seem to be in requiring the school district itself to supplement its provision of free transportation with payment of an appropriate attorney's fee to plaintiffs' attorneys for securing the addition of such a provision to the plan of desegregation." *(Id.)*

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n7 Such an award, of course, would necessarily bring about a diminution in educational funding, a result which plaintiffs and their attorneys might be presumed to oppose. Moreover, an award of this kind would essentially constitute the acceptance of a fee from a client, and thus could not be accepted by either of the law firms representing plaintiffs. (See fn. 4, *ante*; see also Comment, *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 695; cf. *Sanders* v. *City of Los Angeles* (1970) 3 Cal.3d 252, 263 [90 Cal.Rptr. 169, 475 P.2d 201]; *National Coun. of Com. Mental H. C. Inc.* v. *Weinberger* (D.D.C. 1974) 387 F.Supp. 991, 994-995.)

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We, along with the concurring judge in *Brewer* **[***17]** (Winter, Cir. J., conc. specially, 456 F.2d at pp. 952-954), **[**1309]** are of the view that the *Brewer* case, to the extent that it relies upon the terminology used, represents an improper application of the "common fund" theory. (See also Dawson, *Lawyers and Involuntary Clients in Public Interest Litigation* (1975) 88 Harv.L.Rev. 849, 895-896; Comment, *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 695-696.) In any event it is not consistent with the law of this state. We hold that here, where plaintiffs' efforts have not effected the creation or preservation of an identifiable "fund" of money out of which **[*38]** they seek to recover their attorneys fees, the "common fund" exception is inapplicable. The trial court was correct in so concluding.

(b) *The Substantial Benefit Theory*

As we indicated in our opinion in *D'Amico* v. *Board of Medical Examiners, supra*, 11 Cal.3d 1, 25, the courts have fashioned another nonstatutory exception to the general rule on the award of attorneys fees. This exception, which may be viewed as an outgrowth of the "common fund" doctrine, permits the award of fees when the litigant, proceeding in a representative **[***18]** capacity, obtains a decision resulting in the conferral of a "substantial benefit" of a pecuniary or nonpecuniary nature. In such circumstance, the court, in the exercise of its equitable discretion, thereupon may decree that under dictates of justice those receiving the benefit should contribute to the costs of its production. Although of fairly recent development in California, this exception to the general rule is now well established in our law.

Although the seminal California case on this subject, *Fletcher* v. *A. J. Industries, supra*, 266 Cal.App.2d 313, arose in the context of corporate litigation, n8 more recent decisions have applied the "substantial benefit" theory in a wide variety of circumstances, including those involving governmental defendants. Thus in *Knoff* v. *City etc. of San Francisco, supra*, 1 Cal.App.3d 184, a class action, the plaintiffs had secured the issuance of a writ of mandate requiring the board of supervisors to order a full investigation into the loss of property taxes during certain previous years, including the identification of taxable property which had escaped taxation for any reason, and to take appropriate action to recover the **[***19]** taxes due. The Court of Appeal affirmed a judgment awarding the plaintiffs their attorneys fees out of tax revenues to be collected "in consequence of . . . compliance" with the writ of mandate (*id.* at p. 203), **[*39]** citing *Fletcher* for the proposition that the award was

proper even in the absence of an existing "fund."

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n8 In *Fletcher*, a stockholders derivative action, the plaintiffs had obtained an order approving a settlement guaranteeing a beneficial change in corporate management and procedures as well as the arbitration of certain claims of managerial misconduct, with the possibility of future monetary awards. The Court of Appeal, affirming a trial court order awarding attorneys fees and costs to the plaintiffs, held that although no specific "fund" had been created out of which such fees could be awarded on the "common fund" theory, the benefit conferred on the corporation and shareholders justified a shifting of the monetary burden of producing that benefit to all those who would enjoy it. The court placed significant reliance upon certain dicta in the United States Supreme Court's decision in *Sprague* v. *Ticonic Nat. Bank, supra*, 307 U.S. 161, 166-167 [83 L.Ed. 1184, 1186-1187]. (See generally Dawson, *Lawyers and Involuntary Clients: Attorney Fees from Funds, supra*, 87 Harv.L.Rev. 1597, 1609-1611.)

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In the more recent case of *Mandel* v. *Hodges* (1976) 54 Cal.App.3d 596 [127 Cal.Rptr. 244], the plaintiff, a state employee, had successfully challenged the state's practice of giving its employees time off with pay on Good Friday as a violation of constitutional prohibitions against the establishment of religion. The Court of Appeal, affirming an award of attorneys fees against the state, held that a substantial benefit had accrued to the state in the form of the future saving of funds formerly expended for work not performed, and that the trial court, exercising its equitable powers **[**1310]** in a suit brought in a representative capacity, had properly shifted the cost burden of producing that benefit to the party enjoying it.

Finally, in *Card* v. *Community Redevelopment Agency* (1976) 61 Cal.App.3d 570 [131 Cal.Rptr. 153], the plaintiff taxpayers had secured a judgment declaring invalid a city ordinance purporting to amend an existing redevelopment plan by including areas not covered by the original plan. As a result, certain property tax increment revenues otherwise payable to the redevelopment agency under the amending ordinance became available to various **[***21]** city and county taxing agencies. The Court of Appeal approved a portion of the judgment awarding attorneys fees to be paid by the various taxing agencies in proportion to their respective shares in the tax increment funds, holding that "[this] result substantially benefits the affected taxing agencies, named in the judgment (and through them their taxpayers), since it reduces both the occasion for the [redevelopment agency's] expenditure of such funds and the [agency's] source of such funds as well." (61 Cal.App.3d at p. 583.)

(See fn. 10.) Relying on these and other n9 cases, plaintiffs and their attorneys urge that the award in this case was justified on the **[*40]** "substantial benefit" rationale and that the trial court erred in concluding otherwise. n10 In urging that such a benefit was conferred upon the state as a result of this litigation, they make reference to various factual findings of the trial court on the general subject, the most significant of which are **[**1311]** set forth in the margin. n11 To the extent, however, **[*41]** that the subject findings are susceptible of the reading that substantial benefits in the form of **[***22]** increased educational opportunities have been bestowed upon the school children of this state as a necessary result of the *Serrano* decision -- or that benefits in the form of tax savings have been bestowed upon the taxpayers -- they are without support. The fundamental holding of *Serrano* -- i.e., that the existing school finance system, insofar as it operates to deny equality of educational opportunity to the school children of this state, is thereby violative of state equal-protection guarantees -- does nothing in and of itself to assure that concrete "benefits" will accrue to anyone. Only in the event that implementing legislation, in establishing the equality of educational opportunity required by *Serrano*, does so at a level higher than that presently enjoyed by the *least* favored student under the present system will concrete "benefits" accrue

to *any* school child; only in the event that that level rises above the level of opportunity available to the *most* favored student under the present system will the required "benefits" accrue to *all* of the school children. By the same token, relative "benefits" to taxpayers will depend wholly upon the tax structure **[***23]** that the Legislature chooses to establish in order to finance its new system. In short, concrete "benefits" can accrue to the state or its citizens in the wake of *Serrano* only insofar as the Legislature, in its implementation of the command of equality which that case represents, chooses to bestow them. n12

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n9 Among the federal decisions relied upon by plaintiffs and their attorneys are *Hall* v. *Cole* (1973) 412 U.S. 1 [36 L.Ed.2d 702, 93 S.Ct. 1943], and *Newman* v. *State of Alabama* (M.D. Ala. 1972) 349 F.Supp. 278. In *Hall* the United States Supreme Court held that a former union member whose legal action had had the effect of establishing certain rights of free speech within the union was entitled to attorneys fees on the "substantial benefit" theory because the plaintiff, "by vindicating his own right of free speech . . . [had] necessarily rendered a substantial service to his union as an institution and to all of its members . . . [and] reimbursement of [his] attorneys' fees out of the union treasury simply shifts the costs of litigation to 'the class that has benefited from them and that would have had to pay them had it brought the suit.'" (412 U.S. at pp. 8-9 [36 L.Ed.2d at p. 709], fn. omitted.) In *Newman*, where a class action brought by state prisoners had resulted in a holding that inadequate medical treatment afforded them constituted cruel and unusual punishment within the meaning of the Eighth and Fourteenth Amendments, fees were awarded *against the state* on this theory "because of the positive benefit resulting to the *plaintiffs* and the members of *plaintiffs*' class." (349 F.Supp. at p. 286, italics added.) However the judgment as it related to attorneys fees was subsequently vacated and remanded for reconsideration in light of the intervening decisions in *Alyeska Pipeline Co.* v. *Wilderness Society, supra*, 421 U.S. 240 (to be discussed *infra*) and *Edelman* v. *Jordan* (1974) 415 U.S. 651 [39 L.Ed.2d 662, 94 S.Ct. 1347]. In *Alyeska* the high court, choosing to treat the "substantial benefit" rule as a part of the "common fund" exception, had clearly indicated that fees could be awarded under this rationale only "from the fund or property itself or directly from *the other parties enjoying the benefit*" (421 U.S. at p. 257 [44 L.Ed.2d at p. 153], italics added, fn. omitted), thus suggesting that the approach adopted in *Newman* was erroneous under the federal rule. **[***24]**

n10 Although the trial court found that substantial benefits had been bestowed on the state's public school children and taxpayers by *Serrano* (see fn. 11, *post*, and accompanying text) it concluded that fees could not be awarded on the "substantial benefit" theory because no such benefit had accrued to "the defendants in this case." While we believe, as we explain *infra*, that the trial court properly declined to base its award on this theory, we are also convinced of the correctness of plaintiffs' argument that such an award does not depend upon substantial benefi to the *defendant*. Despite the fact that the trial court's position on this point may find some support in the language of *D'Amico* and other cases, we have concluded that the proper rule -- as reflected in the Court of Appeal cases we have reviewed -- "[permits] reimbursement [of attorneys fees] in cases where the litigation has conferred a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them." (*Mills* v. *Electric Auto-Lite* (1970) 396 U.S. 375, 393-394 [24 L.Ed.2d 593, 607, 90 S.Ct. 616]; see generally Comment, *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 662-666.) **[***25]**

n11 The court found, inter alia: "5. Plaintiffs have rendered substantial service to the State Defendants and to the taxpayers of the State generally by bringing defendants into compliance with the mandate of the State Constitution and by securing for defendants and taxpayers the benefits assumed to flow from a nondiscriminatory educational system."

"139. The class of children directly benefited by *Serrano* consists of all children in the State of

California who are enrolled in and attending public elementary and secondary schools except those in the intervening defendant districts."

"140. The plaintiff parent-taxpayers class benefited by *Serrano* consists of all parents of children in the California public school system who were also owners of real property assessed for taxes."

"141. Millions of school children and taxpayers other than the named plaintiffs will benefit from the results obtained by plaintiffs in this litigation."

"142. An award of attorneys' fee against the State Defendants will, in effect, spread the costs of the present litigation among those who have benefited from it."

"164. Millions of school children and taxpayers of California will benefit in the years to come as a result of *Serrano*."

"166. The benefits of equal education obtained by this case will be multiplied throughout the lives of the children of this state, leading to more equal job opportunities and greater ability to participate in the social, cultural and political activity of our society."

"167. The State itself will benefit from the equalization and upgrading of education as a result of *Serrano*."

"176. The State Defendants to some extent benefit from the increased equity and rationality in the taxing system and from a more equitable educational system for the children of this State, both of which are results of *Serrano*." **[***26]**

n12 We are aware, of course, that the Legislature has recently passed and the Governor signed into law an urgency measure directed toward meeting the demands of *Serrano*. (Stats. 1977, ch. 894.) To the extent that this measure will ultimately result in an improvement in educational opportunity for some or all of the state's school children, such improvement will have been brought about by legislative rather than judicial action.

The trial court, in announcing its decision, stated the matter thus: "But one question in this particular case is although there has been a great benefit, undoubtedly, to all of the citizens of the State, has there been any creation of a type of fund or saving of money? On the contrary, all of the argument has been it is going to cost the taxpayers millions of dollars more in order to carry out the Court's decision. Now, it can do that if it is carried out in one way. I don't know what the Supreme Court will say, but I will carefully point out in the approach which I took, which was that the Constitution will guarantee equality of educational opportunity but no minimum level, and the billions of dollars that we are talking about depends upon the decision to bring all school districts in terms of income up to where Beverly Hills is. *That is a political decision, in my opinion, and not a constitutional one*. If the financial affairs of the State won't support such a decision, then I could well see a different approach, in which all school districts would be at a much lower level to come within the State's finances." (Italics added.)

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[*42] **[**1312]** It is also urged, however, that while *Serrano* may not have had the direct effect of producing increased educational opportunity or tax savings, it did produce benefits of a conceptual or doctrinal character which are shared by the state as a whole. Certain findings of the trial court -- notably those numbered 5, 167, and 176 (set forth in fn. 11, *ante*) -- support this contention. Common sense as well speaks in favor of the proposition that plaintiffs and their attorneys, as a result of the *Serrano* litigation, have rendered an enormous service to the state and all of its citizens by insuring that the state educational financing system shall be brought into conformity with the equal protection provisions of our

state Constitution so that the degree of educational opportunity available to the school children of this state will no longer be dependent upon the taxable wealth of the district in which each student lives. We have concluded, however, that to award fees on the "substantial benefit" theory on the basis of considerations of this nature -- separate and apart from any consideration of actual and concrete benefits bestowed -- would be to extend **[***28]** that theory beyond its rational underpinnings. n13 If the effectuation of constitutional or statutory policy, without more, is to serve as a sufficient basis for the award of attorneys fees in this state, the rationale for such awards must be found in a theory more directly concerned with considerations of this nature. It is to such a theory that we now turn.

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n13 The decisions of the United States Supreme Court in *Mills* v. *Electric Auto-Lite, supra,* 396 U.S. 375, and *Hall* v. *Cole, supra,* 412 U.S. 1, are not inconsistent with this conclusion. In each of those cases a concrete benefit, in the form of informed corporate suffrage in *Mills*, and enhanced union free speech rights in *Hall*, had been achieved by the litigation and bestowed upon the entities against which fees were awarded. (Cf. generally Dawson, *Lawyers and Involuntary Clients in Public Interest Litigation, supra*, 88 Harv.L.Rev. 849, 863-870.) In the instant case, on the other hand, the command of equality emerging from the litigation will afford little more than philosophic comfort to anyone in the absence of a legislative decision to achieve that equality by raising the disadvantaged to the level of the favored, rather than vice versa.

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III

In *D'Amico* v. *Board of Medical Examiners, supra,* 11 Cal.3d 1, plaintiffs had sought an award of fees not only on the "common fund" and "substantial benefit" theories *but also* on two additional theories, both of which were grounded largely on federal case law. The first of these, involving awards against an opponent who has maintained an unfounded action or defense "'in bad faith, vexatiously, wantonly or for oppressive reasons'" (11 Cal.3d at p. 26), is not involved in the instant case and we do not address ourselves to it. However, the second, the **[*43]** so-called "private attorney general" concept, was adopted by the trial court as the basis for its award, and we are now called upon to determine its applicability in this jurisdiction.

In addressing ourselves to the "private attorney general" theory in *D'Amico*, we said "This concept, as we understand it, seeks to encourage suits effectuating a strong congressional or national policy by awarding substantial attorney's fees, regardless of defendants' conduct, to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens." (11 Cal.3d at p. 27.) Noting, however, that **[***30]** such doctrine was then under examination by the United States Supreme Court, we thought it prudent to await "an announcement by the high court concerning its limits and contours on the federal level" (*id.*) before determining its possible applicability in this jurisdiction.

The announcement has now been made. In *Alyeska Pipeline Co.* v. *Wilderness Society, supra,* 421 U.S. 240, n14 **[**1313]** a five to two opinion authored by Justice White, the Supreme Court held that the awarding of attorneys fees on a "private attorney general" theory, in the absence of express statutory authorization, did not lie within the equitable jurisdiction of the federal courts. Such awards, the court held, "would make major inroads on a policy matter that Congress has reserved for itself." (421 U.S. at p. 269 [44 L.Ed.2d at p. 159].)

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n14 The case involving this question which was before the high court at the time of *D'Amico* was later vacated on other grounds. (*Bradley* v. *School Board of Richmond, Virginia* (E.D.Va.

1971) 53 F.R.D. 28, revd. (4th Cir. 1972) 472 F.2d 318, vacated on other grounds (1974) 416 U.S. 696 [40 L.Ed.2d 476, 94 S.Ct. 2006].)

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The high court rested its conclusion on two bases. The first, involving the interpretation of an 1853 court costs act, need not long concern us here, for the act in question (presently 28 U.S.C. §§ 1920, 1923) bears little resemblance to the governing statute in this state, section 1021 of the Code of Civil Procedure. In any event the fashioning of equitable exceptions to the statutory rule to be applied in California is a matter within the sole competence of this court. n15 The second basis on which the Supreme Court grounded its decision, however, dealing with the manageability and fairness of such awards in the absence of legislative guidance, goes directly to the heart of the determination here before us. The making of such awards in the absence of statutory authorization, the high court indicated, would leave the courts "free to **[*44]** fashion drastic new rules with respect to the allowance of attorneys' fees to the prevailing party . . . or to pick and choose among plaintiffs and the statutes under which they sue and to award fees in some cases but not in others, depending upon the courts' assessment of the importance of the public policies involved in particular **[***32]** cases." (421 U.S. at p. 269 [44 L.Ed.2d at pp. 159-160].) This, the court suggested, would represent an unacceptable and unwise intrusion of the judicial branch of government into the domain of the Legislature.

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n15 This was expressly recognized by the high court in *Alyeska* itself. (See 421 U.S. at p. 259, fn. 31 [44 L.Ed.2d at p. 154].)

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It is with this consideration foremost in mind that we must assess the arguments advanced by plaintiffs and amici curiae in support of our adoption of the "private attorney general" concept in our state. Those arguments may be briefly summarized as follows: In the complex society in which we live it frequently occurs that citizens in great numbers and across a broad spectrum have interests in common. These, while of enormous significance to the society as a whole, do not involve the fortunes of a single individual to the extent necessary to encourage their private vindication in the courts. Although there are within the executive branch of the government offices and **[***33]** institutions (exemplified by the Attorney General) whose function it is to represent the general public in such matters and to ensure proper enforcement, for various reasons the burden of enforcement is not always adequately carried by those offices and institutions, rendering some sort of private action imperative. Because the issues involved in such litigation are often extremely complex and their presentation time-consuming and costly, the availability of representation of such public interests by private attorneys acting *pro bono publico* is limited. Only through the appearance of "public interest" law firms funded by public and foundation monies, argue plaintiffs and amici, has it been possible to secure representation on any large scale. The firms in question, however, are not funded to the extent necessary for the representation of all such deserving interests, and as a result many worthy causes of this nature are without adequate representation under present circumstances. One solution, so the argument goes, within the equitable powers of the judiciary to provide, is the award of substantial attorneys fees to those public-interest litigants and their attorneys **[**1314]** **[***34]** (whether private attorneys acting *pro bono publico* or members of "public interest" law firms) who are successful in such cases, to the end that support may be provided for the representation of interests of similar character in future litigation.

In the several cases in which the courts, persuaded by these and similar arguments, have granted fees on the "private attorney general" **[*45]** theory, various formulations of the rule have appeared. In spite of variations in emphasis, all of these formulations seem to

suggest that there are three basic factors to be considered in awarding fees on this theory. These are in general: (1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, (3) the number of people standing to benefit from the decision. (See generally, Comment, *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 666-674.) n16 Thus it seems to be contemplated that if a trial court, in ruling that a motion for fees upon this theory, determines that the litigation has resulted in the vindication of a strong or societally important **[***35]** public policy, that the necessary costs of securing this result transcend the individual plaintiff's pecuniary interest to an extent requiring subsidization, and that a substantial number of persons stand to benefit from the decision, the court may exercise its equitable powers to award attorney fees on this theory.

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n16 A fourth factor, suggested by Justice Marshall in his dissenting opinion in *Alyeska*, was the extent to which "shifting [the cost of litigation] to the defendant would effectively place it on a class that benefits from the litigation." (421 U.S. at p. 285 [44 L.Ed.2d at p. 169].) The majority, however, in responding to this suggestion, point out that to impose this limitation would result in an expanded version of the "substantial benefit" rule rather than a true "private attorney general" rationale. "When Congress has provided for allowance of attorneys' fees for the private attorney general," the majority stated, "it has imposed no such common-fund conditions upon the award. The dissenting opinion not only errs in finding authority in the courts to award attorneys' fees, without legislative guidance, to those plaintiffs the courts are willing to recognize as private attorneys general, but also disserves that basis for fee shifting by imposing a limiting condition characteristic of other justifications." (421 U.S. at p. 265, fn. 39 [44 L.Ed.2d at p. 157].) We find this reasoning persuasive. The "private attorney general" theory must be accepted or rejected on its own merits -- i.e., as a theory rewarding the effectuation of significant policy -- rather than as a policy-oriented extension of the "substantial benefit" theory burdened with the limitations of that rationale.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - - **[***36]**

It is at once apparent that a consideration of the first factor may in instances present difficulties since it is couched in generic terms, contains no specific objective standards and nevertheless calls for a subjective evaluation by the judge hearing the motion as to whether the litigation before the court has vindicated a public policy sufficiently strong or important to warrant an award of fees. We are aware of the apprehension voiced in some critiques that trial courts, whose function it is to apply existing law, will be thrust into the role of making assessments of the relative strength or weakness of public policies furthered by their decisions and of determining at the same time which public policy should be encouraged by an award of fees, and which not -- a role closely approaching that of the legislative function. (See generally, Comment, **[*46]** *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 670-671; Comment, *The Supreme Court, 1974 Term* (1975) 89 Harv.L.Rev. 1, 178-180.) n17 Since generally speaking the enactment of a statute entails in a sense the declaration of a public policy, it is arguable that, where it contains no provision for the awarding of attorney fees, **[***37]** the Legislature **[**1315]** was of the view that the public policy involved did not warrant such encouragement. A judicial evaluation, then, of the strength or importance of such statutorily based policy presents difficult and sensitive problems whose resolution by the courts may be of questionable propriety.

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n17 Thus in rejecting the private attorney general theory in *Alyeska*, the high court declared that such a rule "would make major inroads on a policy matter that Congress has reserved for itself" and that federal courts "are not free to fashion drastic new rules with respect to the allowance of attorneys' fees to the prevailing party in federal litigation or to pick and choose among plaintiffs and the statutes under which they sue and to award fees in some cases but

not in others, depending upon the courts' assessment of the importance of the public policies involved in particular cases." (*Alyeska Pipeline Co. v. Wilderness Society, supra*, 421 U.S. 240, 269 [44 L.Ed.2d 141, 159-160].)

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Such **[***38]** difficulties, however, are not present in the instant case. The trial court, in awarding fees to plaintiffs, found that the public policy advanced by this litigation was not one grounded in statute but one grounded in the *state Constitution*. Thus, the trial court concluded as a matter of law: "If as a result of the efforts of plaintiffs' attorneys rights created or protected by *the State Constitution* are protected to the benefit of a large number of people, plaintiffs' attorneys are entitled to reasonable attorney's fees from the defendants under the private attorney general equitable doctrine." (Italics added.) **(See fn. 18.)** Its factual findings, which are not here challenged, establish that the interests here furthered were *constitutional* in stature. n18 Those findings also make clear that the benefits flowing from this adjudication are to be widely enjoyed among the citizens of this **[*47]** state n19 and that the nature of the litigation was such that subsidization of the plaintiffs is justified in the event of their victory. n20 In these circumstances we conclude that an award of attorneys fees to plaintiffs and their attorneys was proper under **[***39]** the theory posited by the trial court.

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n18 The trial court found, inter alia, that "[the] plaintiffs . . . have proven that the sum of money available for public education in California is not being spent in accordance with the California Constitution" and that "[the] efforts of plaintiffs' attorneys . . . have assured that the billions of dollars spent every year in California on education will be spent in accordance with the California Constitution."

The determination that the public policy vindicated is one of constitutional stature will not, of course, be in itself sufficient to support an award of fees on the theory here considered. Such a determination simply establishes the first of the three elements requisite to the award (i.e., the relative societal importance of the public policy vindicated). (See text accompanying fn. 16, *ante*.) Only if it is also shown (2) that the necessity for private enforcement in the circumstances has placed upon the plaintiff a burden out of proportion to his individual stake in the matter, and (3) that the benefits flowing from such enforcement are to be widely enjoyed among the state's citizens -- only then will an award on the "private attorney general" theory be justified. **[***40]**

n19 The trial court found, for example, that "*Serrano* protects the right of every California child to receive a quality of education not dependent on the wealth of the school district in which he or she lives," and that "*Serrano* guarantees that the correlation between tax effort and educational quality will be equal for all children and taxpayers throughout the State of California."

n20 The trial court found, for example, that "[the] plaintiffs in *Serrano* individually did not have the resources to retain counsel to vindicate their rights to equitable educational and taxation systems," and that "[because] of the nature of the constitutional rights involved in this case, neither the California Attorney General nor any other public or governmental counsel could reasonably have been expected to institute litigation to vindicate the rights asserted by the plaintiffs in this case."

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So holding, we need not, and do not, address the question as to whether courts may award attorney fees under the "private attorney general" theory, where the litigation at hand has vindicated a public **[***41]** policy having a statutory, as opposed to, a constitutional basis.

The resolution of this question must be left for an appropriate case.

In sum, we hold that in the light of the circumstance of the instant case, the trial court acted within the proper limits of its inherent equitable powers when it concluded that reasonable attorneys fees should be awarded to plaintiffs' attorneys n21 on the "private attorney general" theory.

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n21 The propriety of a direct award to the plaintiffs' attorney, rather than to plaintiffs themselves, in the exercise of the court's equitable powers, is no longer questioned in the federal courts. (See *Central R. R. & Banking Co.* v. *Pettus* (1885) 113 U.S. 116, 124-125 [28 L.Ed. 915, 918, 5 S.Ct. 387]; *Brandenberger* v. *Thompson* (9th Cir. 1974) 494 F.2d 885, 889; *Miller* v. *Amusement Enterprises, Inc.* (5th Cir. 1970) 426 F.2d 534, 539 [16 A.L.R.Fed. 613]; *Townsend* v. *Edelman* (7th Cir. 1975) 518 F.2d 116, 122-123; see Comment, *Awards of Attorney's Fees to Legal Aid Offices* (1973) 87 Harv.L.Rev. 411, 422.) The equity powers of California courts are no less expansive in this respect. (See *Knoff* v. *City etc. of San Francisco, supra*, 1 Cal.App.3d 184, 203-204; *Horn* v. *Swoap* (1974) 41 Cal.App.3d 375, 383-384 [116 Cal.Rptr. 113].)

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IV

It should be clear from what we have said above that the eligibility of plaintiffs' **[**1316]** attorneys for the award of fees granted in this case is not affected under the "private attorney general" theory by the fact that plaintiffs are under no obligation to pay fees to their attorneys, or the further fact that plaintiffs' attorneys receive funding from charitable or **[*48]** public sources. Because the basic rationale underlying the "private attorney general" theory which we here adopt seeks to encourage the presentation of meritorious constitutional claims affecting large numbers of people, and because in many cases the only attorneys equipped to present such claims are those in funded "public interest" law firms, a denial of the benefits of the rule to such attorneys would be essentially inconsistent with the rule itself. (See generally Comment, *Awards of Attorney's Fees to Legal Aid Offices, supra*, 87 Harv.L.Rev. 411.) The propriety of such awards under statutory provisions is already well-established in this state (see *Horn* v. *Swoap, supra*, 41 Cal.App.3d 375, 383-384; *Trout* v. *Carleson* (1974) 37 Cal.App.3d 337, 342-343 [112 Cal.Rptr. 282]), **[***43]** and similar considerations are applicable when the award is made under the court's equitable powers.

V

We reject the contention of Public Advocates, Inc. n22 that the fee awarded it was inadequate in light of all the circumstances. It is urged that the trial court, in limiting its award to Public Advocates to the admittedly substantial amount of $ 400,000, failed to take adequate account of the novelty and extreme difficulty of this litigation, its extremely contingent character, the significance of the issues determined, and the standard which the award in this case will set for similar awards in future cases. However, the record clearly indicates that the court considered all of these factors, among many others, in making its determination. Fundamental to its determination -- and properly so n23 -- was a careful compilation of the time spent and reasonable hourly compensation of each attorney and certified law student involved in the presentation of the case. That compilation yielded a total dollar figure of $ 571,172.50, of which $ 225,662.50 was applicable to Public Advocates, Inc., $ 320,710 to Western Center on Law and Poverty, and $ 24,800 to **[*49]** time **[***44]** spent by certified law students. Using these figures as a touchstone, the court then took into consideration various relevant factors, of which some militated in favor of augmentation and some in favor of diminution. Among these factors were: (1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them; (2) the extent to which the

nature of the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award; (4) the fact that an award against the state would ultimately **[**1317]** fall upon the taxpayers; (5) the fact that the attorneys in question received public and charitable funding for the purpose of bringing law suits of the character here involved; n24 (6) the fact that the monies awarded would inure not to the individual benefit of the attorneys involved but the organizations by which they are employed; and (7) the fact that in the court's view the two law firms involved had approximately an equal share in the success of the litigation. Taking all of these factors into consideration, **[***45]** the court proceeded to make a total award in the amount of $ 800,000, to be shared equally by each of the two law firms representing plaintiffs.

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n22 As indicated above, Western Center on Law and Poverty does not join in this contention.

n23 We are of the view that the following sentiments of the United States Court of Appeals for the Second Circuit, although uttered in the context of an antitrust class action, are wholly apposite here: "The starting point of every fee award, once it is recognized that the court's role in equity is to provide just compensation for the attorney, must be a calculation of the attorney's services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts." (*City of Detroit* v. *Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 470; see also *Lindy Bros. Bldrs., Inc. of Phila.* v. *American R. & S. San. Corp.* (3d Cir. 1973) 487 F.2d 161, 167-169; see generally Dawson, *Lawyers and Involuntary Clients in Public Interest Litigation, supra*, 88 Harv.L.Rev. 849, especially pp. 925-929.) **[***46]**

n24 While as we have indicated the fact of public or foundational support should not have any relevance to the question of eligibility for an award, we believe that it may properly be considered in determining the size of the award.

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The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." (*Harrison* v. *Bloomfield Building Industries, Inc.* (6th Cir. 1970) 435 F.2d 1192, 1196; see *Mandel* v. *Hodges, supra*, 54 Cal.App.3d 596, 624.) We find no abuse of discretion here.

VI.

As indicated at the outset of this opinion, in *Serrano II* we specifically reserved jurisdiction for the purpose of determining plaintiffs' motion filed in this court on January 28, 1977, for attorneys' fees for services rendered in connection with the *Serrano II* appeal-which appeal was prosecuted only by certain officers of the County of Los Angeles and certain intervening school districts. (See 18 **[***47]** Cal.3d at p. 777.) On July 7, 1977, plaintiffs filed a letter request, which we treat as a supplementary motion, seeking additional fees for services rendered in opposing an unsuccessful petition for writ of certiorari filed by the aforesaid appellants in the United States Supreme Court. Finally, on October 31, 1977, plaintiffs filed a motion in this court for attorneys' fees for services **[*50]** rendered in connection with the instant appeal-which appeal was prosecuted only by certain state officers. All of these motions are now before us for decision. We have determined, however, in the interest of avoiding further delay in the finality of the instant decision while permitting all parties to be fully heard in these matters, that all of the aforesaid motions should be remanded to the trial court with directions to hear and determine them in light of the principles set forth in this opinion. (See *Bozung* v. *Local Agency Formation Com.* (1975) 13 Cal.3d 483, 485; *No Oil,*

Inc. v. *City of Los Angeles* (1975) 13 Cal.3d 486, 487.) In each instance, the award of attorneys' fees, if any, shall be made and assessed only against said defendants and appellants appealing **[***48]** in the respective appeal, or such of them as the trial court in the exercise of its equitable discretion shall determine.

The order concerning attorneys' fees filed August 1, 1975 is affirmed. The cause is remanded to the trial court with directions to hear and determine plaintiffs' motions for attorneys' fees filed in this court on January 28, 1977, July 7, 1977, and October 31, 1977, in conformity with the views herein expressed and to make and enter all necessary and appropriate orders.

DISSENTBY: RICHARDSON; CLARK

DISSENT: RICHARDSON, J. I respectfully dissent. In the absence of any statutory authority therefor, the majority awards substantial attorneys' fees to plaintiffs on the ground that plaintiffs' counsel acted in the capacity of "private attorneys general" in vindicating constitutional rights for a large segment of our state's population. I have previously, in my **[**1318]** dissenting opinion in *Serrano II* (*Serrano* v. *Priest* (1976) 18 Cal.3d 728, 777-785 [135 Cal.Rptr. 345, 557 P.2d 929]), expressed the reasons for my disagreement with the majority's premise that plaintiffs were denied equal protection of the laws under the state Constitution.

However, **[***49]** accepting as I must the *Serrano II* holding of a constitutional infringement, again with due deference, in considering the majority's proposed "private attorney general" doctrine, I find more persuasive the rationale of the United States Supreme Court expressed recently in *Alyeska Pipeline Co.* v. *Wilderness Society* (1975) 421 U.S. 240 [44 L.Ed.2d 141, 95 S.Ct. 1612], in which it declined to approve the doctrine in the absence of statutory guidance in this area. In passing, I note a **[*51]** touch of irony in the fact that very recently we likewise and unanimously refused an invitation to adopt the identical "private attorney general" doctrine herein approved by the majority, observing that "the doctrine is currently under examination by the United States Supreme Court . . . and, pending an announcement by the high court concerning its limits and contours on the federal level, we decline to consider its possible application in this state." (*D'Amico* v. *Board of Medical Examiners* (1974) 11 Cal.3d 1, 27 [112 Cal.Rptr. 786, 520 P.2d 10].) The Supreme Court now has spoken, but the majority, ignoring its awaited reasoning and lessons, adopts a rule which the high **[***50]** court carefully considered and rejected. To me, *Alyeska's* thesis is both compelling and fully applicable here for reasons which I briefly develop.

First, the high court noted that "Although . . . Congress has made specific provision for attorneys' fees under certain federal statutes, it has not changed the general statutory rule that allowances for counsel fees are limited to the sums specified by the costs statute." (421 U.S. at pp. 254-255 [44 L.Ed.2d at pp. 151-152].) The high tribunal, cognizant of broad congressional authority over the matter of attorneys' fees and court costs, reasoned further that "Under this scheme of things, it is apparent that the circumstances under which attorneys' fees are to be awarded and the range of discretion of the courts in making those awards are matters for Congress to determine." (*Id.*, at p. 262 [44 L.Ed.2d at p. 156], fn. omitted.)

Similarly, California, acting through its Legislature in parallel fashion, has expressly limited the manner of the award of attorneys' fees. "*Except as attorney's fees are specifically provided for by statute*, the measure and mode of compensation . . . is left to the agreement, express **[***51]** or implied, of the parties . . . ." (Code Civ. Proc., § 1021, italics added.) As with the Congress under the federal scheme, the California Legislature has clearly and "specifically provided . . . by statute" for attorneys' fees to be recovered in particular actions; as examples, in the Code of Civil Procedure, defamation (§ 836), condemnation, abandonment and dismissal (§ 1268.610), wage claim in municipal court (§ 1031), partition (§ 874.010, subd. (a)), and, in the Civil Code, dissolution of marriage (§ 4370). It has not elected as yet to provide for such recovery in actions such as the present one. The federal

and California patterns are closely parallel. I think the better procedure is to accept the *Alyeska* model and, by recognizing the demonstrated legislative interest, to refrain from developing our own nonstatutory bases for such awards, thus deferring to the Legislature in this area in the same manner as the Supreme Court has deferred to the Congress.

[*52] Second, I am further persuaded of the wisdom of the *Alyeska* reasoning by the high tribunal's anticipation of the very considerable difficulty which courts would experience in attempting to "pick and **[***52]** choose," among the multitudinous enactments, those particular statutes in which the public policy at issue is sufficiently "important **[**1319]** " to justify recovery on a "private attorney general" theory. The Supreme Court voiced its legitimate concern in these words: "[It] would be difficult, indeed, for the courts, without legislative guidance, to consider some statutes important and others unimportant and to allow attorneys' fees only in connection with the former." (421 U.S. at pp. 263-264 [44 L.Ed.2d at p. 157].) We face identical obstacles which are not lowered because they are of state rather than federal origin.

Furthermore, and finally, the majority's proposed refinement, limiting awards to cases involving *constitutional* rights, fails to avoid the pitfalls readily foreseen in *Alyeska*. A glance at our state Constitution discloses in article I alone, numerous "rights" of varying degrees of importance, ranging from the inalienable right to life, liberty and property (§ 1) to the right to fish in public waters (§ 25). Each of them presumably is a "constitutional" right.

Will the ambit of "rights" to which the doctrine applies be narrow or wide ranging? The **[***53]** majority recognizes the need for refinement and limitation of the principle but defers the difficult inquiry for an appropriate case," finding that the present matter has a constitutional rather than a statutory basis. One's lingering unease is not entirely allayed, however, since the majority in *Serrano II* in the course of its determination of those rights which it deemed "fundamental" for equal protection purposes stated, "Suffice it to say that we are constrained no more by inclination than by authority to gauge the importance of rights and interests affected by legislative classifications wholly through determining the extent to which they are 'explicitly or implicitly guaranteed' . . . by the terms of our compendious, comprehensive, and distinctly mutable state Constitution." (*Serrano v. Priest, supra*, 18 Cal.3d 728, 767, fn. omitted.) The inescapable meaning of the foregoing language is that the "importance," nature and quality of "constitutional rights," in the sense used by the majority, is "open ended" -- a right is not necessarily "fundamental" merely because it is incorporated in the state Constitution. If such is the case, it is exceedingly difficult **[***54]** to understand why, for purposes of applying the "private attorney general" concept, vindication of every such "constitutional" right will be considered important enough to qualify for an award of attorneys' fees.

[*53] In view of the foregoing considerations and uncertainties, and particularly because of the force and clear legislative expression of section 1021 of the Code of Civil Procedure, and the cogent analysis of the United States Supreme Court in *Alyeska*, it seems to me much wiser to await further legislative guidance on the matter of attorneys' fees. In the final analysis, and as a practical matter, it is the Legislature, presumably, that must find the funds to pay the bill. The absence of any specific legislative authorization is especially troublesome in this case, because substantial sums ($ 800,000) are awarded from the public treasury to publicly or charitably supported attorneys to whom the plaintiffs themselves legally owe nothing for services. From a policy standpoint, other factors may render this result entirely appropriate but those considerations should be legislatively expressed and defined.

I would reverse the judgment and deny the motion for attorneys' **[***55]** fees on appeal.

CLARK J., Dissenting. While joining the dissent of Justice Richardson, I add several considerations. Establishing an open-ended monetary-reward program to subsidize lawyers who successfully prosecute constitutional litigation, the **[**1320]** majority opinion usurps the legislative function.

The majority opinion points to neither constitutional nor statutory requirement that attorneys be compensated for successfully pursuing constitutional litigation in behalf of what they deem to be the public interest. Moreover, in the instant case the majority opinion frankly concedes that neither taxpayer nor school child is assured of any concrete benefit by the *Serrano II* decision. n1 (*Ante*, p. 41.) Rather, the majority decide for policy reasons, usually reserved to the Legislature, that constitutional litigation should be promoted in circumstances where the only real winners can be the subsidized attorneys. If the majority's goal is to promote constitutional litigation, they have chosen a productive formula. The majority's view that vindication of constitutional rights is important and that litigation to that end should be encouraged is **[*54]** laudable. **[***56]** But the majority's financial backing of that view constitutes an improper judicial prerogative that is unacceptable.

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n1 Essentially *Serrano II* requires a reallocation of tax resources and of educational funding. As pointed out in my dissent (*Serrano II*, 18 Cal.3d 728, 785 [135 Cal.Rptr. 345, 557 P.2d 929]), the reallocation will primarily involve taking from the poor and giving to those more economically fortunate. While some taxpayers and some students may be expected to profit by *Serrano II* and others suffer, members of the two groups cannot be precisely identified. The award of attorney fees runs against the stte generally with no effort to apportion it between winners or losers.

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Until today, California judges have entertained neither the dream nor the power to endorse a particular social program, appropriate the requisite money from the public treasury to fund it, and then order payment to those deemed deserving. I have always thought such authority to be vested exclusively in the Legislature. **[***57]** However, if the judiciary is to partake of the legislative process, should we not do so in a deliberative, parliamentarian manner? Should we not appoint committees and hold public hearings to determine whether, in the absence of reward money, charitable foundations, public-spirited attorneys or tax funded law firms, like the one before us, will adequately seek to vindicate constitutional rights? We should also be informed whether the subsidy will likely produce results commensurate with the costs, and whether other methods of financing constitutional litigation might be more effective. And the ultimate step in the budget-making process must be taken -- to determine whether other important social programs are more in need of limited tax funds. We, of course, have done none of these things because, unlike the Legislature, we are neither equipped nor empowered to do so.

Finally, the majority in recognition of the dangers inherent in the private attorney general concept, purport to limit the concept to only those instances when constitutional rights are vindicated in the face of legislative or executive default. Not only is this a limitation without bounds, but the reward **[***58]** becomes nothing more -- nor is it less -- than a bounty for searching out and invalidating constitutionally vulnerable legislative or executive action. Our Constitution, of course, establishes a government of three equal branches -- legislative, executive, and judicial. Is it any more appropriate for the judiciary to offer a bounty for legislative or executive hide, than it is for those branches to seek ours?

CALIFORNIA SENATE
Regular Session 2001-02, June 24, 2002
Rollcall 10:18 AM

PASSED
AYES: 22
NOES: 13
NOTV: 5

F# 59
UNFINISHED BUSINESS
SB976 POLANCO

AYES	NOES	NOT VOTING
	Ackerman	
Alarcon		
Alpert		
	Battin	
Bowen		
	Brulte	
Burton		
Chesbro		
Costa		
Dunn		
		Escutia
Figueroa		
	Haynes	
	Johannessen	
	Johnson	
Karnette		
	Knight	
Kuehl		
Machado		
	Margett	
	McClintock	
		McPherson
	Monteith	
	Morrow	
Murray		
O'Connell		
	Oller	
Ortiz		
		Peace
Perata		
Polanco		
	Poochigian	
Romero		
Scott		
		Sher
Soto		
Speier		
Torlakson		
Vasconcellos		
		Vincent

CALIFORNIA ASSEMBLY
Regular Session
2001-02
VOTE TABULATION

SEQ. NO. 21
AYES 46
NOES 25
NV 9

FILE 49
SB 976 POLANCO
SENATE THIRD READING
BY KEELEY

DATE: 06/20/2002
TIME: 12:25:32 PM

AYES - 46

ALQUIST	DIAZ	LOWENTHAL	SHELLEY
ARONER	DUTRA	MATTHEWS	SIMITIAN
CALDERON	FIREBAUGH	MIGDEN	STEINBERG
CANCIAMILLA	FLOREZ	NAKANO	STROM-MARTIN
CARDENAS	FROMMER	NATION	THOMSON
CARDOZA	GOLDBERG	NEGRETE MCLEOD	VARGAS
CHAN	HERTZBERG	OROPEZA	WASHINGTON
CHAVEZ	JACKSON	PAPAN	WAYNE
CHU	KEELEY	PAVLEY	WIGGINS
COHN	KEHOE	REYES	WRIGHT
CORBETT	KORETZ	SALINAS	MR SPEAKER
CORREA	LONGVILLE		

NOES - 25

AANESTAD	COGDILL	LEACH	PESCETTI
ASHBURN	COX	LEONARD	RICHMAN
BATES	DAUCHER	LESLIE	RUNNER
BOGH	HARMAN	MOUNTJOY	STRICKLAND
BRIGGS	HOLLINGSWORTH	PACHECO,ROBERT	WYLAND
CAMPBELL, B	LA SUER	PACHECO,ROD	ZETTEL
CAMPBELL, J			

NOT VOTING - 9

@ CEDILLO	HORTON	LIU	MALDONADO
DICKERSON	KELLEY	@ MADDOX	WYMAN
HAVICE			

VOTE ADDED UPON LIFTING OF CALL AT MEMBER'S DESK.
+ VOTE ADDED, CHANGED, OR CORRECTED.
@ MEMBER ABSENT OR EXCUSED.

UNOFFICIAL BALLOT. SEQ. NO. 21

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 06/04/02
LOCATION: ASM. JUD.
MOTION: Do pass as amended.
(AYES 8. NOES 4.) (PASS)

AYES
****

Corbett	Dutra	Jackson	Longville
Shelley	Steinberg	Vargas	Wayne

NOES
****

Harman	Bates	Robert Pacheco	Rod Pacheco

ABSENT, ABSTAINING, OR NOT VOTING
****

Vacancy

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 04/16/02
LOCATION: ASM. E.,R. & C.A.
MOTION: Do pass and be re-referred to the Committee on Judiciary.
(AYES 5. NOES 1.) (PASS)

AYES
****

Longville Cardenas Steinberg Keeley
Shelley

NOES
****

Ashburn

ABSENT, ABSTAINING, OR NOT VOTING
****

Leonard

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 04/02/02
LOCATION: ASM. E.,R. & C.A.
MOTION: Reconsideration granted.
(AYES 4. NOES 0.) (PASS)

AYES
****

Longville	Ashburn	Cardenas	Keeley

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
****

Horton	Leonard	Shelley

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 04/02/02
LOCATION: ASM. E.,R. & C.A.
MOTION: Do pass and be re-referred to the Committee on Appropriations.
(AYES 3. NOES 1.) (FAIL)

AYES
****

Longville Cardenas Keeley

NOES
****

Ashburn

ABSENT, ABSTAINING, OR NOT VOTING
****

Horton Leonard Shelley

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 01/30/02
LOCATION: SEN. FLOOR
MOTION: Senate 3rd Reading SB976 Polanco
(AYES 24. NOES 10.) (PASS)

AYES
****

Alarcon	Alpert	Bowen	Burton
Chesbro	Costa	Dunn	Escutia
Figueroa	Karnette	Kuehl	Machado
Murray	O'Connell	Ortiz	Perata
Polanco	Romero	Sher	Soto
Speier	Torlakson	Vasconcellos	Vincent

NOES
****

Ackerman	Battin	Brulte	Johannessen
Johnson	Knight	McClintock	McPherson
Morrow	Poochigian		

ABSENT, ABSTAINING, OR NOT VOTING
****

Haynes	Margett	Monteith	Oller
Peace	Scott		

VOTES - ROLL CALL
MEASURE: SB 976
AUTHOR: Polanco
TOPIC: Elections: rights of voters.
DATE: 05/30/2001
LOCATION: SEN. FLOOR
MOTION: Senate 3rd Reading SB976 Polanco
(AYES 16. NOES 10.) (FAIL)

AYES
****

Alarcon Chesbro Dunn Escutia
Figueroa Karnette Kuehl Murray
Peace Polanco Romero Scott
Soto Speier Torlakson Vincent

NOES
****

Ackerman Brulte Haynes Johannessen
Knight McClintock McPherson Morrow
Oller Poochigian

ABSENT, ABSTAINING, OR NOT VOTING
****

Alpert Battin Bowen Burton
Costa Johnson Machado Margett
Monteith O'Connell Ortiz Perata
Sher Vasconcellos

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 05/02/01
LOCATION: SEN. E. & R.
MOTION: Do pass.
(AYES 5. NOES 3.) (PASS)

AYES
****

Alpert Burton Murray Ortiz
Perata

NOES
****

Brulte Johnson Poochigian

ABSENT, ABSTAINING, OR NOT VOTING
****

Polanco

CHAIR, BUDGET SUBCOMMITTEE NO. 4 GENERAL GOVERNMENT

CHAIR, LATINO LEGISLATIVE CAUCUS

CHAIR, JOINT COMMITTEE ON PRISON CONSTRUCTION & OPERATIONS

CHAIR, SUBCOMMITTEE ON PROFESSIONAL & VOCATIONAL STANDARDS

CHAIR, SUBCOMMITTEE ON THE AMERICAS

California State Senate

Senate Majority Leader

SENATOR RICHARD G. POLANCO

TWENTY-SECOND SENATORIAL DISTRICT

MEMBER

BANKING, COMMERCE, AND INTERNATIONAL TRADE

BUDGET AND FISCAL REVIEW

BUSINESS AND PROFESSIONS

ELECTIONS AND REAPPORTIONMENT

HEALTH AND HUMAN SERVICES

LABOR & INDUSTRIAL RELATIONS

PUBLIC SAFETY

FOR IMMEDIATE RELEASE: July 10, 2002 **Contact: Saeed Ali, 916-445-3456**

PRESS ADVISORY

CALIFORNIA'S NEW VOTING RIGHTS ACT, SENATE BILL 976, SIGNED INTO LAW

SACRAMENTO, CA - Senator Richard G. Polanco (D-Los Angeles), Senate Majority Leader, today announced that Governor Gray Davis had approved and signed Senate Bill 976 into law. The law will go into effect on January 1, 2003. Senate Bill 976 addresses the problem of racial bloc voting in California - a state without a majority racial or ethnic group.

Senator Polanco thanked Governor Davis for his support and commented, "After the 2000 Census, it is clear that in California we are facing a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. I authored this measure to identify the problem and provide the tools to provide a solution."

Senator Polanco added, "SB 976 is necessary because the federal Voting Rights Act's remedy fails to redress California's problem of racial bloc voting. Federal case law requires that the minority community be geographically compact and sufficiently large to constitute a majority in a hypothetical election district. This geographic compactness standard requires that the minority population in such an election district constitute more than 50 percent of the eligible voter population. If the minority community were at 49 percent, then the federal courts cannot provide a remedy. Such a bright-line test establishes an artificial threshold which often serves to deny minority voting rights in California simply because the minority community is not sufficiently compact."

Renowned civil rights attorney, Mr. Joaquin Avila, drafted the measure and assisted in its passage.

Post-it® Fax Note 7671	Date 7/11	# of pages ▶ 1
To Paul Payne	From Saeed Ali	
Co./Dept.	Co.	
Phone #	Phone # 916 445 3456	
Fax # 707 521 5239	Fax #	

CAPITOL OFFICE: STATE CAPITOL, ROOM 313 • SACRAMENTO, CALIFORNIA 95814-4906 • (916) 445-3456 PHONE • (916) 445-0413 FAX
DISTRICT OFFICE: 300 SOUTH SPRING STREET, SUITE 8710 • LOS ANGELES, CALIFORNIA 90013 • (213) 620-2529 PHONE • (213) 617-0077 FAX

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INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM
(916) 442-7660

Assembly Committee on Elections, Reapportionment and Const. Amend.

SOURCE:
CALIFORNIA STATE ARCHIVES

SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT
Senator Don Perata, Chair

BILL NO:	**SB 976**	HEARING DATE:	**5/2/01**
AUTHOR:	**POLANCO**	ANALYSIS BY:	**Darren Chesin**
AMENDED:	**AS TO BE AMENDED**		
FISCAL:	**NO**		

SUBJECT:

At large and district elections: rights of voters

BACKGROUND:

Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

- The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

- The minority community was politically cohesive, in that minority voters usually supported minority candidates.

- There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

PROPOSED LAW:

This bill would establish criteria in state law through which the validity of local at-large election systems can be challenged in court. Specifically, this bill does all of the following:

(a) Provides that a local political jurisdiction may not employ an at-large method of election if it results in the dilution or the abridgement of the rights of any registered voter who is a member of a minority race, color or language group, by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.

(b) Provides that a violation of this prohibition is established if it is shown that racially polarized voting occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the same jurisdiction.

(c) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by the voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

(d) Specifies the methodology by which racially polarized voting may be established.

(e) Specifies 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.

(f) States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(g) Delineates other factors that may be introduced as evidence in order to establish a violation.

(h) Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

COMMENTS:

1. According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

2. This bill establishes criteria when met, that would serve to prohibit the use of at-large elections in local jurisdictions. Unlike the preconditions established by the Supreme Court in Thornburg v. Gingles, this bill does not require that the minority community be geographically compact or concentrated. If a minority community is not sufficiently geographically compact to ensure that it can elect one of their members from a district, what is gained by eliminating the at-large election system?

3. Several bills seeking to promote the use of district-based elections over at-large elections have been pursued in the past. Last year, AB 8 (Cardenas) which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member trustee areas is best made at the local level, not by the state. AB 172 (Firebaugh) of 1999, which would have prohibited at-large elections for specified K-12 school districts, passed this committee but died in the Senate Committee on Education.

POSITIONS:

Sponsor: Joaquin Avila, former President, MALDEF; public interest attorney

Support: None received

Oppose: None received

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR: 16-10, 5/30/01
AYES: Alarcon, Chesbro, Dunn, Escutia, Figueroa, Karnette, Kuehl, Murray, Peace, Polanco, Romero, Scott, Soto, Speier, Torlakson, Vincent
NOES: Ackerman, Brulte, Haynes, Johannessen, Knight, McClintock, McPherson, Morrow, Oller, Poochigian

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SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is

CONTINUED

elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

CONTINUED

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

7. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

The bill defines:

CONTINUED

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

   C. One which combines at-large elections with district-based elections.

2. "District-based election" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

3. "Political subdivision" 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.

4. "Protected class" as a class of voters who are members of a minority race, color or language group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

5. "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

Comments:

CONTINUED

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 1/8/02)

Mexican American Legal Defense and Educational Fund

DLW:jk 1/8/02 Senate Floor Analyses

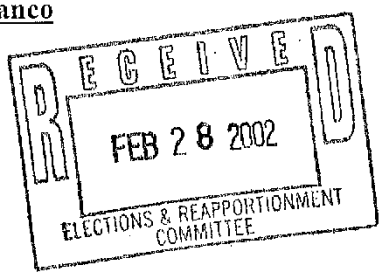
SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****

Assembly Elections,
Reapportionment and Constitutional
Amendments Committee
John Longville, Chair

State Capitol, Room 3123
319-2094
319-2162 (fax)

Bill No. SB 976
Intro /Amended Date: _____
Author Polanco



Please note these important committee deadline dates:

April 26th last day for policy committees to hear and report Assembly fiscal bills for referral to fiscal committees.
May 10th last day for policy committees to hear and report to the floor nonfiscal Assembly bills.
May 24th last day for policy committees to meet prior to June 11th.
June 1st last day for fiscal committees to hear and report Assembly bills to the Floor
June 3th committee meetings may resume.
August 16th last day for policy committees to meet and report Senate bills.
August 31st end of session

1) NEED FOR BILL:

Please present all the relevant facts (BE SPECIFIC) that demonstrate the need for this bill. Please see attached note

2) SOURCE AND BACKGROUND OF BILL:

a) Who is the person in your office to contact regarding this bill? (Please provide telephone numbers.) Saeed Ali 445 3456

b) What, if any, person, organization, or governmental entity requested introduction of this bill? Joaquin Avila, Attorney

c) Has a similar bill been before either this Session or a previous Session of the Legislature? If so, please identify the Session, bill number, and disposition of this bill.

No

d) Have there been any interim hearings, a committee report, or issue in general on this bill? If so, please identify.

No

e) Please list likely support and opposition. Attach copies of letters of support and opposition you have received.

- MALDEF, ACLU — Support
- No known opposition

f) Please attach copies of all Senate analyses (policy, fiscal, floor), if applicable.

3) AMENDMENTS PRIOR TO HEARING:

a) Do you plan any substantive amendments to this bill prior to hearing?

YES ✓ NO _____

b) If the answer to question (a) is "YES" please explain briefly the substance of the amendments being prepared (or attach a copy of the draft language that has been sent to Legislative Counsel). Attached

c) Please send 8 copies of all amendments to the ER&CA Committee. **The original copy must be signed by the member.** — Will do

d) **No substantive amendments shall be accepted after 5:00 p.m. on Monday the week prior to the hearing, and the amendments must be in Legislative Counsel form.**

4) WITNESSES:

Please list the witnesses you plan to have testify on the day of the hearing:

Joaquin Avila

This form must be filled out and returned within 5 business days. The Chair may withhold the hearing of a bill if the worksheet and accompanying information is not received within the required five-day period. Please send this form and all supporting documentation to the attention of Patricia Hawkins, State Capitol, room 3123.

SB 976

Senate Bill 976 addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity.

SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem.

In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution.

There is no known opposition to the measure.

Date of Hearing: April 2, 2002

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS
John Longville, Chair
SB 976 (Polanco) – As Amended: March 18, 2002

SENATE VOTE: 24-10

SUBJECT: Elections: rights of voters.

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW:

1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS:

1) Purpose of the Bill: According to the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

2) Legal History: In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

   a) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

   b) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

   c) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

   In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in

Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

3) Impact of this Bill: In Gingles, the Supreme Court established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

4) Previous Legislation: AB 8 (Cardenas) of 1999, which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by this committee, but was amended to an unrelated subject in the Senate Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 16, 2002

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS
John Longville, Chair
SB 976 (Polanco) – As Amended: April 9, 2002

SENATE VOTE: 24-10

SUBJECT: Elections: rights of voters.

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW:

1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS:

1) Purpose of the Bill: According to the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

2) Legal History: In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

   a) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

   b) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

   c) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

   In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in

Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

3) Impact of this Bill: In Gingles, the Supreme Court established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

4) Previous Legislation: AB 8 (Cardenas) of 1999, which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by this committee, but was amended to an unrelated subject in the Senate Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

SENATE THIRD READING
SB 976 (Polanco)
As Amended June 11, 2002
Majority vote

SENATE VOTE: 24-10

ELECTIONS	5-1	JUDICIARY	8-4
Ayes:	Longville, Cardenas, Steinberg, Keeley, Shelley	Ayes:	Corbett, Dutra, Jackson, Longville, Shelley, Steinberg, Vargas, Wayne
Nays:	Ashburn	Nays:	Harman, Bates, Robert Pacheco, Rod Pacheco

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

1) Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW:

1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS: According to the author, this bill "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

1) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

As noted above, the Supreme Court in Gingles established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, which was vetoed, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by the Assembly, but was amended to an unrelated subject in the Senate Education Committee.

Analysis Prepared by: Willie Guerrero / E., R. & C. A. / (916) 319-2094

FN: 0005396

CONFLICT NOTIFICATION

June 14, 2002

S.B. 905

The above measure, introduced by Senator Perata, which was set for hearing in the

Assembly Elections, Reapportionment and Constitutional Amendments Committee

appears to be in conflict with

A.B. 2598 - Assembly Elections, Reapportionment and Constitutional Amendments Committee
S.B. 585 (02:10 U) - Perata
S.B. 1019 - Torlakson

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Section@lc.ca.gov or 916-445-0430 at your earliest convenience.

Assembly
California Legislature

ASSEMBLY COMMITTEE ON JUDICIARY
ELLEN M. CORBETT, CHAIR

STAFF
DREW LIEBERT, CHIEF COUNSEL
KEVIN G. BAKER, COUNSEL
SASKIA I. KIM, COUNSEL
KATHY SHER, COUNSEL
CINDY FISCHER, COMMITTEE SECRETARY
VANESSA CISNEROS, COMMITTEE SECRETARY
STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0106
(916) 319-2334

DATE: 6/10

TOTAL PAGES SENT INCLUDING COVER: 3

TO: E.R+C.A.

OFFICE:

TELEPHONE:

FAX:

FROM:

TELEPHONE: (916) 319-2334

FAX: (916) 319-2188

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT VANESSA.
THANK YOU.

MESSAGE: SB 976 amendments - just taken to the Desk

47855

06/06/02 9:02 AM
RN0211642 PAGE 1
Substantive

AMENDMENTS TO SENATE BILL NO. 976
AS AMENDED IN ASSEMBLY APRIL 9, 2002

Amendment 1
On page 3, line 8, after "difference" insert:

, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.),

Amendment 2
On page 3, line 9, strike out the first "the" and insert:

a

Amendment 3
On page 3, strike out lines 18 to 22, inclusive, and insert:

applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

Amendment 4
On page 3, line 33, strike out "candidates are members" and insert:

at least one candidate is a member

Amendment 5
On page 3, line 35, strike out "the" and insert:

a

Amendment 6
On page 4, line 2, strike out "Elections in multiseat at-large" and insert:

In multi-seat at-large election

Amendment 7
On page 4, line 5, strike out "the" and insert:

a

Amendment 8
On page 4, line 19, strike out the first "the" and insert:

a

Amendment 9
On page 4, line 33, strike out "including pages 48 and 49" and insert:

48-49

Amendment 10
On page 5, line 1, strike out "the" and insert:

a

Amendment 11
On page 5, lines 2 and 3, strike out "that is the subject of an action filed pursuant to" and insert:

where a violation of

Amendment 12
On page 5, line 3, after "14028" insert:

is alleged

AMENDMENTS TO SENATE BILL NO. 976
AS AMENDED IN ASSEMBLY MARCH 18, 2002

Amendment 1

On page 3, line 20, strike out "provided in Section 14028" and insert:

defined in Section 14026

Amendment 2

On page 4, line 1, strike out "In" and insert:

Elections in

AMENDMENTS TO SENATE BILL NO. 976
AS AMENDED IN ASSEMBLY MARCH 18, 2002

Amendment 1

On page 3, line 20, strike out "provided in Section 14028" and insert:

defined in Section 14026

Amendment 2

On page 4, line 1, strike out "In" and insert:

Elections in

- 0 -

State Capitol
P.O. Box 942849
Sacramento, CA 94249-0096
(916) 319-2094
Fax: (916) 319-2162

Willie Guerrero
Chief Consultant

Patricia L. Hawkins
Committee Secretary

Assembly
California Legislature

Elections, Reapportionment and Constitutional Amendments Committee

John Longville, Chair
Assemblymember, Sixty-Second District

MEMORANDUM

To: Legislative Counsel

Date: 4-8-02

RE: SB 976 (Polanco)

- [ ] Draft bill as per attached
- [x] Draft amendments as per attached
- [ ] Opinion as per attached WRITTEN VERBAL
- [x] If necessary, confer with WILLIE GUERRERO
- [ ] Confer with me before drafting.
- [ ] This is to authorize _____ to work with your office on the above legislation.
- [x] I need request by 4-9-02
- [ ] Above requested by phone.
- [ ] Other _____

Willie G
Signature

Attachment(s)

Please draft amendments to SB 976 (Polanco) as follows:

Page 3, Line 20: Strike "14028" and insert "14026".

Page 4, Line 1: Strike "In" and insert "Elections in".

AMENDMENTS TO SENATE BILL NO. 976
AS AMENDED IN SENATE MAY 1, 2001

Amendment 1

On page 2, lines 16 and 17, strike out ", and does not include any method of district-based elections"

Amendment 2

On page 2, line 25, strike out "election"" and insert:

elections"

Amendment 3

On page 3, line 12, strike out "minority"

Amendment 4

On page 3, line 12, after "language" insert:

minority

Amendment 5

On page 3, line 35, strike out "registered"

Amendment 6

On page 3, line 37, strike out the second "of" and insert:

or

Amendment 7

On page 4, line 1, after the second "of" insert:

the

Amendment 8

On page 4, line 3, after the period insert:

Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

Amendment 9
On page 4, line 16, after "considered" insert:

in determining a violation of Section 14027 and this section

Amendment 10
On page 4, line 17, after "class" insert:

and who are preferred by voters of the protected class, as determined by an analysis of voting behavior,

Amendment 11
On page 4, line 27, after the comma insert:

or a violation of Section 14027 and this section,

Amendment 12
On page 5, strike out lines 1 and 2 and insert:

political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

Amendment 13
On page 5, line 7, after "14027" insert:

and Section 14028

Amendment 14
On page 5, line 11, after the comma insert:

and litigation expenses including, but not limited to, expert witness fees and expenses

Amendment 15
On page 5, line 11, strike out "Prevailing plaintiff" strike out lines 12 and 13, and insert:

Prevailing defendant parties shall not recover any costs, unless the

court finds the action to be frivolous, unreasonable, or without foundation.

Amendment 16
On page 5, line 15, after the second "Section" insert:

2

Amendment 17
On page 5, below line 16, insert:

14032. Any voter who is a member of the protected class and who resides in a political subdivision that is the subject of an action filed pursuant to Sections 14027 and 14028 may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

- 0 -

AUTHOR'S AMENDMENTS<c2>

Committee on Elections, Reapportionment and Constitutional Amendments

March 18, 2002 [1]<r>

¶ Mr. Speaker: The Chair of your Committee on Elections, Reapportionment and Constitutional Amendments reports:

¶ Senate Bill No. 976

(1)With author's amendments with the recommendation: Amend, and re-refer to the committee. <1>

Longville, Chair [1] <r>

Longville

UNOFFICIAL BALLOT

2001-2002 Votes - ROLL CALL

MEASURE: SB 976
TOPIC: Elections: rights of voters.
DATE: 06/04/02
LOCATION: ASM. JUD.
MOTION: Do pass as amended.
(AYES 8. NOES 4.) (PASS)

AYES
****

Corbett	Dutra	Jackson	Longville
Shelley	Steinberg	Vargas	Wayne

NOES
****

Harman	Bates	Robert Pacheco	Rod Pacheco

ABSENT, ABSTAINING, OR NOT VOTING
****

Vacancy

CHAIR, BUDGET SUBCOMMITTEE
NO. 4 GENERAL GOVERNMENT

CHAIR, LATINO LEGISLATIVE
CAUCUS

CHAIR, JOINT COMMITTEE ON
PRISON CONSTRUCTION &
OPERATIONS

CHAIR, SUBCOMMITTEE ON
PROFESSIONAL & VOCATIONAL
STANDARDS

CHAIR, SUBCOMMITTEE ON THE
AMERICAS

California State Senate

Senate Majority Leader

SENATOR RICHARD G. POLANCO
TWENTY-SECOND SENATORIAL DISTRICT

MEMBER
BANKING, COMMERCE, AND
INTERNATIONAL TRADE
BUDGET AND FISCAL REVIEW
BUSINESS AND PROFESSIONS
ELECTIONS AND
REAPPORTIONMENT
HEALTH AND HUMAN SERVICES
LABOR & INDUSTRIAL RELATIONS
PUBLIC SAFETY

February 27, 2002

Legislative Counsel
State Capitol, Room 3021
Sacramento, CA 95814

RE: Senate Bill 976, R.N. 0205380

I am enclosing changes to the draft amendments. A mockup is also enclosed. Please provide me with new draft amendments reflecting the changes.

If you have any questions, please contact my Chief of Staff, Saeed Ali, at 445-3456.

Sincerely,

RICHARD G. POLANCO
Senate Majority Leader

RGP: sma

CAPITOL OFFICE: STATE CAPITOL, ROOM 313 • SACRAMENTO, CALIFORNIA 95814-4906 • (916) 445-3456 PHONE • (916) 445-0413 FAX
DISTRICT OFFICE: 300 SOUTH SPRING STREET, SUITE 8710 • LOS ANGELES, CALIFORNIA 90013 • (213) 620-2529 PHONE • (213) 617-0077 FAX

To: Saeed Ali
From: Joaquin G. Avila
Re: Changes to Proposed Amendments - SB 976
Date: February 26, 2002

Changes to February 18th Amendments

Amendments Nos. 1 - 7 No changes

Amendment 8 - In third line the word "that" should read "than" - the third line reads as follows: "existence of racially polarized voting than elections conducted"

Amendment 9 - Should read:
"On page 4, line 16, after "considered" insert:
in determining a violation of Section 14027 and this section"

Amendment 10 - Should read:
"On page 4, line 17, after "class" insert:
and who are preferred by voters of the protected class, as determined by an analysis of voting behavior,"

Amendment 11 - Should read:
"On page 4, line 27, after "voting," insert:
or a violation of Section 14027 and this section,"

Amendment 12 - 13 No changes

Amendment 14 - Should read:
"On page 5, line 9, after "fee" insert:
and litigation expenses, including but not limited to expert witness fees and expenses"

Amendment 15 - Should read:
"On page 5, line 11, strike out "Prevailing plaintiff" and strike out lines 12 and 13

Amendment 16 - Should read:
"On page 5, line 11, after "costs." insert:
Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation."

Amendment 17 - No change

Amendment 18 - Delete the word "registered" from the first line.
First line should read: "Section 14032. Any voter who is a member of the"

AMENDED IN SENATE MAY 1, 2001

SENATE BILL No. 976

Introduced by Senator Polanco

February 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as amended, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass ~~municipal~~ areas of representation within the state. With respect to these ~~municipal~~ areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that ~~a municipal political subdivision may not be subdivided~~ *an at-large method of election, as defined, may not be imposed or applied* in a manner that results in ~~a denial~~ *the dilution* or abridgment of the right of ~~a registered voter to vote on account of membership in a minority race, color or language group~~ *registered voters who are members of a protected class, as defined, by impairing their ability to elect candidates of their choice or to influence the outcome of an election.*

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a ~~municipal~~ political subdivision, *among other things.* It would provide that an

intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

~~(a) "At-large method of election" means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.~~

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision ~~*and does not include any method of district-based elections.*~~ :

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) "District-based ~~election.~~ elections" means a method of electing members to the governing body of a ~~municipal~~ political subdivision in which the candidate must reside within an election district that is a divisible part of the ~~municipal~~ political subdivision and is elected only by voters residing within that election district.

~~(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage.~~

~~(d) "Municipal political~~

(c) "Political subdivision" means a geographic area of representation created for the provision of ~~municipal~~ government services, including, but not limited to, a city, a school district, a community college district, or other ~~local district~~ *district organized pursuant to state law.*

~~(e)~~

(d) "Protected class" means a class of voters who are members of a [~~minority~~] race, color or language group, *as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).*

minority

~~(f) "Racially polarized voting" means voting in which there is a consistent difference in the way voters of an identifiable class based on a minority race, color or language group vote and the way the rest of the electorate vote in a municipal political subdivision.~~

~~14027. A municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of any registered voter to vote on account of membership in a minority race, color or language group.~~

(e) "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgment of the rights of [~~registered~~] voters who are members of the protected class, as provided in Section 14028, by impairing their ability to elect candidates of their choice [~~of~~] or their ability to influence the outcome of an election.

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for

members of the governing body [~~of~~] the ~~a municipal political subdivision~~ *political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.*

Elections conducted prior to the filing of an action pursuant to Section 14027 a this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

~~(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027.~~

(b) The occurrence of racially polarized voting [or a violation of section 14027 and this section] *shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered* in determining a violation of section 14027 and this section *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 based on Section 14027 and this section. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.*

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this Section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in

1 ~~*political campaigns, may also be introduced as evidence but these*~~
2 ~~*factors are not necessary to establish a violation of this section.*~~
3 14029. Upon a finding of a violation of Section 14027 *and*
4 *Section 14028*, the court shall implement appropriate remedies,
5 including the imposition of district-based elections ~~in place of~~
6 ~~at-large districts~~, that are tailored to remedy the violation.
7 14030. In any action to enforce Section 14027, the court shall
8 allow the prevailing plaintiff party, other than the state or political
9 subdivision thereof, a reasonable attorney's fee consistent with the
10 standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~at~~
11 *including* pages 48 and 49, as part of the costs. ~~Prevailing plaintiff~~
12 ~~parties, other than the state or political subdivision thereof, shall~~
13 ~~recover their expert witness fees and expenses as part of the costs.~~
14 *14031. This chapter is enacted to implement the guarantees*
15 *of Section 7 of Article I and of Section of Article II of the California*
16 *Constitution.*

political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

and Section 14028

and litigation expenses, including but not limited to expert witness fees and expenses

Prevailing ~~plaintiff~~ defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

2

Amendment 18
On page 5, below line 16, insert:

14032. Any ~~registered~~ voter who is a member of the protected class and who resides in a political subdivision that is the subject of an action filed pursuant to Sections 14027 and 14028 may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

- 0 -

O

LRI HISTORY LLC
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM
(916) 442-7660

Assembly Committee on Judiciary

SOURCE:
CALIFORNIA STATE ARCHIVES

MAR 20 2002

ASSEMBLY JUDICIARY COMMITTEE'S BACKGROUND

INFORMATION WORKSHEET

Measure: SB 976 **Author:** Polanco 313

1. Who is the source of the bill? Are they the sponsor? What person, organization, or governmental entity requested introduction?
   Author

2. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number, summary of bill's contents, and disposition of the bill. (Use attachments if necessary)
   No

3. Have there been any interim hearings on the subject matter of the bill? If so, when?
   No

4. **Please attach a sheet explaining in detail the problem or deficiency in the present law which the bill seeks to remedy and how the bill resolves the problem. Please also list all witnesses you plan to have testify.** ✓

5. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff which would be helpful to the analysis of the bill.

6. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

7. If you plan substantive amendments to this bill prior to hearing, please attach a detailed explanation of the substance of the amendments to be prepared. **Please recall that all substantive amendments must be received by the committee in Legislative Counsel form the Tuesday prior to the committee hearing.**

STAFF PERSON TO CONTACT: Saeed Ali PHONE#: 445 3456

*******IMPORTANT NOTE*******

THIS FORM MUST BE FILLED OUT AND RETURNED NO LATER THAN 7 DAYS AFTER RECEIPT OR THE BILL MAY BE PUT OVER AS AN AUTHOR'S RESET.

ASSEMBLY JUDICIARY COMMITTEE, 1020 N Street (LOB), Room 104

********PLEASE PROVIDE 2 STAPLED COPIES OF THIS SHEET AND ALL OTHER SUPPORTING DOCUMENTATION INCLUDING LETTERS OF SUPPORT AND OPPOSITION***

319 2334

JUDICIARY COMMITTEE [redacted]

SB 976

Senate Bill 976 addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity.

SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem.

In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution.

There is no known opposition to the measure.

Date of Hearing: June 4, 2002

ASSEMBLY COMMITTEE ON JUDICIARY
Ellen M. Corbett, Chair
SB 976 (Polanco) – As Amended: April 9, 2002

SENATE VOTE: 24-10

SUBJECT: DISCRIMINATION: VOTING RIGHTS

KEY ISSUE: SHOULD THE STATE ENACT A VOTING RIGHTS ACT IN ORDER TO PROHIBIT AND REMEDY RACIALLY POLARIZED VOTING THAT ABRIDGES OR DILUTES THE RIGHT TO VOTE IN AT-LARGE ELECTION SYSTEMS?

SYNOPSIS

This bill, which was previously heard by the Elections, Reapportionment and Constitutional Amendments Committee, enacts a state voting rights act comparable to the federal voting rights act in order to address racial block voting in at-large elections. Unlike prior unsuccessful measures concerned with at-large election methods, this bill would not mandate that any political subdivision convert an at-large election system to a single-member district system. Rather, this bill simply prohibits the abridgement or dilution of minority voting rights.

SUMMARY: Prohibits discrimination in at-large election districts. Specifically, this bill:

1) Provides that an at-large method of election may not be employed by a political subdivision of the state in a manner that results in the dilution or the abridgment of the rights of voters who are members of a protected race, color or language class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Prohibits racially polarized voting, as defined, in elections for members of the governing body of a political subdivision or in elections incorporating other electoral choices by the voters of a political subdivision.

3) Provides that a voter may sue to enforce and a court may remedy violations of the act.

EXISTING LAW:

1) Provides for political subdivisions and the election of public officials by all of the voters (at-large), or from districts formed within the political subdivision (district-based), or by some combination thereof. (Elections Code sections 10505, 10508, and 10523; Government Code Sections 58000-58200.)

2) Allows voters of the entire political subdivision to determine by local initiative whether public officials are elected by divisions or by the entire political subdivision. (Elections Code Section 9102.)

FISCAL EFFECT: As currently in print, this bill is keyed non-fiscal.

COMMENTS: The author states that SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

This Bill Addresses Racially Polarized Voting if it Impairs the Right of Protected Groups to Influence the Outcome of an Election. This bill establishes a state Voting Rights Act much like the federal Voting Rights Act. Accordingly, it provides protections against the dilution or abridgement of the right to vote by members of the race, color and language groups recognized by the federal act. Restrictive interpretations given to the federal act, however, have put the cart before the horse by requiring that a plaintiff show that the protected class is geographically compact enough to permit the creation of a single-member district in which the protected class could elect its own candidate. This bill would avoid that problem.

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the court created three requirements that a plaintiff must establish to prove that an election system diluted the voting strength of a protected minority group: (1) the minority community was politically cohesive, in that minority voters usually supported minority candidates; (2) there was racially polarized voting among the majority community, which usually voted for majority candidates rather than for minority candidates; and (3) the minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate. Prior to the *Thornburg* decision, there had been no requirement to show geographical compactness in order to show a violation of the federal voting rights act.

This bill would allow a showing of dilution or abridgement of minority voting rights by showing the first two *Thornburg* requirements without an additional showing of geographical compactness. Under other decisions of the U.S. Supreme Court, the geographical compactness or concentration of the protected class within a political subdivision is a factor in determining whether a district may be drawn to allow that class of voters to elect the candidate of their choice. This bill recognizes that geographical concentration is an appropriate question at the remedy stage. However, geographical compactness would not appear to be an important factor in assessing whether the voting rights of a minority group have been diluted or abridged by an at-large election system. Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).

This Bill Does Not Mandate the Abolition of At-large Election Systems. Unlike prior legislation regarding at-large methods of election, discussed below, this bill does not mandate that any political subdivision convert at-large districts to single-member districts. Instead, this bill simply prohibits at-large election systems from being used to dilute or abridge the rights of voters in protected classes.

Author's Technical Amendments. To clarify that there is more than one protected class, the author properly wishes to change references to "the protected class" to "a protected class."

Similarly, to avoid confusion regarding the definition of racially polarized voting, the author appropriately suggests language referencing the standard under the federal voting rights act. Thus, proposed section 14025(3) on page 3, line 7 *ff*, should read as follows: (e) ''Racially polarized voting'' means voting in which there is a difference, ***as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.),*** in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 *et seq.*) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

In addition, to correct awkward syntax, the author prudently desires to reword section 14027 as follows: "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined in Section 14026."

To clarify the intention of section 14028(b), the author properly proposes that the bill be amended as follows: (b) The occurrence of racially polarized voting shall be determined from examining results of elections in which ***at least one*** candidate~~s~~ ~~are~~ ***is a*** member~~s~~ of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered in determining a violation of Section 14027 and this section 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 based on Section 14027 and this section. ~~In~~ ~~***Elections***~~ In multiseat at-large ***election*** districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

The author also desires to correct the citation format in section 14030 to read: In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~**including pages**~~ 48 ~~and~~ -49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Finally, to clarify the syntax of section 14032, the author wisely suggests that it should read as follows: "Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located."

Prior Related Legislation. AB 8 (Cardenas) of 1999 sought to eliminate the at-large election system within the Los Angeles Community College District. That bill was vetoed by the Governor, who stated in his veto message that the decision to create single-member districts was best made at the local level. AB 172 (Firebaugh) of 1999 proposed to prohibit at-large elections

for specified K-12 school districts. After passing the Assembly, that bill was amended to an unrelated subject in the Senate.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU
Joaquin Avila, Esq.
Mexican American Legal Defense and Educational Fund (MALDEF)

Opposition

None on file

Analysis Prepared by: Kevin G. Baker / JUD. / (916) 319-2334

SB 976 (POLANCO)
ELECTIONS: RIGHTS OF VOTERS.

Version: 4/9/02 Last Amended
Vote: Majority
Oppose

Vice-Chair: Tom Harman
Tax or Fee Increase: No

Creates a separate criteria under state law for filing of civil rights actions in "at-large" district elections in addition to those currently provided for in federal law, in a manner which is certain to invite both increased litigation as well as disputed "findings of fact" as a result of "probative declarations" included in the bill.

NOTE #1: NO Senate Republicans voted in support of the bill (10 "Noes," 4 "Abs./N.V.").

NOTE #2: April 9th amendments -- taken after the defeat of the bill in Committee on April 1st -- are purely technical and in no way address the substantive objections which underlie the "OPPOSE" recommendation on the bill.

Policy Question

1. Should the State of California establish a new Voting Rights act to protect minority communities from polarized voting?
2. Should an inequitable, one-sided award of attorney's fees and cost to prevailing plaintiffs be provided which is designed to encourage litigation of a frivolous nature or marginal value?

Summary

Creates a new state Voting Rights Act (referred to in the bill as the "California Voting Rights Act of 2001") that establishes criteria in state law that enables the validity of at-large elections to be challenged in California state court beyond current U.S. Supreme Court interpretations to do all of the following:

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of

Senate Republican Floor Votes (24-10) 1/30/02
Ayes: None
Noes: All Republicans Except
Abs. / NV: Haynes, Margett, Monteith, Oller

Assembly Republican Elections Votes (3-1) 4/2/02
FAIL PASSAGE
Ayes: None
Noes: Ashburn
Abs. / NV: Leonard

Assembly Republican Elections Votes (5-1) 4/16/02
Ayes: None
Noes: Ashburn
Abs. / NV: Leonard

Assembly Republican Judiciary Votes (0-0) 6/4/01
Ayes: None
Noes: None
Abs. / NV: None

voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides "reasonable attorney fees and litigation expenses" for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

Support

Mexican American Legal Defense and Education Fund (MALDEF)

Opposition

None on file

Arguments In Support of the Bill

According to a statement from the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

Arguments In Opposition to the Bill

1. The Federal Voting Rights act already protects minorities from the deleterious effects of at-large district voting (where such deleterious effects may be found to occur), and this bill would unnecessarily – and in some cases inappropriately -- exceed the federally established criteria.
2. The bill does not require geographic concentration of a minority to establish a finding of racially polarized voting. Since the remedy is generally to provide for single member district elections, the determination of any such racial polarized voting and crafting of an appropriate remedy under this statutory language is potentially challengeable under constitutional law as vague and overbroad.
3. The provisions which state that "Any voter of the protected class…may file an action…in the superior court" (p. 5, lines 6-10), and which state that "In any action…the court shall allow the prevailing plaintiff party…reasonable attorney's fee…and litigation expenses including, but not limited to, expert witness fees and expenses…" (page 4, lines 31-37) will invite litigation in virtually any conceivable circumstance. When taken together with the statutory definitions of probative factors, the bill in its current form is at once unworkable and ill-advised as a matter of public policy, while potentially unavailing in seeking to address the very harms it purports to redress.
4. If the paramount principle is to allow local communities to determine their choice of governance, including whether to use at-large districts or single-member districts, then state legislation should not dictate such choice. Governor Davis reconfirmed this principle in vetoing AB 8 (Cardenas) of 2001 in stating that the decision to create single-member trustee areas is best made at the local level, not by the state.

Fiscal Effect

Unknown.

Comments

While it is always difficult to oppose a measure which seeks to ensure voting rights – let alone a bill entitled the "California Voting Rights Act of 2001" – this bill, however well-intentioned, simply does not merit support. Not only does it seek to exceed federal Voting Rights law (both statutory and case law) in a manner which is currently unnecessary to address the real issues of voter access, but the language of the bill presents VERY REAL problems in the areas of increased litigation and probative findings written into the statutory law, not to mention the overall policy question of creating a body of law separate from the established federal standard.

First, as noted in the "Arguments in Opposition," the provisions of the bill which provide that "Any

voter of the protected class…may file an action…in the superior court" (p. 5, lines 6-10), and which state that "In any action…the court shall allow the prevailing plaintiff party…a reasonable attorney's fee…and litigation expenses including, but not limited to, expert witness fees and expenses…" (p. 4, lines 31-37) will invite litigation in virtually any conceivable circumstance, and are by themselves enough to garner an "Oppose unless amended" recommendation. When taken together with the "probative declarations" of the bill, however, there can be no question of the appropriateness behind the "Oppose" recommendation.

According to Black's Law Dictionary (6th ed.), "Probative evidence…in the law of evidence, means having the effect of proof." Similarly, "Probative facts…in the law of evidence, (are) facts which actually have effect of proving facts sought; evidentiary facts." ***This bill provides that ALL of the following are "probative, but not necessary factors to establish a violation…":***

- "…the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections…"
- "…denial of access to those processes determining which groups of candidates will receive financial or other support in a given election…"
- "…the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and…"
- "…the use of overt or subtle racial appeals in political campaigns."

A careful reader of this language can only conclude that these criteria are both unworkable and admit of wholly subjective analysis. Furthermore, as Section 14029 of the bill (page 4, lines 27-30) states that "Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation," a court MUST act WHENEVER it is found to have established ANY of these criteria as having existed. So not only is a court compelled to act upon the most problematic of criteria, but the profoundly liberal standing and plaintiff legal compensation provision of the bill all but invite litigation where it may not be warranted. Again, as noted at the beginning of these comments, any hint of a violation of voting rights is a very serious issue which must be addressed; sadly, this bill is wholly inadequate to the task.

Applicable federal law

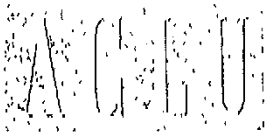
In Thornburg v. Gingles (1986) the Supreme Court made three preconditions criteria to prove a claim that the Voter Rights Act had been violated.

1. Minority community was sufficiently concentrated geographically so that a district could be created where a minority candidate could be elected.
2. The minority community showed enough cohesiveness to elect a minority candidate.
3. There was racially polarized voting that usually voted for majority candidates.

NOTE ON HEARING OF BILL IN POLICY COMMITTEE

At the April 1st hearing of the ERCA Committee on this bill, witnesses speaking in support of the bill were questioned as to the particulars of how the bill would operate, and did not refute the contentions which rest at the heart of opposition to this measure.

Policy Consultant: Richard Mersereau/Mark Redmond 6/1/02
Fiscal Consultant:



AMERICAN CIVIL LIBERTIES UNION

CALIFORNIA LEGISLATIVE OFFICE
Francisco Lobaco, *Legislative Director*
Valerie Small Navarro, *Legislative Advocate*
Rita M. Egri, *Legislative Assistant*

1127 Eleventh Street, Suite 534
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

May 31, 2002

The Honorable Richard Polanco
State Capitol, Room 5046
Sacramento, CA 95814

Re: SB 976 (Polanco) -- Support

Dear Senator Polanco:

The American Civil Liberties Union supports SB 976, your bill to provide state law protection against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of African-Americans, Latinos, and other protected groups on local governing boards. Statewide, the underrepresentation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction. Thus, we support SB 976 because it increases the opportunity to fully participate in the political process.

If you or your staff have any questions or comments, please call us.

Sincerely yours,

FRANCISCO LOBACO
Legislative Director

V. Small Navarro

VALERIE SMALL NAVARRO
Legislative Advocate

Cc: Members and Consultant, Assembly Judiciary Committee

ACLU OF NORTHERN CALIFORNIA
Dorothy M. Ehrlich, *Executive Director*
1663 Mission Street • Suite 460
San Francisco • CA 94103
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Ramona Ripston, *Executive Director*
1616 Beverly Blvd
Los Angeles • CA 90026
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Linda Hills, *Executive Director*
P.O. Box 87131
San Diego • CA 92138-7131
(619) 232-2121

MALDEF

Mexican American Legal Defense and Educational Fund

Sacramento Satellite Office
[illegible]
Suite 124
Sacramento, CA 95811
Tel 916 443 7531
Fax 916 443 1541

National Headquarters
Los Angeles Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel 213 629 2512
Fax 213 629 0266

Chicago Regional Office
[illegible] W. Randolph Street
Suite 1400
Chicago, IL 60601
Tel 312 782 1422
Fax 312 782 1528

San Antonio Regional Office
140 E. Houston Street
Suite 300
San Antonio, TX 78205
Tel 210 224 5476
Fax 210 224 5382

Washington, D.C. Regional Office
1717 K Street, NW
Suite 811
Washington, DC 20036
Tel 202 293 2828
Fax 202 293 2849

San Francisco Redistricting Office
[illegible] Street
Suite [illegible]
San Francisco, CA 94117
Tel 415 504 1403
Fax 415 504 1808

Albuquerque Program Office
[illegible] Avenue, NE
Suite 203
Albuquerque, NM 87106
Tel 505 842 8325
Fax 505 842 1864

Houston Program Office
Ripley House
1110 Navigation
Suite 229
Houston, TX 77011
Tel 713 215 8101
Fax 713 215 8504

Phoenix Program Office
202 E. McDowell Road
Suite 150
Phoenix, AZ 85004
Tel 602 307 9028
Fax 602 307 5039

Atlanta Census Office
5565 Lenox Road
Suite 750
Atlanta, GA 30326
Tel 404 261 7020
Fax 404 261 7021

May 31, 2002

The Honorable Ellen Corbett, Chair
Committee on the Judiciary
California State Assembly
1020 N Street, Room 104
Sacramento, CA 95814

Re: SB 976 (Polanco) - Support **VIA FACSIMILE**

Dear Assembly Member Corbett:

The Mexican American Legal Defense and Educational Fund (MALDEF) strongly supports Senate Bill 976, which would amend state law to protect against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of Latinos and other protected groups on local governing boards. Statewide, the representation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, SB 976 would provide for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction.

We hope that you will support this important legislation. If you have any questions about our position, please call me at 916-443-7531.

Sincerely,

Francisco Estrada
Senior Policy Analyst

cc: Senator Richard Polanco
Kevin Baker, Consultant, Assembly Committee on the Judiciary

Celebrating Our 33rd Anniversary
Protecting and Promoting Latino Civil Rights
www.maldef.org

(2)REPORTS OF STANDING COMMITTEES<c2>

(2)Committee on Judiciary

[t8] Date of Hearing: June 04, 2002 [_]<r>

¶ Mr. Speaker: Your Committee on Judiciary reports:

¶Senate Bill No. 976 (8-4)

(1)With amendments with the recommendation: Amend, and do pass, as amended. <1>

_____,Chair ___
CORBETT

(5)Above bill(s) ordered to second reading.

AMENDMENTS TO SENATE BILL NO. 976
AS AMENDED IN ASSEMBLY APRIL 9, 2002

Amendment 1
On page 3, line 8, after "difference" insert:

, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.),

Amendment 2
On page 3, line 9, strike out the first "the" and insert:

a

Amendment 3
On page 3, strike out lines 18 to 22, inclusive, and insert:

applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

Amendment 4
On page 3, line 33, strike out "candidates are members" and insert:

at least one candidate is a member

Amendment 5
On page 3, line 35, strike out "the" and insert:

a

Amendment 6
On page 4, line 2, strike out "Elections in multiseat at-large" and insert:

In multi-seat at-large election

Amendment 7
On page 4, line 5, strike out "the" and insert:

a

Amendment 8
On page 4, line 19, strike out the first "the" and insert:

a

Amendment 9
On page 4, line 33, strike out "including pages 48 and 49" and insert:

48-49

Amendment 10
On page 5, line 1, strike out "the" and insert:

a

Amendment 11
On page 5, lines 2 and 3, strike out "that is the subject of an action filed pursuant to" and insert:

where a violation of

Amendment 12
On page 5, line 3, after "14028" insert:

is alleged

Judiciary

Date of Hearing: 06/04/2002

BILL NO.	SB 976	SB 994	SB 1210	SB 1271
ACTION VOTED ON	Do pass as amended	Do pass as amended and re-refer to the Cmte on Appr, Rec. Consent	Do pass; re-refer to Cmte on A.,E.,S.,T. & I. M	Do pass, to Consent
	Aye : No	Aye : No	Aye : No	Aye : No
Corbett (Chair)	X :	X :	X :	X :
Harman (V. Chair)	: X	X :	Not Voting	X :
Bates	: X	X :	Not Voting	X :
Dutra	X :	X :	X :	X :
Jackson	X :	X :	X :	X :
Longville	X :	X :	X :	X :
Pacheco, Robert	: X	X :	Not Voting	X :
Pacheco, Rod	: X	X :	Not Voting	X :
Shelley	X :	X :	X :	X :
Steinberg	X :	X :	X :	X :
Vargas	X :	X :	X :	X :
Wayne	X :	X :	X :	X :
Vacancy				
	Ayes: 8 Noes: 4	Ayes: 12 Noes: 0	Ayes: 8 Noes: 0	Ayes: 12 Noes: 0

RECEIVED:_____

_____, Chair

1

48654

03/13/02 3:32 PM
RN0206266 PAGE 1
Substantive

AMENDMENTS TO SENATE BILL NO. 976
AS AMENDED IN SENATE MAY 1, 2001

Amendment 1
On page 2, lines 16 and 17, strike out ", and does not include any method of district-based elections"

Amendment 2
On page 2, line 25, strike out "election"" and insert:

elections"

Amendment 3
On page 3, line 12, strike out "minority"

Amendment 4
On page 3, line 12, after "language" insert:

minority

Amendment 5
On page 3, line 35, strike out "registered"

Amendment 6
On page 3, line 37, strike out the second "of" and insert:

or

Amendment 7
On page 4, line 1, after the second "of" insert:

the

Amendment 8
On page 4, line 3, after the period insert:

Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

Amendment 9
On page 4, line 16, after "considered" insert:

in determining a violation of Section 14027 and this section

Amendment 10
On page 4, line 17, after "class" insert:

and who are preferred by voters of the protected class, as determined by an analysis of voting behavior,

Amendment 11
On page 4, line 27, after the comma insert:

or a violation of Section 14027 and this section,

Amendment 12
On page 5, strike out lines 1 and 2 and insert:

political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.

Amendment 13
On page 5, line 7, after "14027" insert:

and Section 14028

Amendment 14
On page 5, line 11, after the comma insert:

and litigation expenses including, but not limited to, expert witness fees and expenses

Amendment 15
On page 5, line 11, strike out "Prevailing plaintiff" strike out lines 12 and 13, and insert:

Prevailing defendant parties shall not recover any costs, unless the

court finds the action to be frivolous, unreasonable, or without foundation.

Amendment 16
On page 5, line 15, after the second "Section" insert:

2

Amendment 17
On page 5, below line 16, insert:

14032. Any voter who is a member of the protected class and who resides in a political subdivision that is the subject of an action filed pursuant to Sections 14027 and 14028 may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

- 0 -

LRI HISTORY LLC
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Assembly Floor Analysis

SOURCE:
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SENATE THIRD READING
SB 976 (Polanco)
As Amended June 11, 2002
Majority vote

SENATE VOTE: 24-10

ELECTIONS	5-1	JUDICIARY	8-4
Ayes:	Longville, Cardenas, Steinberg, Keeley, Shelley	Ayes:	Corbett, Dutra, Jackson, Longville, Shelley, Steinberg, Vargas, Wayne
Nays:	Ashburn	Nays:	Harman, Bates, Robert Pacheco, Rod Pacheco

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

1) Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW:

1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS: According to the author, this bill "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

1) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

As noted above, the Supreme Court in Gingles established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, which was vetoed, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by the Assembly, but was amended to an unrelated subject in the Senate Education Committee.

Analysis Prepared by: Willie Guerrero / E., R. & C. A. / (916) 319-2094

FN: 0005396

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Assembly Republican Caucus

SOURCE:
CALIFORNIA STATE ARCHIVES

SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT
Senator Don Perata, Chair

BILL NO: SB 976 HEARING DATE: 5/2/01
AUTHOR: POLANCO ANALYSIS BY: Darren Chesin
AMENDED: 5/1/01
FISCAL: NO

SUBJECT :

At large and district elections: rights of voters

BACKGROUND :

Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a

plaintiff first must establish to prove such a claim. The

plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

The minority community was politically cohesive, in that minority voters usually supported minority candidates.

There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

PROPOSED LAW :

This bill would establish criteria in state law through which the validity of local at-large election systems can be challenged in court. Specifically, this bill does all of the following:

(a) Provides that a local political jurisdiction may not employ an at-large method of election if it results in the dilution or the abridgement of the rights of any registered voter who is a member of a minority race, color or language group, by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.

(b) Provides that a violation of this prohibition is established if it is shown that racially polarized voting occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the same jurisdiction.

(c) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by the voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

(d) Specifies the methodology by which racially polarized

voting may be established.

(e) Specifies 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.

(f) States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(g) Delineates other factors that may be introduced as evidence in order to establish a violation.

(h) Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

COMMENTS :

1. According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

2. This bill establishes criteria when met, that would serve to prohibit the use of at-large elections in local jurisdictions. Unlike the preconditions established by the Supreme Court in Thornburg v. Gingles , this bill does not require that the minority community be geographically compact or concentrated. If a minority community is not sufficiently geographically compact to ensure that it can elect one of their members from a district, what is gained by eliminating the at-large election system?

3. Several bills seeking to promote the use of district-based elections over at-large elections have

been pursued in the past. Last year, AB 8 (Cardenas) which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member trustee areas is best made at the local level, not by the state. AB 172 (Firebaugh) of 1999, which would have prohibited at-large elections for specified K-12 school districts, passed this committee but died in the Senate Committee on Education.

POSITIONS :

Sponsor: Joaquin Avila, former President, MALDEF; public interest attorney

Support: Mexican American Legal Defense and Educational Fund

Oppose: None received

SB 976 (Polanco)
Page 4

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916)
327-4478

SB 976

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE : 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR : 16-10, 5/30/01
AYES: Alarcon, Chesbro, Dunn, Escutia, Figueroa, Karnette, Kuehl, Murray, Peace, Polanco, Romero, Scott, Soto, Speier, Torlakson, Vincent
NOES: Ackerman, Brulte, Haynes, Johannessen, Knight, McClintock, McPherson, Morrow, Oller, Poochigian

SUBJECT : Elections: rights of voters

SOURCE : Author

DIGEST : This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS : Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

CONTINUED

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting

occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political

process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

7. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

A. One in which the voters of the entire jurisdiction elect the members to the governing body.

B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

C. One which combines at-large elections with district-based elections.

1. "District-based election" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

2. "Political subdivision" 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. "Protected class" as a class of voters who are members of a minority race, color or language group, as this class

is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

4. "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

Comments :

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

SUPPORT : (Verified 1/8/02)

Mexican American Legal Defense and Educational Fund

DLW:jk 1/8/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

SB 976 (Polanco) **Oppose**
File Item #
Senate Floor: 16-9 (Failed)
(NO: Ackerman, Haynes, Johannessen, Knight, McClintock, McPherson, Morrow, Oller, Poochigian; ABS: Battin, Brulte, Johnson, Margett, Monteith)
Senate Elections & Reapportionment: 5-3
(NO: Brulte, Johnson, Poochigian)
Vote requirement: 21
Version Date: 5/1/01

Quick Summary

Creates a new state Voting Rights Act that goes far beyond current Supreme Court interpretations of the federal Voting Rights law. It will unnecessarily increase voting rights litigation in the state. As currently drafted, this bill is not supportable, however, the author has expressed a desire to work on a bipartisan approach to this issue.

Digest

Enacts the California Voting Rights Act of 2001.

Provides that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a political subdivision.

Provides that intent to discriminate against a protected class is not required to establish a violation of its provisions.

Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing plaintiff party reasonable attorneys fees.

Background

Existing law provides for public officials in political subdivisions are generally elected in at large elections.

Existing law generally permits the voters of the entire political subdivision to decide the manner of election for the entire district.

Most school boards and city councils are elected in at-large elections.

Using the federal Voting Rights Act, several lawsuits have forced local jurisdictions to change their voting procedures. In *Thornburg v. Gingles,* the U.S. Supreme Court set out a three-part test to determine whether at-large elections violated the Voting Rights Act:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.
2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.
3. There was racially polarized voting among the majority community, which usually voted for majority candidates rather than for the minority candidates.

Applying the *Gingles* test in *Gomez v. City of Watsonville,* the United States Supreme Court affirmed that the at-large elections for city council violated the Voting Rights Act by diluting Hispanic voting strength. The Court ordered single-member district elections.

Analysis

This bill is unnecessary. The federal Voting Rights Act already protects minorities from harm created by at-large elections.

This bill does not require geographic concentration for a finding of racially polarized voting. If a minority group is not geographically concentrated, how will single-member districts change the results?

It also permits other factors to be considered including use of electoral devices or other voting practices or procedures; the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.

Add those factors to the provisions permitting attorneys' fees and this bill is the full-employment act for voting rights act lawyers and creates a whole new area for trial lawyers to have a field day.

Support & Opposition Received

Support: Mexican American Legal Defense and Educational Fund (MALDEF)

Consultant: *Cynthia Bryant*

Whip Comments

Last year, Governor Davis hit the nail on the head when he vetoed AB 8 (Cardenas), a similar measure that changed the voting methodology of the LA Community College District Board of Trustees from at-large to 7 trustee districts. In his veto message, the Governor cited local control.

Under current law, generally, voters of the entire local political jurisdiction can already vote to change their election methodology without legislative authority.

While the intent allows for potentially greater representation, it does so at the expense of principle. Local control means allowing the local community to determine their choice of governance.

Date of Hearing: April 16, 2002

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS
John Longville, Chair
SB 976 (Polanco) - As Amended: April 9, 2002

SENATE VOTE : 24-10

SUBJECT : Elections: rights of voters.

SUMMARY : Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill :

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW :

1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT : None

COMMENTS :

1) Purpose of the Bill : According to the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its

diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

2) Legal History : In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

a) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

b) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

c) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles .

3) Impact of this Bill : In Gingles , the Supreme Court established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

4) Previous Legislation : AB 8 (Cardenas) of 1999, which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by this committee, but was amended to an unrelated subject in the Senate Education Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

None on file.

Opposition

None on file.

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

SENATE THIRD READING
SB 976 (Polanco)
As Amended June 11, 2002
Majority vote

SENATE VOTE: 24-10

ELECTIONS	5-1	JUDICIARY	8-4
Ayes:	Longville, Cardenas, Steinberg, Keeley, Shelley	Ayes:	Corbett, Dutra, Jackson, Longville, Shelley, Steinberg, Vargas, Wayne
Nays:	Ashburn	Nays:	Harman, Bates, Robert Pacheco, Rod Pacheco

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

1) Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW:

1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS: According to the author, this bill "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

1) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

As noted above, the Supreme Court in Gingles established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, which was vetoed, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by the Assembly, but was amended to an unrelated subject in the Senate Education Committee.

Analysis Prepared by: Willie Guerrero / E., R. & C. A. / (916) 319-2094

FN: 0005396

SB 976 (POLANCO)
ELECTIONS: RIGHTS OF VOTERS.

Version: 4/9/02 Last Amended
Vote: Majority
Oppose

Vice-Chair: Roy Ashburn
Tax or Fee Increase: No

Creates a separate criteria under state law for filing of civil rights actions in "at-large" district elections in addition to those currently provided for in federal law, in a manner which is certain to invite both increased litigation as well as disputed "findings of fact" as a result of "probative declarations" included in the bill.

NOTE #1: NO Senate Republicans voted in support of the bill (10 "Noes," 4 "Abs./N.V.").

NOTE #2: April 9th amendments -- taken after the defeat of the bill in Committee on April 1st -- are purely technical and in no way address the substantive objections which underlie the "OPPOSE" recommendation on the bill.

Policy Question

Should the State of California establish a new Voting Rights act to protect minority communities from polarized voting?

Summary

Creates a new state Voting Rights Act (referred to in the bill as the "California Voting Rights Act of 2001") that establishes criteria in state law that enables the validity of at-large elections to be challenged in California state court beyond current U.S. Supreme Court interpretations to do all of the following:

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are

Senate Republican Floor Votes (24-10) 1/30/02
Ayes: None
Noes: All Republicans Except
Abs. / NV: Haynes, Margett, Monteith, Oller

Assembly Republican Elections Votes (3-1) 4/2/02
FAIL PASSAGE
Ayes: None
Noes: Ashburn
Abs. / NV: Leonard

Assembly Republican Elections Votes (5-1) 1/16/01
Ayes: None
Noes: Ashburn
Abs. / NV: Leonard

Assembly Republican Votes (0-0) 1/1/01
Ayes: None
Noes: None
Abs. / NV: None

not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides "reasonable attorney fees and litigation expenses" for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

Support

Mexican American Legal Defense and Education Fund (MALDEF)

Opposition

None on file

Arguments In Support of the Bill

According to a statement from the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

Arguments In Opposition to the Bill

The Federal Voting Rights act already protects minorities from the deleterious effects of at-large district voting (where such deleterious effects may be found to occur), and this bill would unnecessarily – and in some cases inappropriately -- exceed the federally established criteria.

The bill does not require geographic concentration of a minority to establish a finding of racially polarized voting.

The provisions which state that "Any voter of the protected class…may file an action…in the superior court" (p. 5, lines 6-10), and which state that "In any action…the court shall allow the prevailing plaintiff party…a reasonable attorney's fee…and litigation expenses including, but not limited to, expert witness fees and expenses…" (page 4, lines 31-37) will invite litigation in virtually any conceivable circumstance. When taken together with the statutory definitions of probative factors, the bill in its current form is at once unworkable and ill-advised as a matter of public policy, while potentially unavailing in seeking to address the very harms it purports to redress.

Fiscal Effect

Unknown.

Comments

While it is always difficult to oppose a measure which seeks to ensure voting rights – let alone a bill entitled the "California Voting Rights Act of 2001" – this bill, however well-intentioned, simply does not merit support. Not only does it seek to exceed federal Voting Rights law (both statutory and case law) in a manner which is currently unnecessary to address the real issues of voter access, but the language of the bill presents VERY REAL problems in the areas of increased litigation and probative findings written into the statutory law, not to mention the overall policy question of creating a body of law separate from the established federal standard.

First, as noted in the "Arguments in Opposition," the provisions of the bill which provide that "Any voter of the protected class…may file an action…in the superior court" (p. 5, lines 6-10), and which state that "In any action…the court shall allow the prevailing plaintiff party…a reasonable attorney's fee…and litigation expenses including, but not limited to, expert witness fees and expenses…" (p. 4, lines 31-37) will invite litigation in virtually any conceivable circumstance, and are by themselves enough to garner an "Oppose unless amended" recommendation. When taken together with the "probative declarations" of the bill, however, there can be no question of the appropriateness behind the "Oppose" recommendation.

According to Black's Law Dictionary (6th ed.), "Probative evidence…in the law of evidence, means having the effect of proof." Similarly, "Probative facts…in the law of evidence, (are) facts which actually have effect of proving facts sought;

evidentiary facts." ***This bill provides that ALL of the following are "probative, but not necessary factors to establish a violation…":***

- "…the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections…"
- "…denial of access to those processes determining which groups of candidates will receive financial or other support in a given election…"
- "…the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and…"
- "…the use of overt or subtle racial appeals in political campaigns."

A careful reader of this language can only conclude that these criteria are both unworkable and admit of wholly subjective analysis. Furthermore, as Section 14029 of the bill (page 4, lines 27-30) states that "Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation," a court MUST act WHENEVER it is found to have established ANY of these criteria as having existed. So not only is a court compelled to act upon the most problematic of criteria, but the profoundly liberal standing and plaintiff legal compensation provision of the bill all but invite litigation where it may not be warranted. Again, as noted at the beginning of these comments, any hint of a violation of voting rights is a very serious issue which must be addressed; sadly, this bill is wholly inadequate to the task.

Applicable federal law

In Thornburg v. Gingles (1986) the Supreme Court made three preconditions criteria to prove claim that the Voter Rights Act had been violated.

1. Minority community was sufficiently concentrated geographically so that a district could be created where a minority candidate could be elected.
2. The minority community showed enough cohesiveness to elect a minority candidate.
3. There was racially polarized voting that usually voted for majority candidates.

NOTE ON HEARING OF BILL IN POLICY COMMITTEE

At the April 1st hearing of the ERCA Committee on this bill, witnesses speaking in support of the bill were questioned as to the particulars of how the bill would operate, and did not refute the contentions which rest at the heart of opposition to this measure.

Policy Consultant: Richard Mersereau 4/11/00
Fiscal Consultant:

LRI HISTORY LLC
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM
(916) 442-7660

Senate Committee on Elections and Reapportionment

SOURCE:
CALIFORNIA STATE ARCHIVES

SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT

BACKGROUND INFORMATION REQUEST

Measure: SB 976 Author: POLANCO

1. Origin of the bill:

   a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?
   Mr. Joaquin Avila, former President, MALDEF & public interest attorney

   b. Has a similar bill been before either this session or a previous session of the Legislature? If so, please identify the session, bill number and disposition of the bill.
   No

   c. Has there been an interim committee report on the bill? If so, please identify the report.
   No

2. What is the problem or deficiency in the present law which the bill seeks to remedy?
   This bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.
   forthcoming

5. If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared. (Forward a **signed original with 5 copies of amendments** to committee staff no later than the Wednesday prior to your scheduled hearing date. If no hearing date has been set, kindly forward amendments at earliest opportunity.)

6. List the witnesses you plan to have testify (attach separate sheet if necessary).
   1. Joaquin Avila
   2. Alan Clayton

PLEASE RETURN THIS FORM TO: THE SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, ROOM 5046, STATE CAPITOL, (PHONE) **445-2601** (FAX) **445-2496.**

AUTHOR'S STAFF NAME and PHONE NUMBER: Saeed Ali 5-3456

SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT

BACKGROUND INFORMATION REQUEST

Measure: SB 976 Author: POLANCO

1. Origin of the bill:

   a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?

   Mr. Joaquin Avila, former President, MALDEF & political interest attorney

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PLEASE RETURN THIS FORM TO: THE SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT, ROOM 5046, STATE CAPITOL, (PHONE) **445-2601** (FAX) **445-2496.**

AUTHOR'S STAFF NAME and PHONE NUMBER: _____

SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT
Senator Don Perata, Chair

BILL NO:	**SB 976**	HEARING DATE:	**5/2/01**
AUTHOR:	**POLANCO**	ANALYSIS BY:	**Darren Chesin**
AMENDED:	**AS TO BE AMENDED**		
FISCAL:	**NO**		

SUBJECT:

At large and district elections: rights of voters

BACKGROUND:

Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

- The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

- The minority community was politically cohesive, in that minority voters usually supported minority candidates.

- There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

PROPOSED LAW:

This bill would establish criteria in state law through which the validity of local at-large election systems can be challenged in court. Specifically, this bill does all of the following:

(a) Provides that a local political jurisdiction may not employ an at-large method of election if it results in the dilution or the abridgement of the rights of any registered voter who is a member of a minority race, color or language group, by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.

(b) Provides that a violation of this prohibition is established if it is shown that racially polarized voting occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the same jurisdiction.

(c) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by the voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

(d) Specifies the methodology by which racially polarized voting may be established.

(e) Specifies 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.

(f) States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(g) Delineates other factors that may be introduced as evidence in order to establish a violation.

(h) Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

COMMENTS:

1. According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

2. This bill establishes criteria when met, that would serve to prohibit the use of at-large elections in local jurisdictions. Unlike the preconditions established by the Supreme Court in Thornburg v. Gingles, this bill does not require that the minority community be geographically compact or concentrated. If a minority community is not sufficiently geographically compact to ensure that it can elect one of their members from a district, what is gained by eliminating the at-large election system?

3. Several bills seeking to promote the use of district-based elections over at-large elections have been pursued in the past. Last year, AB 8 (Cardenas) which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member trustee areas is best made at the local level, not by the state. AB 172 (Firebaugh) of 1999, which would have prohibited at-large elections for specified K-12 school districts, passed this committee but died in the Senate Committee on Education.

POSITIONS:

Sponsor: Joaquin Avila, former President, MALDEF; public interest attorney

Support: None received

Oppose: None received

Date of Hearing: April 2, 2002

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS
John Longville, Chair
SB 976 (Polanco) - As Amended: March 18, 2002

SENATE VOTE: 24-10

SUBJECT: Elections: rights of voters.

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.
2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

8) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

9) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

10) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW:

1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS:

1) Purpose of the Bill: According to the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

2) Legal History: In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

   a) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

   b) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

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   In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

3) Impact of this Bill: In Gingles, the Supreme Court established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

4) Previous Legislation: AB 8 (Cardenas) of 1999, which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by this committee, but was amended to an unrelated subject in the Senate Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

Date of Hearing: April 16, 2002

ASSEMBLY COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS
John Longville, Chair
SB 976 (Polanco) – As Amended: April 9, 2002

SENATE VOTE: 24-10

SUBJECT: Elections: rights of voters.

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

1) Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of voters who are members of a protected class by impairing their ability to elect candidates of their choice or their ability to influence the outcome of an election.

2) Establishes that voter rights have been abridged 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.

3) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

4) Provides that the existence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

5) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

6) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

7) Specifies that other factors, including the use or electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

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1) Provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS:

1) Purpose of the Bill: According to the author, SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

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   a) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

   b) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

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Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

3) Impact of this Bill: In Gingles, the Supreme Court established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

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REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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

SB 976 ISSUES + QUESTIONS

1 - Pg. 2, Line 15, strike "municipal"?

2 - (c) "Spanish" heritage? What about others, e.g., European, Arabic, African, etc.
→ Consistant w/ VRA

3 - Pg. 2, line 27, how is "minority" defined?
→ Cross reference VRA

4 - Definition of "racially polarized voting" - on what evidence is the difference based? Exit polling? What have the courts accepted as evidence?
→ Per Thornburg v. Gingles

5 - Pg. 2, lines 33-34 - "denial or abridgement of the right of any registered voter to vote..." Needs to be more specific.

6 - What jurisdictions will this likely affect?

→ League of Cities
CSBA

ANNOTATED

SENATE BILL **No. 976**

Introduced by Senator Polanco

February 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as introduced, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass municipal areas of representation within the state. With respect to these municipal areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that a municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of a registered voter to vote on account of membership in a minority race, color or language group.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a municipal political subdivision. It would provide that an intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Discuss Watsonville + Salinas - any others??? Santa Maria

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

See #1 ~~(a) "At-large method of election" means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.~~

(b) "District-based election" means a method of electing members to the governing body of a municipal political subdivision in which the candidate must reside within an election district that is a divisible part of the ~~municipal~~ political subdivision and is elected only by voters residing within that election district.

(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage. What about Asians, Arabs, etc.? Russian?

(d) ~~"Municipal~~ political subdivision" means a geographic area of representation created for the provision of ~~municipal~~ government services, including, but not limited to, a city, a school district, a community college district, or other local district.

(e) "Protected class" means a class of voters who are members of a minority race, color or language group.

See #5 (f) "Racially polarized voting" means voting in which there is ~~a consistent difference in the way voters of an identifiable class based on a minority race, color or language group vote and the way the rest of the electorate vote in a municipal political subdivision.~~

14027. ~~A municipal political subdivision may not be subdivided~~ in a manner that results in a denial or abridgment of the right of any registered voter to vote on account of membership in a minority race, color, or language group. as provided in Sec 14028

See #6

PROSPECTIVE OR APPLY TO EXISTING?

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of a ~~municipal~~ political subdivision.

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a ~~municipal~~ political subdivision that is the subject of an action based upon Section 14027. and this section.

(c) 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.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required. and this section

14029. Upon a finding of a violation of Section 14027, the court shall implement appropriate remedies, including the imposition of district-based elections ~~in place of at-large districts~~, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, at pages 48 and 49, as part of the costs. Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.

Why "subdivision" instead of "jurisdiction"?

"Minority" not defined - could be white!

"Asian American" defined?

BILL NUMBER: SB 976 INTRODUCED

BILL TEXT

annotated

INTRODUCED BY Senator Polanco

FEBRUARY 23, 2001

Put in "out Code"

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as introduced, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass municipal areas of representation within the state. With respect to these municipal areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that a municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment

of the right of a registered voter to vote on account of membership in a minority race, color or language group.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a municipal political subdivision. It would provide that an intent to discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

~~(a) "At-large method of election" means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.~~

a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire political subdivision elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the political subdivision and the voters of the entire political subdivision elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) "District-based election" means a method of electing members to the governing body of a ~~municipal~~ political subdivision in which the candidate must reside within an election district that is a divisible part of the ~~municipal~~ political subdivision and is elected only by voters residing within that election district.

(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage*", as these groups are referenced and defined in the federal Voting Rights Act, 42 U.S.C. 1973, et seq..*

(d) "~~Municipal p~~ *P*olitical subdivision" means a geographic area of representation created for the provision of ~~municipal~~ government services, including, but not limited to, a city, *a* school district, a community college district, or other ~~local~~ district *organized pursuant to the laws of the State of California.*

(e) "Protected class" means a class of voters who are members of a

minority race, color or language group, *as this class is referenced and defined in the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et seq..*

(f) "Racially polarized voting" means voting in which there is a

~~consistent difference in the way voters of an identifiable class~~

~~based on a minority race, color or language group vote and the way~~

~~the rest of the electorate vote in a municipal political subdivision~~. *a difference in the choice of candidates or other electoral choices between those who are members of a protected class that are preferred by the voters in the protected class, and those who are not members of the protected class that are preferred by the rest of the electorate. The methodologies as approved in applicable federal cases to enforce the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et. seq. to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.*

14027. ~~A municipal political subdivision may not be subdivided in~~

~~a manner that results in a denial or abridgment of the right of any~~

~~registered voter to vote on account of membership in a minority race,~~

~~color or language group.~~ *An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of any registered voter who is a member of the protected class, as provided in section 14028.*

14028. (a) A violation of Section 14027 is established if it is

shown that racially polarized voting occurs in elections for members

of the governing body of a ~~municipal~~ political subdivision *or in elections incorporating other electoral choices by the voters of the political subdivision.*

(b) The occurrence of racially polarized voting shall be

determined from examining results of elections in which candidates

are members of a protected class. One circumstance that may be

considered is the extent to which candidates who are members of a

protected class have been elected to the governing body of a

~~municipal~~ political subdivision that is the subject of an action

based upon Section 14027 *and this section.*

(c) 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.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required. ?

(e) Other factors such as the history of discrimination, the use of electoral devices which enhance the dilutive effects of at-large elections, denial of access to candidate slating groups, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

14029. Upon a finding of a violation of Section 14027 *and section 14028*, the court shall implement appropriate remedies, including the imposition of district-based elections ~~in place of at-large districts~~, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~at~~ *including* pages 48 and 49, as part of the costs. Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.

14031 The California Voting Rights Act of 2001 is enacted to enforce Article 1, Section 7 and Article 2, Section 2 of the California State Constitution.

List of at-large cities?

ANALYSIS SUMMARY

Bill: SB 976 2001-2002

VERSION DATE	STORED DATE	RECORD NUMBER	ANALYZING OFFICE	BILL AUTHOR
06/21/02	06/21/02	21847	SEN. F. A.	Polanco
06/11/02	06/12/02	21130	ASM. BILL ANALYSIS	Polanco
04/09/02	06/03/02	20528	ASM. JUD.	Polanco
04/09/02	04/15/02	16133	ASM. E.,R. & C.A.	Polanco
03/18/02	04/02/02	15395	ASM. E.,R. & C.A.	Polanco
01/09/02	01/09/02	14059	SEN. F. A.	Polanco
06/01/01	06/01/01	6362	SEN. F. A.	Polanco
05/08/01	05/08/01	4321	SEN. F. A.	Polanco
05/01/01	05/02/01	3580	SEN. E. & R.	Polanco

2001-2002 COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 976
AUTHOR : Polanco
TOPIC : Elections: rights of voters.
TYPE OF BILL :

INACTIVE BILL
NON-APPROPRIATION
NON-STATE-MANDATED LOCAL PROGRAM
NON-TAX-LEVY
NON-URGENCY
MAJORITY VOTE
NON-FISCAL

BILL HISTORY

2002

July 9 Chaptered by Secretary of State. Chapter 129, Statutes of 2002.
July 9 Approved by Governor.
June 27 Enrolled. To Governor at 1 p.m.
June 24 Senate concurs in Assembly amendments. (Ayes 22. Noes 13. Page 4916.) To enrollment.
June 20 In Senate. To unfinished business.
June 20 Read third time. Passed. (Ayes 47. Noes 25. Page 6921.) To Senate.
June 12 Read second time. To third reading.
June 11 Read second time. Amended. To second reading.
June 10 From committee: Do pass as amended. (Ayes 8. Noes 4.)
Apr. 17 From committee: Do pass, but first be re-referred to Com. on JUD. (Ayes 5. Noes 1.) Re-referred to Com. on JUD.
Apr. 9 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Mar. 18 From committee with author's amendments. Read second time. Amended. Re-referred to committee. (Corrected March 20.)
Mar. 7 Hearing postponed by committee.
Feb. 15 To Coms. on E.,R. & C.A. and JUD.
Jan. 30 In Assembly. Read first time. Held at Desk.
Jan. 30 Read third time. Passed. (Ayes 24. Noes 7. Page 3313.) To Assembly.

2001

Aug. 28 Read second time. To third reading.
Aug. 27 From inactive file to second reading file.
June 6 Placed on inactive file on request of Senator Polanco.
May 30 Read third time. Refused passage. (Ayes 16. Noes 10. Page 1272.) Motion to reconsider made by Senator Polanco. Reconsideration granted.
May 7 Read second time. To third reading.
May 3 From committee: Do pass. (Ayes 5. Noes 3. Page 895.)
May 1 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Apr. 16 Hearing postponed by committee. Set for hearing May 2.
Apr. 11 Set for hearing April 18.

Mar. 15	To Com. on E. & R.
Feb. 26	Read first time.
Feb. 25	From print. May be acted upon on or after March 27.
Feb. 23	Introduced. To Com. on RLS. for assignment. To print.

UNOFFICIAL BALLOT

Bill: SB 976 2001-2002

Author: Polanco
Topic: Elections: rights of voters.

06/24/02 SEN. FLOOR
Unfinished Business SB976 Polanco

AYES 22 NOES 13 (PASS)

06/20/02 ASM. FLOOR
SB 976 Polanco Senate Third Reading By Keeley

AYES 47 NOES 25 (PASS)

06/04/02 ASM. JUD.
Do pass as amended.

AYES 8 NOES 4 (PASS)

04/16/02 ASM. E.,R. & C.A.
Do pass and be re-referred to the Committee on Judiciary.

AYES 5 NOES 1 (PASS)

04/02/02 ASM. E.,R. & C.A.
Reconsideration granted.

AYES 4 NOES 0 (PASS)

04/02/02 ASM. E.,R. & C.A.
Do pass and be re-referred to the Committee on Appropriations.

AYES 3 NOES 1 (FAIL)

01/30/02 SEN. FLOOR
Senate 3rd Reading SB976 Polanco

AYES 24 NOES 10 (PASS)

05/30/01 SEN. FLOOR
Senate 3rd Reading SB976 Polanco

AYES 16 NOES 10 (FAIL)

05/02/01 SEN. E. & R.

Do pass.

AYES 5 NOES 3 (PASS)

856 F. Supp. 1409 printed in FULL format.

TIMOTHY A. DeWITT, STEPHEN J. DeWITT, Plaintiffs, v. PETE WILSON, Governor of the State of California; MARCH FONG EU, Secretary of State of the State of California, Defendants.

No. CIV-S-93-535 EJG/JFM

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

856 F. Supp. 1409; 1994 U.S. Dist. LEXIS 13411

June 23, 1994, Decided
June 27, 1994, Filed

CORE TERMS: redistricting, Voting Rights Act, reapportionment, compactness, gerrymandering, voting, voter, majority-minority, contiguity, summary judgment, geographical, district boundaries, compact, congressional districts, community of interest, narrowly tailored, political process, federal law, challenging, irregular, candidates, drawing, region, census, geographically, contiguous, miles, Fifteenth Amendments, Rights Act, congressional district

JUDGES: [**1] Before: HUG, Circuit Judge, GARCIA, and BURRELL, District Judges.

OPINIONBY: PROCTER HUG, JR.

OPINION: [*1410] MEMORANDUM OPINION AND ORDER

HUG, Circuit Judge:

Plaintiffs, residents of California qualified and duly registered to vote in the State, filed suit in the district court for the Eastern District of California on March 30, 1993, challenging California's 1992 redistricting plan, adopted by the State in Wilson v. Eu, 1 Cal. 4th 707, 823 P.2d 545 (Cal. 1992). Plaintiffs raised three causes of action challenging the constitutionality of the redistricting plan. Claims one and two challenged the constitutionality of California Election Code, section 25003, a term limitation statute, and section 6402(b), a statute permitting candidates to run for only one congressional seat. The third claim for relief alleges that California's redistricting plan relied on race-conscious reapportionment and diluted white voter strength in violation of the Equal Protection Clause of the Fourteenth and Fifteenth Amendments.

The court, sitting with a single judge, dismissed causes one and two as nonjusticiable. Pursuant to 28 U.S.C. @ 2284(a), [**2] the court certified the reapportionment claim to be heard by a three judge district court. Pursuant to 28 U.S.C. @ 2284(b)(1), the Chief Judge of the United States Court of Appeals for the Ninth Judicial Circuit appointed this panel to hear this case.

The parties filed cross motions for summary judgment. The motions were heard on January 7, 1994. After considering the parties' written and oral arguments, the record, and case law in this matter, we deny plaintiffs' motion for summary judgment and grant the State's motion for summary judgment.

FACTS

On September 23, 1991, Governor Wilson vetoed the California legislature's reapportionment plan. Recognizing the legislative impasse and the importance of having a plan in place prior to the upcoming 1992 elections, the California Supreme Court issued a mandate and appointed three retired California judges to serve as Special Masters to resolve the election year crisis.

The Masters were directed to hold public hearings to permit the presentation of evidence and argument with respect to proposed plans of reapportionment. Wilson, 823 P.2d at 547. The Masters[**3] were further directed to compile a report and recommendation on reapportionment, basing the report on the public hearings and the guiding principles of the Federal Voting Rights Act of 1965, as amended (42 U.S.C. @ 1973 et seq.), federal law pertinent to redistricting, the provisions of article XXI, section 1 of the California Constitution, and the criteria developed by an earlier panel of Special Masters for the reapportionment plans adopted by the California Supreme Court in 1973, see Legislature v. Reinecke, 10 Cal. 3d 396, 516 P.2d 6, 110 Cal. Rptr. 718 (Ca. 1973). Wilson, 823 P.2d at 549.

The two relevant sections of the Voting Rights Act are sections 2 and 5. Section 2 of the voting Rights Act forbids state voting procedures which abridge voting rights "on account of race or color" and states that redistricting plans which provide "less opportunity [to minorities] than other members of the electorate to participate in the political process and to elect representatives of their choice" abridge voting rights. 42 U.S.C. @ 1973[**4] (Supp. 1994). Section 5 of the Act prohibits a region subject to its provisions from implementing changes in any "standard, practice, or procedure with respect to voting" without authorization from the United States Attorney General. 42 U.S.C. @ 1973(c). Four California counties, Kings, Merced, Monterey, and Yuba, were subject to section 5; and, thus, the Masters had to devise a plan that would gain preclearance.

[*1411] The state constitutional standards required that the Masters comply with the following redistricting procedures:

(1) consecutively numbered single-member districts, (2) "reasonably equal" populations among districts of the same type, (3) contiguous districts, and (4) "respect" for the "geographical integrity of any city, county, or city and county, or of any geographical region' to the extent possible without violating the other standards.

Cal. Const. art. XXI, @ 1.

The redistricting criteria established in Reinecke called for:

(1) equality of population, (2) contiguity and compactness of districts, (3) respect for county and city boundaries, (4) preservation of the integrity of the state's geographical regions, (5) consideration[**5] of the "community of

interests" of each area, (6) formation of state senatorial districts from adjacent assembly districts ("nesting"), and use of assembly district boundaries in drawing congressional district boundaries, and (7) reliance on the current census, and on undivided census tracts.

Wilson, 823 P.2d at 549.

With these criteria in mind, the Masters conducted six days of public hearings in Sacramento, San Francisco, San Diego, and Los Angeles, and reviewed the transcripts from 12 public hearings held by the California State Senate on redistricting. They also considered 22 proposed redistricting plans submitted by various public and private organizations. The Masters did not adopt any one of the 22 proposed plans because each of them, in one manner or another, could not satisfy the redistricting criteria the California Supreme Court required to be followed. Thus, the Masters developed their own redistricting plan.

In approving the Masters' Report, the California Supreme Court stated:

As the Report observes, population equality must be deemed the primary reapportionment criterion, being mandated by the provisions of the federal [**6]Constitution. Under the Masters' plans, each legislative district will vary by less than 1 percent from "ideal" equality, while each congressional district will vary by less than 0.25 percent. We find these minor deviations are amply justified by "legitimate state objectives," namely, the need to form reasonably compact districts, to use census tracts rather than blocks in forming districts, and to comply with the Voting Rights Act.

Wilson, 823 P.2d at 551-52 (citations omitted).

With regard to the Voting Rights Act, the California Supreme Court stated:

The Report discusses at length the Masters' close attention to the provisions of the Voting Rights Act, observing that in view of present uncertainties concerning the scope and intent of the act, the Masters "endeavored to draw boundaries that will withstand section 2 challenges under any foreseeable combination of factual circumstances and legal rulings." Their efforts, in this regard, were in part stimulated by the need to provide new districts for the forthcoming June Primary Election. In that connection, the Secretary of State in a brief filed herein urged the Masters to give[**7] the Voting Rights Act "the highest possible consideration in order to minimize the risk of challenge and resulting delay."

Initially, the Masters attempted to reasonably accommodate the interests of every "functionally, geographically compact" minority group of sufficient voting strength to constitute a majority in a single-member district.

As explained by the Masters, the functional aspect of geographical compactness takes into account the presence or absence of a sense of community made possible by open lines of access and communication. We approve the Masters' use of such an approach in determining the compactness of a particular minority group for purposes of assuring its protection under the Voting Rights Act.

Id. at 549-50 (citations omitted).

DISCUSSION

Plaintiffs contend that because the Masters' redistricting plan considered race in redrawing the districts, that this constitutes [*1412] suspect "racial gerrymandering" actionable under the Equal protection Clause, as set forth in Shaw v. Reno, U.S. , 125 L. Ed. 2d 511, 113 S. Ct. 2816 (1993). Plaintiffs further contend that summary judgment should be granted in [**8] their favor because the Masters' plan is not, as required by Shaw, narrowly tailored to meet a compelling government interest. We disagree.

In Shaw v. Reno, the Supreme Court held that the appellants pled a cause of action under the Equal Protection Clause of the Fourteenth Amendment based on an allegation that the State of North Carolina had practiced racial gerrymandering when it reapportioned the State's voting districts. 125 L. Ed. 2d at 536. The two congressional districts challenged in Shaw were drawn to create two majority black districts in the state. The plaintiffs in Shaw alleged that the state had created an unconstitutional racial gerrymander. Their claim was that the North Carolina General Assembly deliberately "created two Congressional Districts in which a majority of black voters was concentrated arbitrarily--without regard to any other considerations, such as compactness, contiguousness, geographical boundaries, or political subdivisions with the purpose to create Congressional Districts along racial lines and to assure the election of two black representatives to Congress." Id. at 522[**9] (quotations omitted).

The first district challenged in Shaw was somewhat hook shaped. At one end it shot out with finger-like extensions. Id. at 521. It has been compared to a "Rorschach ink-blot test" and "bug splattered on a windshield" Id.

The second majority black district challenged in Shaw was 16 miles long and for much of its length was no wider than an interstate highway. Id. The district wound its way, in snake-like fashion, gobbling up black enclaves. Id. It passed through 10 counties, divided towns, and, at one point, remained contiguous only because it intersected at a single point with two other districts before crossing over them. Id.

The Court in Shaw defined racial gerrymandering as "the deliberate and arbitrary distortion of district boundaries . . . for [racial] purposes." Id. at 524 (quoting Davis v. Bandemer, 478 U.S. 109, 92 L. Ed. 2d 85, 106 S. Ct. 2797 (1986)). n1 It then held that the appearance of the anomalous district boundaries was sufficient to state a claim under the Equal [**10] Protection Clause for racial gerrymandering.

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n1 To the extent that Hays v. Louisiana, 839 F. Supp. 1188 (W.D. La. 1993), gives a broader meaning to racial gerrymandering, we disagree.

- - - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -

Shaw held when districts are drawn in such an extremely irregular fashion as to be unexplainable, other than being based solely on race, a claim under the Equal Protection Clause for racial gerrymandering can be stated. Shaw, 125 L. Ed. 2d at 536. Redistricting based solely on race affronts our sense of voter

equality because it creates districts with residents who have little in common with each other except the color of their skin. It fails to take into account geographic and political boundaries, age, economic status, and the community in which the people live. Id. at 529. Redistricting based solely on race assumes that members of the same race think alike, share the same political interests, and prefer the[**11] same candidates at the polls, not because of shared community interests, but only because of their skin pigmentation. It is the equivalent of political apartheid. When a district is drawn in such a manner that it rationally can only be understood as race-based, then a cause of action arises under the Equal Protection Clause. Id. at 536. Thus, if an allegation of deliberate and arbitrary redistricting based solely on race is not contradicted by the State, then it must be determined whether the redistricting plan is narrowly tailored to further a compelling governmental interest. Id.

[*1413] The Court in Shaw specifically noted that "we express no view as to whether the intentional creation of majority-minority districts, without more, always gives rise to an equal protection claim. We hold only that on the facts of this case, plaintiffs have stated a claim sufficient to defeat the state appellees' motion to dismiss." Id. at 530 (quotation omitted).

The narrow holding of Shaw is that "a plaintiff challenging a reapportionment statute under the Equal Protection Clause may state a claim by [**12] alleging that the legislation, though race neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification." Id. Shaw applies to redistricting plans that on their face are so dramatically irregular that they can only be explained as attempts to segregate by the races for purposes of voting without regard for traditional redistricting principles. Id. at 525.

The California redistricting plan does not fit within the narrow holding of Shaw. As the California Supreme Court noted, the Masters' Report sought to balance the many traditional redistricting principles, including the requirements of the voting Rights Act. Wilson, 823 P.2d at 549. No bizarre boundaries were created. The effort to comply with the Voting Rights Act emphasized geographical compactness, which "takes into account the presence or absence of a sense of community made possible by open lines of access and communication." Id. This case, therefore, involves the constitutionality [**13]of a redistricting plan that created majority-minority districts in a manner that was consistent with traditional redistricting principles, not based solely on race, and not involving extremely irregular district boundaries. It involves the question left open by the Court in Shaw.

As the Court noted in Shaw,

A reapportionment statute typically does not classify persons at all; it classifies tracts of land, or addresses. Moreover, redistricting differs from other kinds of state decision making in that the legislature always is aware of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors.

Id. at 528. Thus, in redistricting, consciousness of race does not give rise to a claim of racial gerrymandering when race is considered along with traditional redistricting principles, such as compactness, contiguity, and political boundaries.

Redistricting had been used to dilute minority voting power by spreading minority voters throughout different districts or packing minority voters into a single district. Id. at 524. It is this problem the Voting Rights Act sought [**14]to remedy. Consciousness of race in redistricting through the creation of majority-minority districts, properly performed, alleviates this inequity. Thus, the Supreme Court has stated that

it [is] permissible for a State, employing sound districting principles such as compactness and population equality, to attempt to prevent racial minorities from being repeatedly outvoted by creating districts that will afford fair representation to the members of those racial groups who are sufficiently numerous and whose residential patterns afford an opportunity of creating districts in which they will be in the majority.

United Jewish Organizations, Inc. v. Carey, 430 U.S. 144, 168, 51 L. Ed. 2d 229, 97 S. Ct. 996 (1977).

The Masters did not draw district lines based deliberately and solely on race, with arbitrary distortions of district boundaries. The Masters, in formulating the redistricting plan, properly looked at race, not as the sole criteria in drawing lines but as one of the many factors to be considered. We agree with the California Supreme Court that the Masters' Report evidences a judicious and proper balancing [**15] of the many factors appropriate to redistricting, one of which was the consideration of the application of the Voting Rights Act's objective of assuring that minority [*1414] voters are not denied the chance to effectively influence the political process.

The Masters' Report carefully analyzed and reconciled the redistricting requirements of the State Constitution, the Reinecke case, and the Voting Rights Act. See Wilson, app. I, 823 P.2d at 571-75. In addition to the fundamental requirement of population equality, the Masters noted the state requirements of contiguity, geographic integrity, community of interest, and compactness. In discussing the application of the latter four traditional redistricting principles, the Masters' Report states:

These four criteria all are addressed to the same goal, the creation of legislative districts that are effective, both for the represented and the representative. The constitutional requirement of "contiguity" is not an abstract or geometric technical phrase. It assumes meaning when seen in combination with concepts of "regional integrity" and "community of interest." . . . . "The territory included[**16] within a district should be contiguous and compact, taking into account the availability of transportation and communication." In addition, "social and economic interests common to the population of an area [e.g.] an urban area, a rural area, an industrial area or an agricultural area" should be considered.

. . . . Compactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency. Further, it speaks to relationships that are facilitated by shared interests and by membership in a political community, including a county or city.

Id. at 574-75 (citations and footnotes omitted).

In discussing the particular relationship of these criteria to the Voting Rights Act, the Masters' Report states:

We find no conflict between the Act and the above state criteria. Indeed, quite the contrary. As has already been noted, the Act protects only "geographically compact" minority groups. The major divisions of the state as we have defined them above divide no such minority groups. (The boundary mountain ranges, for example, are virtually unpopulated[**17] areas with few roads crossing them; 50 to 100 miles separates populated areas on either side of these ranges.) Similarly, the values expressed in the concept of contiguity, community of interest, and respect for local government boundaries--the concept of "functional compactness"--is completely consistent with the concept of "geographically compact" minority districts. Indeed, use of these criteria reinforces the Act's guarantee to minority groups to have an equal opportunity "to participate in the political process." As suggested above, political effectiveness can be enhanced by membership and participation in community affairs: candidates for public office can be recruited and nurtured, local media may be better utilized (including the foreign language press), grassroots organizing and campaigning are more viable. As suggested in the June 1980 ballot arguments in favor of Article XXI, use of these criteria can avoid the creation of "districts that are confusing, unfair and unrepresentative."

In sum, we find the criteria underlying the drawing of district boundaries, i.e., criteria feed in the federal and state constitutions, in the Act, and in the decision of the California Supreme[**18] Court in Reinecke IV, supra, not only reconcilable, but compatible. The criteria have guided our deliberations and informed our decisions.

Id. at 575 (citations omitted).

Adhering to their definitions of contiguity and compactness, the Masters refused to create districts that wound in snake-like fashion or resembled a "Rorschach inkblot test" found objectionable in Shaw. This is exemplified in the Masters' refusal to create a district which ran along the Sierra Nevadas where no road exists and where populated areas were separated by 130 miles, and their refusal to "extend a long arm between the Richmond District and 'Chinatown' in order to bring these two areas into the same district." Wilson, 823 P.2d at 577-78, 581 n.44. The [*1415] Masters noted that these were only two of the many examples of bizarrely shaped districts suggested to them, and that a cogent justification for any bizarre-shaped district would be necessary before they could recommend them. Id. at 577 n.24. Thus, the Masters did not redistrict based solely on race, but showed depth and insight in considering race as a component of traditional redistricting[**19] principles.

We conclude that the Masters' redistricting plan, as approved by the California Supreme Court, is not racial gerrymandering, but rather a thoughtful and fair example of applying traditional redistricting principles, while being conscious of race. Thus, we find that the plaintiffs have failed to state a claim of racial gerrymandering. We conclude that in the context of redistricting, where race is considered only in applying traditional redistricting principles along with the requirements of the Voting Rights Act, that strict scrutiny is not required. However, if it were required, we conclude that this California redistricting plan has been narrowly tailored to meet a compelling state interest.

The Court has repeatedly emphasized that legislative reapportionment is primarily a matter for state determination. Most recently, in Voinovich v. Quilter, 122 L. Ed. 2d 500, 513, 113 S. Ct. 1149 (1993), the Court stated:

Of course, the federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law. But that does not mean that the State's powers are similarly limited. Quite[**20] the opposite is true: Federal courts are barred from intervening in state apportionment in the absence of a violation of federal law precisely because it is the domain of the States, and not the federal courts, to conduct apportionment in the first place. Time and again we have emphasized that "'reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.'"

Id. at 513 (citations omitted). Unless the Voting Rights Act itself is found to be unconstitutional or unless the creation of majority-minority districts, in implementation of that Act, is found to be unconstitutional, it is difficult to see how California's carefully drawn plan, utilizing traditional redistricting principles, while seeking to comply with the requirements of the Voting Rights Act, can violate the Equal Protection Clause. We conclude that the redistricting plan adopted by the California Supreme Court appropriately balances the traditional reapportionment principles, does not involve racial gerrymandering, and does not violate the Fourteenth and Fifteenth Amendments.

The appellants also[**21] contend that the reapportionment plan violates the Equal Protection Clause by unduly minimizing white voter strength. The asserted basis for this contention is that even though the districts are equated as to population, the registered voters in the white majority districts far exceed those in the majority-minority districts, giving greater impact to a vote in the latter districts. There is no merit to this contention; population, not voter registration, is the appropriate basis for apportioning districts. Reynolds v. Sims, 377 U.S. 533, 568, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964).

ORDER

For the foregoing reasons, plaintiffs' motion for summary judgment is DENIED and defendants' motion for summary judgment is GRANTED. The clerk is directed to enter judgment for the defendants.

IT IS SO ORDERED.

Dated: June 23, 1994

PROCTER HUG, JR., JUDGE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Dated: June 27, 1994

EDWARD J. GARCIA, JUDGE

UNITED STATES DISTRICT COURT

Dated: June 27, 1994

TIMOTHY A. DeWITT, STEPHEN J. DeWITT, Plaintiffs, v. PETE WILSON, Governor of the State of California; MARCH FONG EU, Secretary of State of the State of California, Defendants.

No. CIV-S-93-535 EJG/JFM

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

856 F. Supp. 1409; 1994 U.S. Dist. LEXIS 13411

June 23, 1994, Decided
June 27, 1994, Filed

CORE TERMS: redistricting, Voting Rights Act, reapportionment, compactness, gerrymandering, voting, voter, majority-minority, contiguity, summary judgment, geographical, district boundaries, compact, congressional districts, community of interest, narrowly tailored, political process, federal law, challenging, irregular, candidates, drawing, region, census, geographically, contiguous, miles, Fifteenth Amendments, Rights Act, congressional district

JUDGES: [**1] Before: HUG, Circuit Judge, GARCIA, and BURRELL, District Judges.

OPINIONBY: PROCTER HUG, JR.

OPINION: [*1410] MEMORANDUM OPINION AND ORDER

HUG, Circuit Judge:

Plaintiffs, residents of California qualified and duly registered to vote in the State, filed suit in the district court for the Eastern District of California on March 30, 1993, challenging California's 1992 redistricting plan, adopted by the State in Wilson v. Eu, 1 Cal. 4th 707, 823 P.2d 545 (Cal. 1992). Plaintiffs raised three causes of action challenging the constitutionality of the redistricting plan. Claims one and two challenged the constitutionality of California Election Code, section 25003, a term limitation statute, and section 6402(b), a statute permitting candidates to run for only one congressional seat. The third claim for relief alleges that California's redistricting plan relied on race-conscious reapportionment and diluted white voter strength in violation of the Equal Protection Clause of the Fourteenth and Fifteenth Amendments.

The court, sitting with a single judge, dismissed causes one and two as nonjusticiable. Pursuant to 28 U.S.C. @ 2284(a), [**2] the court certified the reapportionment claim to be heard by a three judge district court. Pursuant to 28 U.S.C. @ 2284(b)(1), the Chief Judge of the United States Court of Appeals for the Ninth Judicial Circuit appointed this panel to hear this case.

The parties filed cross motions for summary judgment. The motions were heard on January 7, 1994. After considering the parties' written and oral arguments, the record, and case law in this matter, we deny plaintiffs' motion for summary judgment and grant the State's motion for summary judgment.

FACTS

On September 23, 1991, Governor Wilson vetoed the California legislature's reapportionment plan. Recognizing the legislative impasse and the importance of having a plan in place prior to the upcoming 1992 elections, the California Supreme Court issued a mandate and appointed three retired California judges to serve as Special Masters to resolve the election year crisis.

The Masters were directed to hold public hearings to permit the presentation of evidence and argument with respect to proposed plans of reapportionment. Wilson, 823 P.2d at 547. The Masters[**3] were further directed to compile a report and recommendation on reapportionment, basing the report on the public hearings and the guiding principles of the Federal Voting Rights Act of 1965, as amended (42 U.S.C. @ 1973 et seq.), federal law pertinent to redistricting, the provisions of article XXI, section 1 of the California Constitution, and the criteria developed by an earlier panel of Special Masters for the reapportionment plans adopted by the California Supreme Court in 1973, see Legislature v. Reinecke, 10 Cal. 3d 396, 516 P.2d 6, 110 Cal. Rptr. 718 (Ca. 1973). Wilson, 823 P.2d at 549.

The two relevant sections of the Voting Rights Act are sections 2 and 5. Section 2 of the voting Rights Act forbids state voting procedures which abridge voting rights "on account of race or color" and states that redistricting plans which provide "less opportunity [to minorities] than other members of the electorate to participate in the political process and to elect representatives of their choice" abridge voting rights. 42 U.S.C. @ 1973[**4] (Supp. 1994). Section 5 of the Act prohibits a region subject to its provisions from implementing changes in any "standard, practice, or procedure with respect to voting" without authorization from the United States Attorney General. 42 U.S.C. @ 1973(c). Four California counties, Kings, Merced, Monterey, and Yuba, were subject to section 5; and, thus, the Masters had to devise a plan that would gain preclearance.

[*1411] The state constitutional standards required that the Masters comply with the following redistricting procedures:

(1) consecutively numbered single-member districts, (2) "reasonably equal" populations among districts of the same type, (3) contiguous districts, and (4) "respect" for the "geographical integrity of any city, county, or city and county, or of any geographical region' to the extent possible without violating the other standards.

Cal. Const. art. XXI, @ 1.

The redistricting criteria established in Reinecke called for:

(1) equality of population, (2) contiguity and compactness of districts, (3) respect for county and city boundaries, (4) preservation of the integrity of the state's geographical regions, (5) consideration[**5] of the "community of

interests" of each area, (6) formation of state senatorial districts from adjacent assembly districts ("nesting"), and use of assembly district boundaries in drawing congressional district boundaries, and (7) reliance on the current census, and on undivided census tracts.

Wilson, 823 P.2d at 549.

With these criteria in mind, the Masters conducted six days of public hearings in Sacramento, San Francisco, San Diego, and Los Angeles, and reviewed the transcripts from 12 public hearings held by the California State Senate on redistricting. They also considered 22 proposed redistricting plans submitted by various public and private organizations. The Masters did not adopt any one of the 22 proposed plans because each of them, in one manner or another, could not satisfy the redistricting criteria the California Supreme Court required to be followed. Thus, the Masters developed their own redistricting plan.

In approving the Masters' Report, the California Supreme Court stated:

As the Report observes, population equality must be deemed the primary reapportionment criterion, being mandated by the provisions of the federal [**6]Constitution. Under the Masters' plans, each legislative district will vary by less than 1 percent from "ideal" equality, while each congressional district will vary by less than 0.25 percent. We find these minor deviations are amply justified by "legitimate state objectives," namely, the need to form reasonably compact districts, to use census tracts rather than blocks in forming districts, and to comply with the Voting Rights Act.

Wilson, 823 P.2d at 551-52 (citations omitted).

With regard to the Voting Rights Act, the California Supreme Court stated:

The Report discusses at length the Masters' close attention to the provisions of the Voting Rights Act, observing that in view of present uncertainties concerning the scope and intent of the act, the Masters "endeavored to draw boundaries that will withstand section 2 challenges under any foreseeable combination of factual circumstances and legal rulings." Their efforts, in this regard, were in part stimulated by the need to provide new districts for the forthcoming June Primary Election. In that connection, the Secretary of State in a brief filed herein urged the Masters to give[**7] the Voting Rights Act "the highest possible consideration in order to minimize the risk of challenge and resulting delay."

Initially, the Masters attempted to reasonably accommodate the interests of every "functionally, geographically compact" minority group of sufficient voting strength to constitute a majority in a single-member district.

As explained by the Masters, the functional aspect of geographical compactness takes into account the presence or absence of a sense of community made possible by open lines of access and communication. We approve the Masters' use of such an approach in determining the compactness of a particular minority group for purposes of assuring its protection under the Voting Rights Act.

Id. at 549-50 (citations omitted).

DISCUSSION

Plaintiffs contend that because the Masters' redistricting plan considered race in redrawing the districts, that this constitutes [*1412] suspect "racial gerrymandering" actionable under the Equal protection Clause, as set forth in Shaw v. Reno, U.S. , 125 L. Ed. 2d 511, 113 S. Ct. 2816 (1993). Plaintiffs further contend that summary judgment should be granted in [**8] their favor because the Masters' plan is not, as required by Shaw, narrowly tailored to meet a compelling government interest. We disagree.

In Shaw v. Reno, the Supreme Court held that the appellants pled a cause of action under the Equal Protection Clause of the Fourteenth Amendment based on an allegation that the State of North Carolina had practiced racial gerrymandering when it reapportioned the State's voting districts. 125 L. Ed. 2d at 536. The two congressional districts challenged in Shaw were drawn to create two majority black districts in the state. The plaintiffs in Shaw alleged that the state had created an unconstitutional racial gerrymander. Their claim was that the North Carolina General Assembly deliberately "created two Congressional Districts in which a majority of black voters was concentrated arbitrarily--without regard to any other considerations, such as compactness, contiguousness, geographical boundaries, or political subdivisions with the purpose to create Congressional Districts along racial lines and to assure the election of two black representatives to Congress." Id. at 522[**9] (quotations omitted).

The first district challenged in Shaw was somewhat hook shaped. At one end it shot out with finger-like extensions. Id. at 521. It has been compared to a "Rorschach ink-blot test" and "bug splattered on a windshield" Id.

The second majority black district challenged in Shaw was 16 miles long and for much of its length was no wider than an interstate highway. Id. The district wound its way, in snake-like fashion, gobbling up black enclaves. Id. It passed through 10 counties, divided towns, and, at one point, remained contiguous only because it intersected at a single point with two other districts before crossing over them. Id.

The Court in Shaw defined racial gerrymandering as "the deliberate and arbitrary distortion of district boundaries . . . for [racial] purposes." Id. at 524 (quoting Davis v. Bandemer, 478 U.S. 109, 92 L. Ed. 2d 85, 106 S. Ct. 2797 (1986)). n1 It then held that the appearance of the anomalous district boundaries was sufficient to state a claim under the Equal [**10] Protection Clause for racial gerrymandering.

- - - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - - -

n1 To the extent that Hays v. Louisiana, 839 F. Supp. 1188 (W.D. La. 1993), gives a broader meaning to racial gerrymandering, we disagree.

- - - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -

Shaw held when districts are drawn in such an extremely irregular fashion as to be unexplainable, other than being based solely on race, a claim under the Equal Protection Clause for racial gerrymandering can be stated. Shaw, 125 L. Ed. 2d at 536. Redistricting based solely on race affronts our sense of voter

equality because it creates districts with residents who have little in common with each other except the color of their skin. It fails to take into account geographic and political boundaries, age, economic status, and the community in which the people live. Id. at 529. Redistricting based solely on race assumes that members of the same race think alike, share the same political interests, and prefer the[**11] same candidates at the polls, not because of shared community interests, but only because of their skin pigmentation. It is the equivalent of political apartheid. When a district is drawn in such a manner that it rationally can only be understood as race-based, then a cause of action arises under the Equal Protection Clause. Id. at 536. Thus, if an allegation of deliberate and arbitrary redistricting based solely on race is not contradicted by the State, then it must be determined whether the redistricting plan is narrowly tailored to further a compelling governmental interest. Id.

[*1413] The Court in Shaw specifically noted that "we express no view as to whether the intentional creation of majority-minority districts, without more, always gives rise to an equal protection claim. We hold only that on the facts of this case, plaintiffs have stated a claim sufficient to defeat the state appellees' motion to dismiss." Id. at 530 (quotation omitted).

The narrow holding of Shaw is that "a plaintiff challenging a reapportionment statute under the Equal Protection Clause may state a claim by [**12] alleging that the legislation, though race neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification." Id. Shaw applies to redistricting plans that on their face are so dramatically irregular that they can only be explained as attempts to segregate by the races for purposes of voting without regard for traditional redistricting principles. Id. at 525.

The California redistricting plan does not fit within the narrow holding of Shaw. As the California Supreme Court noted, the Masters' Report sought to balance the many traditional redistricting principles, including the requirements of the voting Rights Act. Wilson, 823 P.2d at 549. No bizarre boundaries were created. The effort to comply with the Voting Rights Act emphasized geographical compactness, which "takes into account the presence or absence of a sense of community made possible by open lines of access and communication." Id. This case, therefore, involves the constitutionality [**13]of a redistricting plan that created majority-minority districts in a manner that was consistent with traditional redistricting principles, not based solely on race, and not involving extremely irregular district boundaries. It involves the question left open by the Court in Shaw.

As the Court noted in Shaw,

A reapportionment statute typically does not classify persons at all; it classifies tracts of land, or addresses. Moreover, redistricting differs from other kinds of state decision making in that the legislature always is aware of race when it draws district lines, just as it is aware of age, economic status, religious and political persuasion, and a variety of other demographic factors.

Id. at 528. Thus, in redistricting, consciousness of race does not give rise to a claim of racial gerrymandering when race is considered along with traditional redistricting principles, such as compactness, contiguity, and political boundaries.

Redistricting had been used to dilute minority voting power by spreading minority voters throughout different districts or packing minority voters into a single district. Id. at 524. It is this problem the Voting Rights Act sought [**14]to remedy. Consciousness of race in redistricting through the creation of majority-minority districts, properly performed, alleviates this inequity. Thus, the Supreme Court has stated that

it [is] permissible for a State, employing sound districting principles such as compactness and population equality, to attempt to prevent racial minorities from being repeatedly outvoted by creating districts that will afford fair representation to the members of those racial groups who are sufficiently numerous and whose residential patterns afford an opportunity of creating districts in which they will be in the majority.

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The Masters did not draw district lines based deliberately and solely on race, with arbitrary distortions of district boundaries. The Masters, in formulating the redistricting plan, properly looked at race, not as the sole criteria in drawing lines but as one of the many factors to be considered. We agree with the California Supreme Court that the Masters' Report evidences a judicious and proper balancing [**15] of the many factors appropriate to redistricting, one of which was the consideration of the application of the Voting Rights Act's objective of assuring that minority [*1414] voters are not denied the chance to effectively influence the political process.

The Masters' Report carefully analyzed and reconciled the redistricting requirements of the State Constitution, the Reinecke case, and the Voting Rights Act. See Wilson, app. I, 823 P.2d at 571-75. In addition to the fundamental requirement of population equality, the Masters noted the state requirements of contiguity, geographic integrity, community of interest, and compactness. In discussing the application of the latter four traditional redistricting principles, the Masters' Report states:

These four criteria all are addressed to the same goal, the creation of legislative districts that are effective, both for the represented and the representative. The constitutional requirement of "contiguity" is not an abstract or geometric technical phrase. It assumes meaning when seen in combination with concepts of "regional integrity" and "community of interest." . . . . "The territory included[**16] within a district should be contiguous and compact, taking into account the availability of transportation and communication." In addition, "social and economic interests common to the population of an area [e.g.] an urban area, a rural area, an industrial area or an agricultural area" should be considered.

. . . . Compactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representatives to relate effectively to their constituency. Further, it speaks to relationships that are facilitated by shared interests and by membership in a political community, including a county or city.

Id. at 574-75 (citations and footnotes omitted).

In discussing the particular relationship of these criteria to the Voting Rights Act, the Masters' Report states:

We find no conflict between the Act and the above state criteria. Indeed, quite the contrary. As has already been noted, the Act protects only "geographically compact" minority groups. The major divisions of the state as we have defined them above divide no such minority groups. (The boundary mountain ranges, for example, are virtually unpopulated[**17] areas with few roads crossing them; 50 to 100 miles separates populated areas on either side of these ranges.) Similarly, the values expressed in the concept of contiguity, community of interest, and respect for local government boundaries--the concept of "functional compactness"--is completely consistent with the concept of "geographically compact" minority districts. Indeed, use of these criteria reinforces the Act's guarantee to minority groups to have an equal opportunity "to participate in the political process." As suggested above, political effectiveness can be enhanced by membership and participation in community affairs: candidates for public office can be recruited and nurtured, local media may be better utilized (including the foreign language press), grassroots organizing and campaigning are more viable. As suggested in the June 1980 ballot arguments in favor of Article XXI, use of these criteria can avoid the creation of "districts that are confusing, unfair and unrepresentative."

In sum, we find the criteria underlying the drawing of district boundaries, i.e., criteria feed in the federal and state constitutions, in the Act, and in the decision of the California Supreme[**18] Court in Reinecke IV, supra, not only reconcilable, but compatible. The criteria have guided our deliberations and informed our decisions.

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Adhering to their definitions of contiguity and compactness, the Masters refused to create districts that wound in snake-like fashion or resembled a "Rorschach inkblot test" found objectionable in Shaw. This is exemplified in the Masters' refusal to create a district which ran along the Sierra Nevadas where no road exists and where populated areas were separated by 130 miles, and their refusal to "extend a long arm between the Richmond District and 'Chinatown' in order to bring these two areas into the same district." Wilson, 823 P.2d at 577-78, 581 n.44. The [*1415] Masters noted that these were only two of the many examples of bizarrely shaped districts suggested to them, and that a cogent justification for any bizarre-shaped district would be necessary before they could recommend them. Id. at 577 n.24. Thus, the Masters did not redistrict based solely on race, but showed depth and insight in considering race as a component of traditional redistricting[**19] principles.

We conclude that the Masters' redistricting plan, as approved by the California Supreme Court, is not racial gerrymandering, but rather a thoughtful and fair example of applying traditional redistricting principles, while being conscious of race. Thus, we find that the plaintiffs have failed to state a claim of racial gerrymandering. We conclude that in the context of redistricting, where race is considered only in applying traditional redistricting principles along with the requirements of the Voting Rights Act, that strict scrutiny is not required. However, if it were required, we conclude that this California redistricting plan has been narrowly tailored to meet a compelling state interest.

The Court has repeatedly emphasized that legislative reapportionment is primarily a matter for state determination. Most recently, in Voinovich v. Quilter, 122 L. Ed. 2d 500, 513, 113 S. Ct. 1149 (1993), the Court stated:

Of course, the federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law. But that does not mean that the State's powers are similarly limited. Quite[**20] the opposite is true: Federal courts are barred from intervening in state apportionment in the absence of a violation of federal law precisely because it is the domain of the States, and not the federal courts, to conduct apportionment in the first place. Time and again we have emphasized that "'reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court.'"

Id. at 513 (citations omitted). Unless the Voting Rights Act itself is found to be unconstitutional or unless the creation of majority-minority districts, in implementation of that Act, is found to be unconstitutional, it is difficult to see how California's carefully drawn plan, utilizing traditional redistricting principles, while seeking to comply with the requirements of the Voting Rights Act, can violate the Equal Protection Clause. We conclude that the redistricting plan adopted by the California Supreme Court appropriately balances the traditional reapportionment principles, does not involve racial gerrymandering, and does not violate the Fourteenth and Fifteenth Amendments.

The appellants also[**21] contend that the reapportionment plan violates the Equal Protection Clause by unduly minimizing white voter strength. The asserted basis for this contention is that even though the districts are equated as to population, the registered voters in the white majority districts far exceed those in the majority-minority districts, giving greater impact to a vote in the latter districts. There is no merit to this contention; population, not voter registration, is the appropriate basis for apportioning districts. Reynolds v. Sims, 377 U.S. 533, 568, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964).

ORDER

For the foregoing reasons, plaintiffs' motion for summary judgment is DENIED and defendants' motion for summary judgment is GRANTED. The clerk is directed to enter judgment for the defendants.

IT IS SO ORDERED.

Dated: June 23, 1994

PROCTER HUG, JR., JUDGE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Dated: June 27, 1994

EDWARD J. GARCIA, JUDGE

UNITED STATES DISTRICT COURT

Dated: June 27, 1994

Chesin, Darren

From: Ali, Saeed
Sent: Tuesday, May 01, 2001 6:30 PM
To: Chesin, Darren
Subject: Senate Redistricting Guidelines: Corrected

Senate redistricting guideline...

My apologies. I sent you an early draft. Please throw out that one and use this one. Thanks.

Saeed M. Ali, Principal Consultant
Senate Majority Leader & Latino Legislative Caucus
Capitol, Room 400
Sacramento CA 95814
T: 916-445-3456
F: 916-327-8817

RE: Senate Requirements for Public Plan Submissions, amended for May 2, 2001 hearing

The amended version is improved over its earlier version by dropping such egregious criteria as Congressional seniority, constraints on minority voting rights, etc., it still has several flaws. These should be addressed before the document is adopted.

Recommendations

1. Item #4 should have additional language in order to make it clear that the map drawn can in some cases split a city or a county to avoid a federal Voting Rights Act Section 2 or a Section 5 violation. We believe that the following amendment accomplishes that goal by specifying the approach used in the 1991 California redistricting process by the Special Masters, as it was upheld by the U.S. Supreme Court:

   4) California's Constitution requires that the number of unnecessary city and county splits be minimized. *The approach specified in the Report and Recommendations of the Special Masters on Reapportionment, approved by the California State Supreme Court in Wilson v. Eu, 4 Cal. Rpr. 2nd 379, 1 Cal 4th 707 (Cal. 1992), should be followed.* Plans must be accompanied with a listing of and an explanation for any city and county splits.

   TCA US Case D law since

2. Item #5 that counts the number of people who will be "vote deferred" should be deleted. This criteria was not used in 1991 by the Special Master and could potentially be misused if it is used to undercut other traditional redistricting criteria.

3. Item #7 is not sufficient to protect the rights of minorities. Our proposal is given below.

   4) Four counties within California are designated as "covered" jurisdictions under Section 5 of the Voting Rights Act. *For purposes of congressional and state legislative redistrictings,* Section 5 provides *that any such redistricting , which includes all or a part of one of the four counties, cannot have the intent or the effect of retrogressing or reducing a minority community's position, consistent with applicable constitutional standards, with respect to its opportunity to exercise the electoral franchise effectively.* **The covered counties are Kings, Merced, Monterey and Yuba.** All submitted plans must include written annotations for the plan's effects on minority voters in these four counties.

   All districts within a statewide plan should conform to the standards and criteria utilized in the Report and Recommendations of the Special Masters on Reapportionment, approved by the California State Supreme Court in Wilson v. Eu, 4 Cal. Rpr. 2nd 379, 1 Cal 4th 707 (Cal. 1992), with the exception of the formation of state senatorial districts from adjacent assembly districts (nesting) and with the exception of limiting the use of incumbency protection and political party affiliation as a factor in redistricting.

Our proposal allows a clearer interpretation of federal voting rights law. It also ensures that the positive guidelines used in the 1991 redistricting special master 5 will be included in the state

redistricting criteria. This includes the criteria that the special master approved concerning minority influence district.

In conclusion, these changes are essential to assuring that all Californians have the most positive voting rights language designed to protect their voting rights.

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Substantive

AMENDMENTS TO SENATE BILL NO. 976

Amendment 1

On page 2, strike out lines 9 to 13, inclusive, and insert:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

Amendment 2

On page 2, line 15, strike out "municipal"

Amendment 3

On page 2, line 17, strike out "municipal"

Amendment 4

On page 2, strike out lines 19 to 21, inclusive, in line 22, strike out "(d) "Municipal political" and insert:

(c) "Political

Amendment 5

On page 2, line 23, strike out "municipal"

Amendment 6

On page 2, line 25, strike out "local district" and insert:

district organized pursuant to state law

Amendment 7

across 5/1/01

C31

On page 2, line 26, strike out "(e)" and insert:

(d)

Amendment 8

On page 2, line 27, after "group" insert:

, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.)

Amendment 9

On page 2, strike out lines 28 to 35, inclusive, and insert:

(e) "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgment of the rights of registered voters who are members of the protected class, as provided in Section 14028, by impairing their ability to elect candidates of their choice of their ability to influence the outcome of an election.

Amendment 10

On page 3, lines 3 and 4, strike out "municipal political subdivision" and insert:

political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision

Amendment 11

On page 3, strike out lines 5 to 11, inclusive, and insert:

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that

may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

Amendment 12
On page 3, between lines 17 and 18, insert:

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

Amendment 13
On page 3, line 18, after "14027" insert:

and Section 14028

Amendment 14
On page 3, line 20, strike out "in place of at-large districts"

Amendment 15
On page 3, line 25, strike out "at" and insert:

including

Amendment 16
On page 3, below line 28, insert:

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section of Article II of the California Constitution.

- 0 -

AMENDMENTS TO SENATE BILL NO. 976

Amendment 1

On page 2, strike out lines 9 to 13, inclusive, and insert:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

Amendment 2

On page 2, line 15, strike out "municipal"

Amendment 3

On page 2, line 17, strike out "municipal"

Amendment 4

On page 2, strike out lines 19 to 21, inclusive, in line 22, strike out "(d) "Municipal political" and insert:

(c) "Political

Amendment 5

On page 2, line 23, strike out "municipal"

Amendment 6

On page 2, line 25, strike out "local district" and insert:

district organized pursuant to state law

Amendment 7

On page 2, line 26, strike out "(e)" and insert:

(d)

Amendment 8

On page 2, line 27, after "group" insert:

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14027. An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgment of the rights of registered voters who are members of the protected class, as provided in Section 14028, by impairing their ability to elect candidates of their choice of their ability to influence the outcome of an election.

Amendment 10

On page 3, lines 3 and 4, strike out "municipal political subdivision" and insert:

political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision

Amendment 11

On page 3, strike out lines 5 to 11, inclusive, and insert:

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that

may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

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(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

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and Section 14028

Amendment 14
On page 3, line 20, strike out "in place of at-large districts"

Amendment 15
On page 3, line 25, strike out "at" and insert:

including

Amendment 16
On page 3, below line 28, insert:

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section of Article II of the California Constitution.

BILL NUMBER: SB 976 INTRODUCED

BILL TEXT

INTRODUCED BY Senator Polanco

FEBRUARY 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as introduced, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass ~~municipal~~ areas of representation within the state. With respect to these ~~municipal~~ areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that a ~~municipal~~ political subdivision may not ***may dilute or abridge*** ~~be subdivided in a manner that results in a denial or abridgment of~~ the right of a registered voter to vote on account of membership in a minority race, color or language group.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a municipal political subdivision. It would provide that an intent to

Sacramento Satellite Office
926 J Street
Suite 408
Sacramento, CA 95814
Tel: 916.443.7650
Fax: 916.443.1741

National Headquarters
Los Angeles Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512
Fax: 213.629.0266

Chicago Regional Office
188 W. Randolph Street
Suite 1405
Chicago, IL 60601
Tel: 312.782.1422
Fax: 312.782.1528

San Antonio Regional Office
140 E. Houston Street
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476
Fax: 210.224.5382

San Francisco Regional Office
634 Market Street
Suite 206
San Francisco, CA 94104
Tel: 415.543.5598
Fax: 415.543.5816

Washington, D.C. Regional Office
1717 K Street, NW
Suite 311
Washington, DC 20036
Tel: 202.293.2828
Fax: 202.293.2849

Albuquerque Program Office
1008 Central Avenue, SE
Suite 201
Albuquerque, NM 87106
Tel: 505.843.8333
Fax: 505.243.9161

Houston Program Office
Ripley House
4401 Lovejoy, Suite 23
Houston, TX 77003
Tel: 713.928.6780
Fax: 713.928.6805

Phoenix Program Office
302 E. McDowell Road
Suite 170
Phoenix, AZ 85004
Tel: 602.307.5048
Fax: 602.307-5028

Atlanta Census Office
3535 Lenox Road
Suite 750
Atlanta, GA 30326
Tel: 404.504.7020
Fax: 404.504.7021

May 2, 2001 **By Fax: (916) 445-2496**

The Honorable Richard Polanco
Senate Committee on Elections and Reapportionment
California State Senate
State Capitol, Room 5046
Sacramento, CA 95814

Re: SB 976 (Polanco) - Support

Dear Senator Polanco:

The Mexican American Legal Defense and Educational Fund (MALDEF) supports SB 976, your bill to provide state law protection against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of Latinos and other protected groups on local governing boards. Statewide, the underrepresentation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction. Thus, SB 976 is consistent with our programmatic goal of increasing the opportunity to fully participate in the political process.

We appreciate the opportunity to lend our support to this bill. Please add our names to the list of supporting organizations, community leaders and legislators who view this bill as a positive step toward increasing political participation among full enfranchisement of all our citizens.

Sincerely,

Elizabeth E. Guillen

Elizabeth Guillen
Legislative Counsel

cc: Senate Committee on Elections and Reapportionment
Senator Don Perata, Chair
Darren Chesin, Consultant

Celebrating Our 32nd Anniversary
Protecting and Promoting Latino Civil Rights

discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

~~(a) "At-large method of election" means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.~~

a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire political subdivision elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the political subdivision and the voters of the entire political subdivision elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) "District-based election" means a method of electing members to the governing body of a ~~municipal~~ political subdivision in which the candidate must reside within an election district that is a divisible part of the ~~municipal~~ political subdivision and is elected only by voters residing within that election district.

~~(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage~~*~~", as these groups are referenced and defined in the federal Voting Rights Act, 42 U.S.C. 1973, et seq..~~*

~~(d)~~ *(c)* "~~Municipal p~~ *P*olitical subdivision" means a geographic area of representation created for the provision of ~~municipal~~ government services, including, but not limited to, a city, a school district, a community college district, or other ~~local~~ district *organized pursuant to the laws of the State of California.*

(e) "Protected class" means a class of voters who are members of a minority race, color or language group, *as this class is referenced and defined in the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et seq.*

(f) "Racially polarized voting" means voting in which there is ~~consistent difference in the way voters of an identifiable class based on a minority race, color or language group vote and the way the rest of the electorate vote in a municipal political subdivision.~~

a difference in the choice of candidates or other electoral choices ~~between those who are members of a protected class~~ that are preferred by ~~the~~ voters in the protected class, and ***in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.*** *~~those who are not members of the protected class that are preferred by the rest of the electorate.~~ The methodologies* ***for estimating group voting behavior*** *as approved in applicable federal cases to enforce the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et. seq. to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.*

14027. ~~A municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of any registered voter to vote on account of membership in a minority race,~~

~~color or language group.~~ *An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of any registered voter who is a member of the protected class, as provided in section 14028,* ***by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.***

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of a ~~municipal~~ political subdivision *or in elections incorporating other electoral choices by the voters of the political subdivision.*

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class ***or elections involving ballot ~~referenda, initiatives,~~ measures, or other electoral choices which affect the rights and privileges of members of the protected class.*** One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a ~~municipal~~ political subdivision that is the subject of an action based upon Section 14027 *and this section.* ***In multi-seat at-large elections, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by those candidate(s) from members of the protected class shall be the basis for the racial polarization analysis.***

(c) 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.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices ~~***such as unusually large election districts, majority vote requirements,***~~ ***or other voting practices or procedures that may*** ~~*which*~~ *enhance the dilutive effects of at-large elections, denial of access to* ***those processes determining which groups of candidates will receive financial or other support in a given election*** ~~*candidate slating groups*~~*, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.*

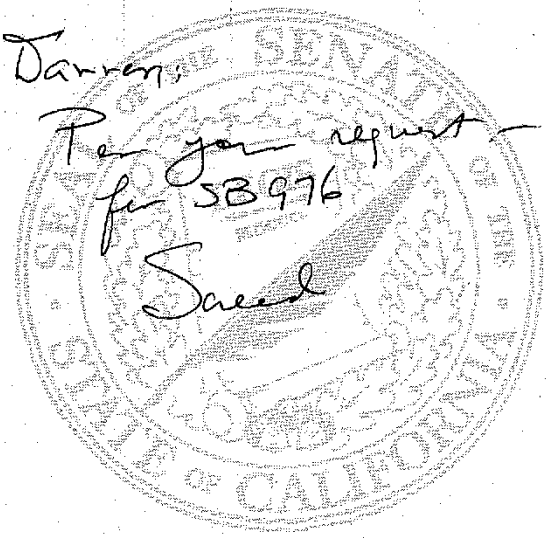
14029. Upon a finding of a violation of Section 14027 *and section 14028*, the court shall implement appropriate remedies, including the imposition of

district-based elections ~~in place of at-large districts~~, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~at~~ *including* pages 48 and 49, as part of the costs. Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.

14031 The California Voting Rights Act of 2001 is enacted to enforce Article 1, Section 7 and Article 2, Section 2 of the California State Constitution.

Senate
California Legislature
RICHARD POLANCO
22ND SENATE DISTRICT



Darren,
Per your request for SB976
Saeed

Saeed Ali
Latino Legislative Caucus
Consultant
State Capitol, Room 2032 445-3456

Service: **LEXSEE®**
Citation: **20 Cal. 3d 25**

*20 Cal. 3d 25, *; 569 P.2d 1303, **;*
*1977 Cal. LEXIS 168, ***; 141 Cal. Rptr. 315*

JOHN SERRANO, JR., et al., Plaintiffs and Appellants, v. IVY BAKER PRIEST, * as State Treasurer, etc., et al., Defendants and Appellants

* Although the former state Treasurer (now deceased) is not a party to this appeal, we continue to use the title Serrano v. Priest for purposes of consistency and convenience.

L.A. No. 30398

Supreme Court of California

20 Cal. 3d 25; 569 P.2d 1303; 1977 Cal. LEXIS 168; 141 Cal. Rptr. 315; 7 ELR 20795

October 4, 1977

SUBSEQUENT HISTORY: [*1]**

The petition of the defendants and appellants for a rehearing was denied November 17, 1977, and the opinion was modified to read as printed above. Bird, C. J., and Manuel, J., did not participate therein. Sullivan, J., * and Wright, J., + participated therein. Clark, J., and Richardson, J., were of the opinion that the petition should be granted. Clark, J., did not concur in the modification.

* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council.

+ Retired Chief Justice of California sitting under assignment by the Acting Chairperson of the Judicial Council.

PRIOR HISTORY:

Superior Court of Los Angeles County, No. C 938254, Bernard S. Jefferson, Judge.

DISPOSITION: The order concerning attorneys' fees filed August 1, 1975 is affirmed. The cause is remanded to the trial court with directions to hear and determine plaintiffs' motions for attorneys' fees filed in this court on January 28, 1977, July 7, 1977, and October 31, 1977, in conformity with the views herein expressed and to make and enter all necessary and appropriate orders.

CASE SUMMARY

PROCEDURAL POSTURE: Appellants, state officials, and respondents, public interest groups, sought review of a decision of the Superior Court of Los Angeles County (California), which awarded attorney fees in favor of respondents regarding respondents' successful lawsuit that held California's public school system in violation of California's constitution.

OVERVIEW: Respondents, public interest groups, had previously successfully sued the state, which resulted in the court finding that the public school financing system was unconstitutional. Respondents filed their first of several motions for attorney fees. Based upon its equitable powers, the trial court awarded attorney fees to respondents' counsel based on the private attorney general theory. Appellants, state officials, and respondents, respectfully, sought review of the award and amount of the attorney fees. The court adopted the private attorney general theory for California as it applied to vindication of a strong state constitutional public policy. The court affirmed the award of attorney fees, articulating that the private attorney general theory encouraged suits effectuating a strong public policy by awarding substantial attorney fees to those who successfully brought such suits and thereby brought about benefits to a broad class of citizens. The court withheld judgment on the issue of whether the private attorney general theory could be applied to a strong statutory policy. The court remanded for the trial court to determine respondents' remaining motions for attorney fees.

OUTCOME: The court affirmed the award and amount of respondent's attorney fees under the private attorney general theory because the previous litigation vindicated a strong constitutional public policy and the result of the litigation benefited a broad class of persons. The court remanded to the trial court with directions to hear and determine respondents' remaining motions for attorney fees in conformity with the court's opinion.

CORE TERMS: private attorney, educational, substantial benefit, equitable, common fund, public policy, school children, constitutional rights, award of fees, funding, equal protection, public interest, vindicated, concrete, urge, grounded, italics, funded, charitable, bestowed, class action, sum of money, benefited, financing, allowance, awarding, saving, specifically provided, educational program, public education

CORE CONCEPTS - ✦ Hide Concepts

Civil Procedure : Costs & Attorney Fees : Attorney Fees

Cal. Code of Civ. Proc. § 1021 provides in relevant part except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties.

Civil Procedure : Costs & Attorney Fees : Attorney Fees

Appellate decisions in this state have created two nonstatutory exceptions to the general rule of Cal. Code of Civ. Proc. § 1021, each of which is based upon inherent equitable powers of the court. The first of these is the well-established common fund principle: when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund. The second principle, of more recent development, is the so-called substantial benefit rule: when a class action or corporate derivative action results in the conferral of substantial benefits, whether of a pecuniary or nonpecuniary nature, upon the defendant in such an action, that defendant may, in the exercise of the court's equitable discretion, be required to yield some of those benefits in the form of an award of attorney's fees.

Civil Procedure : Costs & Attorney Fees : Attorney Fees

Although American courts, in contrast to those of England, have never awarded counsels' fees as a routine component of costs, at least one exception to this rule has become as well established as the rule itself: that one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
Fees are awarded under this rationale out of a fund recovered or maintained by the plaintiff, on the theory that all who will participate in the fund should pay the cost of its creation or protection and that this is best achieved by taxing the fund itself for attorney's fees.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
The courts have fashioned another nonstatutory exception to the general rule on the award of attorneys fees. This exception, which may be viewed as an outgrowth of the common fund doctrine, permits the award of fees when the litigant, proceeding in a representative capacity, obtains a decision resulting in the conferral of a substantial benefit of a pecuniary or nonpecuniary nature. In such circumstance, the court, in the exercise of its equitable discretion, thereupon may decree that under dictates of justice those receiving the benefit should contribute to the costs of its production.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
The high court, choosing to treat the substantial benefit rule as a part of the common fund exception, had clearly indicated that fees could be awarded under this rationale only from the fund or property itself or directly from the other parties enjoying the benefit.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
Reimbursement of attorneys fees is proper in cases where the litigation has conferred a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
In spite of variations in emphasis, there are three basic factors to be considered in awarding fees on the private attorney general theory. These are in general: (1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, (3) the number of people standing to benefit from the decision.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
The starting point of every fee award, once it is recognized that the court's role in equity is to provide just compensation for the attorney, must be a calculation of the attorney's services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
While as the courts have indicated the fact of public or foundational support should not have any relevance to the question of eligibility for an award, it may properly be considered in determining the size of the award.

Civil Procedure : Costs & Attorney Fees : Attorney Fees
Civil Procedure : Appeals : Standards of Review : Clearly Erroneous Review
The experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.

COUNSEL: Sidney M. Wolinsky, Daniel M. Luevano, Rosalyn Chapman, Philip E. Goar, John E. McDermott, **[***2]** Rose Matsui Ochi, David A. Binder, Harold W. Horowitz, Jerome L.

Levine, Michael H. Shapiro, E. Robert Wallach, Richard A. Rothschild, Mary S. Burdick and Diane Messer for Plaintiffs and Appellants.

Bayard F. Berman, William T. Rintala, Henry Shields, Robert G. Sproul, Jr., James J. Brosnahan, Jr., Edward W. Rosston, David M. Heilbron, Stuart C. Walker, Robert E. Cartwright, Edward I. Pollock, Arne Werchick, Sanford M. Gage, Leroy Hersh, Ned Good, David B. Baum, Robert G. Beloud, Roger H. Hedrick, Leonard Sacks, Stephen I. Zetterberg, Antonio Rossmann, Carlyle W. Hall, Jr., Brent N. Rushforth and John R. Phillips as Amici Curiae on behalf of Plaintiffs and Appellants.

Evelle J. Younger, Attorney General, N. Eugene Hill, Assistant Attorney General, John J. Klee, Jr., Ronald V. Thunen, Jr., Thomas E. Warriner and Richard M. Skinner, Deputy Attorneys General, for Defendants and Appellants.

JUDGES: Opinion by Sullivan, J., * with Tobriner, Acting C. J., Mosk, J., Wright, J., + and Kaus, J., ++ concurring. Separate dissenting opinion by Richardson, J., with Clark, J., concurring. Separate dissenting opinion by Clark, J.

* Retired Associate Justice of the Supreme Court sitting under assignment by the Chairperson of the Judicial Council. **[***3]**

+ Retired Chief Justice of California sitting under assignment by the Acting Chairperson of the Judicial Council.

++ Assigned by the Chairperson of the Judicial Council.

OPINIONBY: SULLIVAN

OPINION: [*31] [1304]** In *Serrano* v. *Priest* (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929] (hereafter cited as *Serrano II*) we affirmed a judgment of the Los Angeles County Superior Court, entered on September 3, 1974, which held essentially (1) that the then-existing California public school financing system was invalid as in violation of state constitutional provisions guaranteeing equal protection of the laws, and (2) that the said system must be brought into constitutional compliance within a period of six years from the date of entry of judgment, the trial court retaining jurisdiction for the purpose of granting any necessary future relief. n1 That judgment is now final.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n1 A more complete summary of the trial court judgment was set forth in *Serrano II*: "The trial court held that the California public school financing system for elementary and secondary schools as it stood following the adoption of S.B. 90 and A.B. 1267, while not in violation of the equal protection clause of the Fourteenth Amendment to the federal Constitution, was invalid as in violation of former article I, sections 11 and 21, of the California Constitution (now art. IV, § 16 and art. I, § 7 respectively . . .), our state equal protection provisions. Indicating the respects in which the system before it was violative of our state constitutional standard, the court set a period of six years from the date of entry of judgment as a reasonable time for bringing the system into constitutional compliance; it further held and ordered that the existing system should continue to operate until such compliance had been achieved. The judgment specifically provided that it was not to be construed to require the adoption of any particular system of school finance, but only to require that the plan adopted comport with the requirements of state equal protection provisions. Finally, the trial court retained jurisdiction of the action and over the parties 'so that any of such parties may apply for appropriate relief in the event that relevant circumstances develop, such as a failure by the legislative and executive branches of the state government to take the necessary steps to design, enact into law, and place into operation, within a reasonable time from the date of entry of this Judgment, a California

Public School Financing System for public elementary and secondary schools that will fully comply with the said equal-protection-of-the-law provisions of the California Constitution.'" (*Serrano II* at pp. 748-750.)

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - **[***4]**

Within a month after the entry of the foregoing judgment and prior to the filing of defendants' appeals, plaintiffs' attorneys (Public Advocates, Inc. and Western Center on Law and Poverty) made separate motions for an award of reasonable attorneys fees "against defendants Priest [then the state Treasurer], Riles [then and presently the state Superintendent of Public Instruction] and Flournoy [then the state Controller] in their official capacities as officials of the State of California." The motions were not based upon statute but were instead addressed to the equitable powers of the court. Three theories, to be examined in detail by us below, were advanced in support of the award: the so-called "common **[*32]** **[**1305]** fund" theory, the "substantial benefit" theory, and the "private attorney general" theory.

A hearing on the issue of entitlement to fees was held on January 6, 1975, and on January 27 the trial court entered an interim order in which it announced its intention to award reasonable attorneys fees to plaintiffs' counsel on the private attorney general theory only, declining to apply the other two theories advanced. The matter was continued **[***5]** until April 14, 1975, for briefing and argument upon the issue of the amount of fees to be awarded. On that date the court received testimony and, upon stipulation of the parties, additional evidence by affidavit. At the conclusion of this hearing the court announced its intention to award $ 400,000 as reasonable attorneys fees to Public Advocates, Inc. and $ 400,000 as reasonable attorneys fees to Western Center on Law and Poverty. Upon timely request by Public Advocates, Inc. the court ordered the preparation of findings of fact and conclusions of law. On August 1, 1975, the court filed its "Order Concerning Attorneys' Fees," which was consistent in all relevant respects with its previous rulings, n2 as well as its "Findings of Fact and Conclusions of Law Concerning the Award of Attorneys' Fees" -- of which there were 219 of the former and 28 of the latter.

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n2 The order provided in relevant part: It Is Hereby Ordered that Public Advocates, Inc. and Western Center on Law and Poverty, attorneys for Plaintiffs, are each entitled under the private attorney general doctrine to receive reasonable attorneys' fees from the defendants, Jesse M. Unruh [present state Treasurer], Kenneth Cory [present state Controller], and Wilson C. Riles, in their representative capacities. [para.] It Is Further Ordered that $ 400,000 is a reasonable attorneys' fee for the representation by Public Advocates, Inc. of the plaintiffs from the beginning of the instant action through April 14, 1975. [para.] It Is Further Ordered that $ 400,000 is a reasonable attorneys' fee for the representation by Western Center on Law and Poverty of the plaintiffs from the beginning of the instant action through April 14, 1975."

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Two notices of appeal from the order were filed, one by Public Advocates, Inc. and Western Center on Law and Poverty, as "counsel for plaintiffs," and one by defendants Unruh, Cory, and Riles. On October 1, 1975, we transferred the appeal to this court and ordered it consolidated with the then-pending appeal in *Serrano II*. The latter appeal having been fully briefed, however, we proceeded to hear argument and render our decision in *Serrano II*, deferring our consideration of the instant appeal until the judgment in *Serrano II* had become final.

On January 28, 1977, after the rendition of our decision in *Serrano II* but prior to the issuance of the remittitur, a motion was filed in this court **[*33]** for reasonable attorneys'

fees in connection with the appeal of this cause. This motion was filed by "respondents" (designated in the caption as plaintiffs John Serrano, Jr. et al.) by their attorneys, Public Advocates, Inc. and Western Center on Law and Poverty. Prior to issuance of the *Serrano II* remittitur we modified our judgment to reserve jurisdiction for the purpose of passing upon this motion in conjunction with the instant appeal.

I

We summarize the **[***7]** contentions advanced in the briefs of the parties: n3

Defendants contend that the award of attorneys fees was improper on any of the grounds considered. Thus, they urge that whereas the trial court was correct in determining that such an award cannot be sustained on either the common fund theory or **[**1306]** the substantial benefit theory, it erred in concluding that an award should be made on the private attorney general theory. Additionally they argue that even if such an award based on any of these theories were proper in a case in which the prevailing litigant had incurred an obligation to pay for legal services, it could not be justified in a case in which, as here, the plaintiffs had incurred no obligation for such services which were provided without charge by organizations receiving public or tax-exempt charitable funding. n4 In any event, defendants urge, the award in this case is excessive. Finally, defendants also oppose the granting of the motion for attorneys fees on appeal.

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n3 In addition to the briefs of the parties, briefs amicus curiae have been filed by the Bar Association of San Francisco and the San Francisco Lawyers' Committee for Urban Affairs (joint brief); the Los Angeles County Bar Association; the Woodland Hills Residents Association; Robert E. Cartwright, Edward I. Pollock, Arne Werchick, Sanford M. Gage, Leroy Hersh, Ned Good, David B. Baum, Robert G. Beloud, Roger H. Hedrick, Leonard Sacks and Stephen I. Zetterberg (joint brief); and Center for Law in the Public Interest. **[***8]**

n4 Public Advocates, Inc. is a nonprofit legal corporation supported by tax-exempt charitable funds. Western Center on Law and Poverty is a public interest law center funded by the Legal Services Corporation. (See 42 U.S.C. § 2996 et seq.) Neither may accept fees from clients.

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Plaintiffs and their attorneys, while agreeing with the trial court's award of fees on the private attorney general theory, contend that the court erred in refusing to base its award additionally on the common fund and substantial benefit theories. The fact that plaintiffs are represented by organizations receiving public or other tax-exempt funding, they urge, should have no effect upon their eligibility for the **[*34]** award. Public Advocates, Inc., in an argument in which Western Center on Law and Poverty does not join, also urges that the award is inadequate. Finally, plaintiffs and their attorneys contend that their motion for attorneys fees on appeal should be granted on each of the three theories here in question.

II

Recently in *D'Amico* v. *Board of Medical Examiners* (1974) 11 Cal.3d 1 [112 Cal.Rptr. **[***9]** 786, 520 P.2d 10], we had occasion to point out: "Section 1021 of the Code of Civil Procedure provides in relevant part: 'Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties . . . .' No state statute provides for the award of attorney's fees in a case of this nature, and there has been no express or implied agreement concerning attorney's fees in this case. However, appellate decisions in this state have created two nonstatutory exceptions to the general rule of section 1021, each of which is based upon inherent equitable powers of the court. The first of these is the well-

established 'common fund' principle: when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund. (See, e.g., *Estate of Stauffer* (1959) 53 Cal.2d 124, 132 [346 P.2d 748]; *Estate of Reade* (1948) 31 Cal.2d 669, 671-672 [191 P.2d 745]; see generally **[***10]** 4 Witkin, Cal. Procedure (2d ed. 1971) Judgment, §§ 129-133, pp. 3278-3283.) The second principle, of more recent development, is the so-called 'substantial benefit' rule: when a class action or corporate derivative action results in the conferral of substantial benefits, whether of a pecuniary or nonpecuniary nature, upon the defendant in such an action, that defendant may, in the exercise of the court's equitable discretion, be required to yield some of those benefits in the form of an award of attorney's fees. (See, e.g., *Knoff v. City etc. of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 [81 Cal.Rptr. 683]; *Fletcher v. A. J. Industries, Inc.* (1968) 266 Cal.App.2d 313, 318-325 [72 Cal.Rptr. 146]; see also *Sprague v. Ticonic Bank* (1939) 307 U.S. 161 [83 L.Ed. 1184, 59 S.Ct. 777]; see generally 4 Witkin, Cal. Procedure, *supra*, Judgment, § 134, pp. 3283-3284.)" (*Id.*, at p. 25.) Mindful of these observations, we proceed first to determine whether the trial court was correct in concluding that an award of reasonable attorneys **[**1307]** fees could not be supported in the instant case under either of the aforementioned exceptions to the rule **[***11]** of section 1021.

[*35] (a) *The Common Fund Theory*

"Although American courts, in contrast to those of England, have never awarded counsels' fees as a routine component of costs, at least one exception to this rule has become as well established as the rule itself: that one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State of California* (1975) 15 Cal.3d 162, 167 [124 Cal.Rptr. 1, 539 P.2d 761]; fns. omitted.) This, the so-called "common fund" exception to the American rule regarding the award of attorneys fees (i.e., the rule set forth in section 1021 of our Code of Civil Procedure), is grounded in "the historic power of equity to permit the trustee of a fund or property, or a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund of property itself or directly from the other parties enjoying the benefit." (*Alyeska Pipeline Co. v. Wilderness Society* (1975) 421 U.S. 240, 257 [44 L.Ed.2d 141, **[***12]** 153, 95 S.Ct. 1612]; fn. omitted.)

First approved by this court in the early case of *Fox v. Hale & Norcross S. M. Co.* (1895) 108 Cal. 475 [41 P. 328], the "common fund" exception has since been applied by the courts of this state in numerous cases. (See, e.g., *Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 341, fn. 19 [124 Cal.Rptr. 513, 540 P.2d 609]; *Estate of Reade, supra*, 31 Cal.2d 669, 671-672; *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 277 [153 P.2d 714]; *Farmers etc. Nat. Bank v. Peterson* (1936) 5 Cal.2d 601, 607 [55 P.2d 867]; *Estate of Kann* (1967) 253 Cal.App.2d 212, 223 [61 Cal.Rptr. 122]; see generally Dawson, *Lawyers and Involuntary Clients: Attorney Fees from Funds* (1974) 87 Harv.L.Rev. 1597.) In all of these cases, however, the activities of the party awarded fees have resulted in the preservation or recovery of a certain or easily calculable sum of money -- out of which sum or "fund" the fees are to be paid. n5 We can find no such "fund" in this case.

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n5 "Fees are awarded under this rationale out of a fund recovered or maintained by the plaintiff, on the theory that all who will participate in the fund should pay the cost of its creation or protection and that this is best achieved by taxing the fund itself for attorney's fees." (Comment, *Court Awarded Attorney's Fees and Equal Access to the Courts* (1974) 122 U.Pa.L.Rev. 636, 694-695 [cited hereafter as Comment, *Equal Access*].)

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In relevant findings of fact the trial court found that plaintiffs "have proven that the sum of money available for public education in California is not being spent in accordance with the California Constitution" **[*36]** and "have protected the sum of money available for public education" in the state. Plaintiff urges that these findings are tantamount to a determination that a fund of money for educational use was created by their efforts. The trial court, however, concluded otherwise, reasoning that whatever additional monies are made available for public education as a result of the *Serrano* judgment will flow from legislative implementation of the judgment, not from the judgment itself. That judgment requires substantial equality in educational opportunity for the school children of this state without regard to the taxable wealth per student in the particular district in which a student lives. It does not require any particular level of expenditure. n6 Accordingly, it cannot be said that the efforts of plaintiffs **[**1308]** have created or preserved any "fund" of money to which they should be allowed recourse for their fees.

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n6 In footnote 28 of our *Serrano II* opinion we quoted the following passage from the trial court's memorandum opinion: "What the *Serrano* [I] court imposed as a California constitutional requirement is that there must be uniformity of treatment between the children of the various school districts in the State because all the children of the State in public schools are persons similarly circumscribed. The equal-protection-of-the-laws provisions of the California Constitution mandate nothing less than that all such persons shall be treated alike. If such uniformity of treatment were to result in all children being provided a low-quality educational program, or even a clearly *inadequate* educational program, the California Constitution would be satisfied. This court does not read the *Serrano* [I] opinion as requiring that there is any constitutional mandate for the State to provide funds for each child in the State at some magic level to produce either an adequate-quality educational program or a high-quality educational program. It is only a disparity in treatment between equals which runs afoul of the California constitutional mandate of equal protection of the laws." As our opinion in *Serrano II* makes clear, this is a correct characterization.

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Plaintiffs place great emphasis on the trial court's finding that under the 1972 and 1973 legislation which we have referred to in our *Serrano II* opinion as "S.B. 90 and A.B. 1267" (see *Serrano II* at pp. 736-737, 741-744), passed in response to our decision in *Serrano I*, an annual pool of some $ 550 million has come into existence for purposes of education and property tax relief. Moreover, they point out, it is quite likely that under subsequent legislation substantial further sums of money will become available for these purposes. Again, however, we point out that any such increases in the total educational budget, while they may be termed a "*response*" to our *Serrano* decisions, are by no means *required* by them. It is for the Legislature to determine, in its conjoined political wisdom, whether the achievement of that degree of equality of educational opportunity which is required by the state Constitution is to be accompanied by an overall increase in educational funding.

[*37] Finally, even if it were determined that the monies to become available for education in the wake of *Serrano* should be considered a "fund" for these purposes, **[***15]** plaintiffs and their attorneys nowhere suggest that payment should be made to them out of such monies. n7 Instead they seem to indicate, with perhaps intentional vagueness, that their fees should be paid by "the State." Apparently their primary authority in this respect is the case of *Brewer v. School Board of City of Norfolk, Virginia* (4th Cir. 1972) 456 F.2d 943 (cert. den. (1972) 406 U.S. 933 [32 L.Ed.2d 136, 92 S.Ct. 1778]), in which the Court of Appeals ordered the award of reasonable attorneys fees against a school district after determining that its desegregation plan was inadequate insofar as it failed to provide a practical method of free

transportation for students assigned to schools beyond normal walking distance from their homes. There the court, stating that this was a case for "at least a quasi-application of the 'common fund' doctrine" (456 F.2d at p. 951), reasoned that whereas each of the students involved had secured a right worth approximately $ 60 per year to each of them, it would "defeat the basic purpose of the relief provided" to impose a charge against them for a proportionate share of the attorneys fees (*id.*, at p. 952). "The only feasible **[***16]** solution in this particular situation," the court held, "would seem to be in requiring the school district itself to supplement its provision of free transportation with payment of an appropriate attorney's fee to plaintiffs' attorneys for securing the addition of such a provision to the plan of desegregation." *(Id.)*

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n7 Such an award, of course, would necessarily bring about a diminution in educational funding, a result which plaintiffs and their attorneys might be presumed to oppose. Moreover, an award of this kind would essentially constitute the acceptance of a fee from a client, and thus could not be accepted by either of the law firms representing plaintiffs. (See fn. 4, *ante*; see also Comment, *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 695; cf. *Sanders* v. *City of Los Angeles* (1970) 3 Cal.3d 252, 263 [90 Cal.Rptr. 169, 475 P.2d 201]; *National Coun. of Com. Mental H. C. Inc.* v. *Weinberger* (D.D.C. 1974) 387 F.Supp. 991, 994-995.)

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We, along with the concurring judge in *Brewer* **[***17]** (Winter, Cir. J., conc. specially, 456 F.2d at pp. 952-954), **[**1309]** are of the view that the *Brewer* case, to the extent that it relies upon the terminology used, represents an improper application of the "common fund" theory. (See also Dawson, *Lawyers and Involuntary Clients in Public Interest Litigation* (1975) 88 Harv.L.Rev. 849, 895-896; Comment, *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 695-696.) In any event it is not consistent with the law of this state. We hold that here, where plaintiffs' efforts have not effected the creation or preservation of an identifiable "fund" of money out of which **[*38]** they seek to recover their attorneys fees, the "common fund" exception is inapplicable. The trial court was correct in so concluding.

(b) *The Substantial Benefit Theory*

As we indicated in our opinion in *D'Amico* v. *Board of Medical Examiners, supra*, 11 Cal.3d 1, 25, the courts have fashioned another nonstatutory exception to the general rule on the award of attorneys fees. This exception, which may be viewed as an outgrowth of the "common fund" doctrine, permits the award of fees when the litigant, proceeding in a representative **[***18]** capacity, obtains a decision resulting in the conferral of a "substantial benefit" of a pecuniary or nonpecuniary nature. In such circumstance, the court, in the exercise of its equitable discretion, thereupon may decree that under dictates of justice those receiving the benefit should contribute to the costs of its production. Although of fairly recent development in California, this exception to the general rule is now well established in our law.

Although the seminal California case on this subject, *Fletcher* v. *A. J. Industries, supra*, 266 Cal.App.2d 313, arose in the context of corporate litigation, n8 more recent decisions have applied the "substantial benefit" theory in a wide variety of circumstances, including those involving governmental defendants. Thus in *Knoff* v. *City etc. of San Francisco, supra*, 1 Cal.App.3d 184, a class action, the plaintiffs had secured the issuance of a writ of mandate requiring the board of supervisors to order a full investigation into the loss of property taxes during certain previous years, including the identification of taxable property which had escaped taxation for any reason, and to take appropriate action to recover the **[***19]** taxes due. The Court of Appeal affirmed a judgment awarding the plaintiffs their attorneys fees out of tax revenues to be collected "in consequence of . . . compliance" with the writ of mandate (*id.* at p. 203), **[*39]** citing *Fletcher* for the proposition that the award was

proper even in the absence of an existing "fund."

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n8 In *Fletcher*, a stockholders derivative action, the plaintiffs had obtained an order approving a settlement guaranteeing a beneficial change in corporate management and procedures as well as the arbitration of certain claims of managerial misconduct, with the possibility of future monetary awards. The Court of Appeal, affirming a trial court order awarding attorneys fees and costs to the plaintiffs, held that although no specific "fund" had been created out of which such fees could be awarded on the "common fund" theory, the benefit conferred on the corporation and shareholders justified a shifting of the monetary burden of producing that benefit to all those who would enjoy it. The court placed significant reliance upon certain dicta in the United States Supreme Court's decision in *Sprague v. Ticonic Nat. Bank, supra*, 307 U.S. 161, 166-167 [83 L.Ed. 1184, 1186-1187]. (See generally Dawson, *Lawyers and Involuntary Clients: Attorney Fees from Funds, supra*, 87 Harv.L.Rev. 1597, 1609-1611.)

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In the more recent case of *Mandel v. Hodges* (1976) 54 Cal.App.3d 596 [127 Cal.Rptr. 244], the plaintiff, a state employee, had successfully challenged the state's practice of giving its employees time off with pay on Good Friday as a violation of constitutional prohibitions against the establishment of religion. The Court of Appeal, affirming an award of attorneys fees against the state, held that a substantial benefit had accrued to the state in the form of the future saving of funds formerly expended for work not performed, and that the trial court, exercising its equitable powers **[**1310]** in a suit brought in a representative capacity, had properly shifted the cost burden of producing that benefit to the party enjoying it.

Finally, in *Card v. Community Redevelopment Agency* (1976) 61 Cal.App.3d 570 [131 Cal.Rptr. 153], the plaintiff taxpayers had secured a judgment declaring invalid a city ordinance purporting to amend an existing redevelopment plan by including areas not covered by the original plan. As a result, certain property tax increment revenues otherwise payable to the redevelopment agency under the amending ordinance became available to various **[***21]** city and county taxing agencies. The Court of Appeal approved a portion of the judgment awarding attorneys fees to be paid by the various taxing agencies in proportion to their respective shares in the tax increment funds, holding that "[this] result substantially benefits the affected taxing agencies, named in the judgment (and through them their taxpayers), since it reduces both the occasion for the [redevelopment agency's] expenditure of such funds and the [agency's] source of such funds as well." (61 Cal.App.3d at p. 583.)

(See fn. 10.) Relying on these and other n9 cases, plaintiffs and their attorneys urge that the award in this case was justified on the **[*40]** "substantial benefit" rationale and that the trial court erred in concluding otherwise. n10 In urging that such a benefit was conferred upon the state as a result of this litigation, they make reference to various factual findings of the trial court on the general subject, the most significant of which are **[**1311]** set forth in the margin. n11 To the extent, however, **[*41]** that the subject findings are susceptible of the reading that substantial benefits in the form of **[***22]** increased educational opportunities have been bestowed upon the school children of this state as a necessary result of the *Serrano* decision -- or that benefits in the form of tax savings have been bestowed upon the taxpayers -- they are without support. The fundamental holding of *Serrano* -- i.e., that the existing school finance system, insofar as it operates to deny equality of educational opportunity to the school children of this state, is thereby violative of state equal-protection guarantees -- does nothing in and of itself to assure that concrete "benefits" will accrue to anyone. Only in the event that implementing legislation, in establishing the equality of educational opportunity required by *Serrano*, does so at a level higher than that presently enjoyed by the *least* favored student under the present system will concrete "benefits" accrue

to *any* school child; only in the event that that level rises above the level of opportunity available to the *most* favored student under the present system will the required "benefits" accrue to *all* of the school children. By the same token, relative "benefits" to taxpayers will depend wholly upon the tax structure **[***23]** that the Legislature chooses to establish in order to finance its new system. In short, concrete "benefits" can accrue to the state or its citizens in the wake of *Serrano* only insofar as the Legislature, in its implementation of the command of equality which that case represents, chooses to bestow them. n12

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n9 Among the federal decisions relied upon by plaintiffs and their attorneys are *Hall* v. *Cole* (1973) 412 U.S. 1 [36 L.Ed.2d 702, 93 S.Ct. 1943], and *Newman* v. *State of Alabama* (M.D. Ala. 1972) 349 F.Supp. 278. In *Hall* the United States Supreme Court held that a former union member whose legal action had had the effect of establishing certain rights of free speech within the union was entitled to attorneys fees on the "substantial benefit" theory because the plaintiff, "by vindicating his own right of free speech . . . [had] necessarily rendered a substantial service to his union as an institution and to all of its members . . . [and] reimbursement of [his] attorneys' fees out of the union treasury simply shifts the costs of litigation to 'the class that has benefited from them and that would have had to pay them had it brought the suit.'" (412 U.S. at pp. 8-9 [36 L.Ed.2d at p. 709], fn. omitted.) In *Newman*, where a class action brought by state prisoners had resulted in a holding that inadequate medical treatment afforded them constituted cruel and unusual punishment within the meaning of the Eighth and Fourteenth Amendments, fees were awarded *against the state* on this theory "because of the positive benefit resulting to the *plaintiffs* and the members of *plaintiffs*' class." (349 F.Supp. at p. 286, italics added.) However the judgment as it related to attorneys fees was subsequently vacated and remanded for reconsideration in light of the intervening decisions in *Alyeska Pipeline Co.* v. *Wilderness Society, supra*, 421 U.S. 240 (to be discussed *infra*) and *Edelman* v. *Jordan* (1974) 415 U.S. 651 [39 L.Ed.2d 662, 94 S.Ct. 1347]. In *Alyeska* the high court, choosing to treat the "substantial benefit" rule as a part of the "common fund" exception, had clearly indicated that fees could be awarded under this rationale only "from the fund or property itself or directly from *the other parties enjoying the benefit*" (421 U.S. at p. 257 [44 L.Ed.2d at p. 153], italics added, fn. omitted), thus suggesting that the approach adopted in *Newman* was erroneous under the federal rule. **[***24]**

n10 Although the trial court found that substantial benefits had been bestowed on the state's public school children and taxpayers by *Serrano* (see fn. 11, *post*, and accompanying text) it concluded that fees could not be awarded on the "substantial benefit" theory because no such benefit had accrued to "the defendants in this case." While we believe, as we explain *infra*, that the trial court properly declined to base its award on this theory, we are also convinced of the correctness of plaintiffs' argument that such an award does not depend upon substantial benefi to the *defendant*. Despite the fact that the trial court's position on this point may find some support in the language of *D'Amico* and other cases, we have concluded that the proper rule -- as reflected in the Court of Appeal cases we have reviewed -- "[permits] reimbursement [of attorneys fees] in cases where the litigation has conferred a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them." (*Mills* v. *Electric Auto-Lite* (1970) 396 U.S. 375, 393-394 [24 L.Ed.2d 593, 607, 90 S.Ct. 616]; see generally Comment, *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 662-666.) **[***25]**

n11 The court found, inter alia: "5. Plaintiffs have rendered substantial service to the State Defendants and to the taxpayers of the State generally by bringing defendants into compliance with the mandate of the State Constitution and by securing for defendants and taxpayers the benefits assumed to flow from a nondiscriminatory educational system."

"139. The class of children directly benefited by *Serrano* consists of all children in the State of

California who are enrolled in and attending public elementary and secondary schools except those in the intervening defendant districts."

"140. The plaintiff parent-taxpayers class benefited by *Serrano* consists of all parents of children in the California public school system who were also owners of real property assessed for taxes."

"141. Millions of school children and taxpayers other than the named plaintiffs will benefit from the results obtained by plaintiffs in this litigation."

"142. An award of attorneys' fee against the State Defendants will, in effect, spread the costs of the present litigation among those who have benefited from it."

"164. Millions of school children and taxpayers of California will benefit in the years to come as a result of *Serrano*."

"166. The benefits of equal education obtained by this case will be multiplied throughout the lives of the children of this state, leading to more equal job opportunities and greater ability to participate in the social, cultural and political activity of our society."

"167. The State itself will benefit from the equalization and upgrading of education as a result of *Serrano*."

"176. The State Defendants to some extent benefit from the increased equity and rationality in the taxing system and from a more equitable educational system for the children of this State, both of which are results of *Serrano*." **[***26]**

n12 We are aware, of course, that the Legislature has recently passed and the Governor signed into law an urgency measure directed toward meeting the demands of *Serrano*. (Stats. 1977, ch. 894.) To the extent that this measure will ultimately result in an improvement in educational opportunity for some or all of the state's school children, such improvement will have been brought about by legislative rather than judicial action.

The trial court, in announcing its decision, stated the matter thus: "But one question in this particular case is although there has been a great benefit, undoubtedly, to all of the citizens of the State, has there been any creation of a type of fund or saving of money? On the contrary, all of the argument has been it is going to cost the taxpayers millions of dollars more in order to carry out the Court's decision. Now, it can do that if it is carried out in one way. I don't know what the Supreme Court will say, but I will carefully point out in the approach which I took, which was that the Constitution will guarantee equality of educational opportunity but no minimum level, and the billions of dollars that we are talking about depends upon the decision to bring all school districts in terms of income up to where Beverly Hills is. *That is a political decision, in my opinion, and not a constitutional one*. If the financial affairs of the State won't support such a decision, then I could well see a different approach, in which all school districts would be at a much lower level to come within the State's finances." (Italics added.)

- - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - **[***27]**

[*42] **[**1312]** It is also urged, however, that while *Serrano* may not have had the direct effect of producing increased educational opportunity or tax savings, it did produce benefits of a conceptual or doctrinal character which are shared by the state as a whole. Certain findings of the trial court -- notably those numbered 5, 167, and 176 (set forth in fn. 11, *ante*) -- support this contention. Common sense as well speaks in favor of the proposition that plaintiffs and their attorneys, as a result of the *Serrano* litigation, have rendered an enormous service to the state and all of its citizens by insuring that the state educational financing system shall be brought into conformity with the equal protection provisions of our

state Constitution so that the degree of educational opportunity available to the school children of this state will no longer be dependent upon the taxable wealth of the district in which each student lives. We have concluded, however, that to award fees on the "substantial benefit" theory on the basis of considerations of this nature -- separate and apart from any consideration of actual and concrete benefits bestowed -- would be to extend **[***28]** that theory beyond its rational underpinnings. n13 If the effectuation of constitutional or statutory policy, without more, is to serve as a sufficient basis for the award of attorneys fees in this state, the rationale for such awards must be found in a theory more directly concerned with considerations of this nature. It is to such a theory that we now turn.

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n13 The decisions of the United States Supreme Court in *Mills v. Electric Auto-Lite, supra,* 396 U.S. 375, and *Hall v. Cole, supra,* 412 U.S. 1, are not inconsistent with this conclusion. In each of those cases a concrete benefit, in the form of informed corporate suffrage in *Mills*, and enhanced union free speech rights in *Hall*, had been achieved by the litigation and bestowed upon the entities against which fees were awarded. (Cf. generally Dawson, *Lawyers and Involuntary Clients in Public Interest Litigation, supra*, 88 Harv.L.Rev. 849, 863-870.) In the instant case, on the other hand, the command of equality emerging from the litigation will afford little more than philosophic comfort to anyone in the absence of a legislative decision to achieve that equality by raising the disadvantaged to the level of the favored, rather than vice versa.

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III

In *D'Amico v. Board of Medical Examiners, supra,* 11 Cal.3d 1, plaintiffs had sought an award of fees not only on the "common fund" and "substantial benefit" theories *but also* on two additional theories, both of which were grounded largely on federal case law. The first of these, involving awards against an opponent who has maintained an unfounded action or defense "'in bad faith, vexatiously, wantonly or for oppressive reasons'" (11 Cal.3d at p. 26), is not involved in the instant case and we do not address ourselves to it. However, the second, the **[*43]** so-called "private attorney general" concept, was adopted by the trial court as the basis for its award, and we are now called upon to determine its applicability in this jurisdiction.

In addressing ourselves to the "private attorney general" theory in *D'Amico*, we said "This concept, as we understand it, seeks to encourage suits effectuating a strong congressional or national policy by awarding substantial attorney's fees, regardless of defendants' conduct, to those who successfully bring such suits and thereby bring about benefits to a broad class of citizens." (11 Cal.3d at p. 27.) Noting, however, that **[***30]** such doctrine was then under examination by the United States Supreme Court, we thought it prudent to await "an announcement by the high court concerning its limits and contours on the federal level" (*id.*) before determining its possible applicability in this jurisdiction.

The announcement has now been made. In *Alyeska Pipeline Co. v. Wilderness Society, supra,* 421 U.S. 240, n14 **[**1313]** a five to two opinion authored by Justice White, the Supreme Court held that the awarding of attorneys fees on a "private attorney general" theory, in the absence of express statutory authorization, did not lie within the equitable jurisdiction of the federal courts. Such awards, the court held, "would make major inroads on a policy matter that Congress has reserved for itself." (421 U.S. at p. 269 [44 L.Ed.2d at p. 159].)

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n14 The case involving this question which was before the high court at the time of *D'Amico* was later vacated on other grounds. (*Bradley v. School Board of Richmond, Virginia* (E.D.Va.

1971) 53 F.R.D. 28, revd. (4th Cir. 1972) 472 F.2d 318, vacated on other grounds (1974) 416 U.S. 696 [40 L.Ed.2d 476, 94 S.Ct. 2006].)

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The high court rested its conclusion on two bases. The first, involving the interpretation of an 1853 court costs act, need not long concern us here, for the act in question (presently 28 U.S.C. §§ 1920, 1923) bears little resemblance to the governing statute in this state, section 1021 of the Code of Civil Procedure. In any event the fashioning of equitable exceptions to the statutory rule to be applied in California is a matter within the sole competence of this court. n15 The second basis on which the Supreme Court grounded its decision, however, dealing with the manageability and fairness of such awards in the absence of legislative guidance, goes directly to the heart of the determination here before us. The making of such awards in the absence of statutory authorization, the high court indicated, would leave the courts "free to **[*44]** fashion drastic new rules with respect to the allowance of attorneys' fees to the prevailing party . . . or to pick and choose among plaintiffs and the statutes under which they sue and to award fees in some cases but not in others, depending upon the courts' assessment of the importance of the public policies involved in particular **[***32]** cases." (421 U.S. at p. 269 [44 L.Ed.2d at pp. 159-160].) This, the court suggested, would represent an unacceptable and unwise intrusion of the judicial branch of government into the domain of the Legislature.

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n15 This was expressly recognized by the high court in *Alyeska* itself. (See 421 U.S. at p. 259, fn. 31 [44 L.Ed.2d at p. 154].)

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It is with this consideration foremost in mind that we must assess the arguments advanced by plaintiffs and amici curiae in support of our adoption of the "private attorney general" concept in our state. Those arguments may be briefly summarized as follows: In the complex society in which we live it frequently occurs that citizens in great numbers and across a broad spectrum have interests in common. These, while of enormous significance to the society as a whole, do not involve the fortunes of a single individual to the extent necessary to encourage their private vindication in the courts. Although there are within the executive branch of the government offices and **[***33]** institutions (exemplified by the Attorney General) whose function it is to represent the general public in such matters and to ensure proper enforcement, for various reasons the burden of enforcement is not always adequately carried by those offices and institutions, rendering some sort of private action imperative. Because the issues involved in such litigation are often extremely complex and their presentation time-consuming and costly, the availability of representation of such public interests by private attorneys acting *pro bono publico* is limited. Only through the appearance of "public interest" law firms funded by public and foundation monies, argue plaintiffs and amici, has it been possible to secure representation on any large scale. The firms in question, however, are not funded to the extent necessary for the representation of all such deserving interests, and as a result many worthy causes of this nature are without adequate representation under present circumstances. One solution, so the argument goes, within the equitable powers of the judiciary to provide, is the award of substantial attorneys fees to those public-interest litigants and their attorneys **[**1314]** **[***34]** (whether private attorneys acting *pro bono publico* or members of "public interest" law firms) who are successful in such cases, to the end that support may be provided for the representation of interests of similar character in future litigation.

In the several cases in which the courts, persuaded by these and similar arguments, have granted fees on the "private attorney general" **[*45]** theory, various formulations of the rule have appeared. In spite of variations in emphasis, all of these formulations seem to

suggest that there are three basic factors to be considered in awarding fees on this theory. These are in general: (1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the plaintiff, (3) the number of people standing to benefit from the decision. (See generally, Comment, *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 666-674.) n16 Thus it seems to be contemplated that if a trial court, in ruling that a motion for fees upon this theory, determines that the litigation has resulted in the vindication of a strong or societally important **[***35]** public policy, that the necessary costs of securing this result transcend the individual plaintiff's pecuniary interest to an extent requiring subsidization, and that a substantial number of persons stand to benefit from the decision, the court may exercise its equitable powers to award attorney fees on this theory.

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n16 A fourth factor, suggested by Justice Marshall in his dissenting opinion in *Alyeska*, was the extent to which "shifting [the cost of litigation] to the defendant would effectively place it on a class that benefits from the litigation." (421 U.S. at p. 285 [44 L.Ed.2d at p. 169].) The majority, however, in responding to this suggestion, point out that to impose this limitation would result in an expanded version of the "substantial benefit" rule rather than a true "private attorney general" rationale. "When Congress has provided for allowance of attorneys' fees for the private attorney general," the majority stated, "it has imposed no such common-fund conditions upon the award. The dissenting opinion not only errs in finding authority in the courts to award attorneys' fees, without legislative guidance, to those plaintiffs the courts are willing to recognize as private attorneys general, but also disserves that basis for fee shifting by imposing a limiting condition characteristic of other justifications." (421 U.S. at p. 265, fn. 39 [44 L.Ed.2d at p. 157].) We find this reasoning persuasive. The "private attorney general" theory must be accepted or rejected on its own merits -- i.e., as a theory rewarding the effectuation of significant policy -- rather than as a policy-oriented extension of the "substantial benefit" theory burdened with the limitations of that rationale.

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It is at once apparent that a consideration of the first factor may in instances present difficulties since it is couched in generic terms, contains no specific objective standards and nevertheless calls for a subjective evaluation by the judge hearing the motion as to whether the litigation before the court has vindicated a public policy sufficiently strong or important to warrant an award of fees. We are aware of the apprehension voiced in some critiques that trial courts, whose function it is to apply existing law, will be thrust into the role of making assessments of the relative strength or weakness of public policies furthered by their decisions and of determining at the same time which public policy should be encouraged by an award of fees, and which not -- a role closely approaching that of the legislative function. (See generally, Comment, **[*46]** *Equal Access, supra*, 122 U.Pa.L.Rev. 636, 670-671; Comment, *The Supreme Court, 1974 Term* (1975) 89 Harv.L.Rev. 1, 178-180.) n17 Since generally speaking the enactment of a statute entails in a sense the declaration of a public policy, it is arguable that, where it contains no provision for the awarding of attorney fees, **[***37]** the Legislature **[**1315]** was of the view that the public policy involved did not warrant such encouragement. A judicial evaluation, then, of the strength or importance of such statutorily based policy presents difficult and sensitive problems whose resolution by the courts may be of questionable propriety.

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n17 Thus in rejecting the private attorney general theory in *Alyeska*, the high court declared that such a rule "would make major inroads on a policy matter that Congress has reserved for itself" and that federal courts "are not free to fashion drastic new rules with respect to the allowance of attorneys' fees to the prevailing party in federal litigation or to pick and choose among plaintiffs and the statutes under which they sue and to award fees in some cases but

not in others, depending upon the courts' assessment of the importance of the public policies involved in particular cases." (*Alyeska Pipeline Co. v. Wilderness Society, supra,* 421 U.S. 240, 269 [44 L.Ed.2d 141, 159-160].)

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Such **[***38]** difficulties, however, are not present in the instant case. The trial court, in awarding fees to plaintiffs, found that the public policy advanced by this litigation was not one grounded in statute but one grounded in the *state Constitution*. Thus, the trial court concluded as a matter of law: "If as a result of the efforts of plaintiffs' attorneys rights created or protected by *the State Constitution* are protected to the benefit of a large number of people, plaintiffs' attorneys are entitled to reasonable attorney's fees from the defendants under the private attorney general equitable doctrine." (Italics added.) **(See fn. 18.)** Its factual findings, which are not here challenged, establish that the interests here furthered were *constitutional* in stature. n18 Those findings also make clear that the benefits flowing from this adjudication are to be widely enjoyed among the citizens of this **[*47]** state n19 and that the nature of the litigation was such that subsidization of the plaintiffs is justified in the event of their victory. n20 In these circumstances we conclude that an award of attorneys fees to plaintiffs and their attorneys was proper under **[***39]** the theory posited by the trial court.

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n18 The trial court found, inter alia, that "[the] plaintiffs . . . have proven that the sum of money available for public education in California is not being spent in accordance with the California Constitution" and that "[the] efforts of plaintiffs' attorneys . . . have assured that the billions of dollars spent every year in California on education will be spent in accordance with the California Constitution."

The determination that the public policy vindicated is one of constitutional stature will not, of course, be in itself sufficient to support an award of fees on the theory here considered. Such a determination simply establishes the first of the three elements requisite to the award (i.e., the relative societal importance of the public policy vindicated). (See text accompanying fn. 16, *ante*.) Only if it is also shown (2) that the necessity for private enforcement in the circumstances has placed upon the plaintiff a burden out of proportion to his individual stake in the matter, and (3) that the benefits flowing from such enforcement are to be widely enjoyed among the state's citizens -- only then will an award on the "private attorney general" theory be justified. **[***40]**

n19 The trial court found, for example, that "*Serrano* protects the right of every California child to receive a quality of education not dependent on the wealth of the school district in which he or she lives," and that "*Serrano* guarantees that the correlation between tax effort and educational quality will be equal for all children and taxpayers throughout the State of California."

n20 The trial court found, for example, that "[the] plaintiffs in *Serrano* individually did not have the resources to retain counsel to vindicate their rights to equitable educational and taxation systems," and that "[because] of the nature of the constitutional rights involved in this case, neither the California Attorney General nor any other public or governmental counsel could reasonably have been expected to institute litigation to vindicate the rights asserted by the plaintiffs in this case."

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So holding, we need not, and do not, address the question as to whether courts may award attorney fees under the "private attorney general" theory, where the litigation at hand has vindicated a public **[***41]** policy having a statutory, as opposed to, a constitutional basis.

The resolution of this question must be left for an appropriate case.

In sum, we hold that in the light of the circumstance of the instant case, the trial court acted within the proper limits of its inherent equitable powers when it concluded that reasonable attorneys fees should be awarded to plaintiffs' attorneys n21 on the "private attorney general" theory.

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n21 The propriety of a direct award to the plaintiffs' attorney, rather than to plaintiffs themselves, in the exercise of the court's equitable powers, is no longer questioned in the federal courts. (See *Central R. R. & Banking Co.* v. *Pettus* (1885) 113 U.S. 116, 124-125 [28 L.Ed. 915, 918, 5 S.Ct. 387]; *Brandenberger* v. *Thompson* (9th Cir. 1974) 494 F.2d 885, 889; *Miller* v. *Amusement Enterprises, Inc.* (5th Cir. 1970) 426 F.2d 534, 539 [16 A.L.R.Fed. 613]; *Townsend* v. *Edelman* (7th Cir. 1975) 518 F.2d 116, 122-123; see Comment, *Awards of Attorney's Fees to Legal Aid Offices* (1973) 87 Harv.L.Rev. 411, 422.) The equity powers of California courts are no less expansive in this respect. (See *Knoff* v. *City etc. of San Francisco, supra*, 1 Cal.App.3d 184, 203-204; *Horn* v. *Swoap* (1974) 41 Cal.App.3d 375, 383-384 [116 Cal.Rptr. 113].)

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IV

It should be clear from what we have said above that the eligibility of plaintiffs' **[**1316]** attorneys for the award of fees granted in this case is not affected under the "private attorney general" theory by the fact that plaintiffs are under no obligation to pay fees to their attorneys, or the further fact that plaintiffs' attorneys receive funding from charitable or **[*48]** public sources. Because the basic rationale underlying the "private attorney general" theory which we here adopt seeks to encourage the presentation of meritorious constitutional claims affecting large numbers of people, and because in many cases the only attorneys equipped to present such claims are those in funded "public interest" law firms, a denial of the benefits of the rule to such attorneys would be essentially inconsistent with the rule itself. (See generally Comment, *Awards of Attorney's Fees to Legal Aid Offices, supra*, 87 Harv.L.Rev. 411.) The propriety of such awards under statutory provisions is already well-established in this state (see *Horn* v. *Swoap, supra*, 41 Cal.App.3d 375, 383-384; *Trout* v. *Carleson* (1974) 37 Cal.App.3d 337, 342-343 [112 Cal.Rptr. 282]), **[***43]** and similar considerations are applicable when the award is made under the court's equitable powers.

V

We reject the contention of Public Advocates, Inc. n22 that the fee awarded it was inadequate in light of all the circumstances. It is urged that the trial court, in limiting its award to Public Advocates to the admittedly substantial amount of $ 400,000, failed to take adequate account of the novelty and extreme difficulty of this litigation, its extremely contingent character, the significance of the issues determined, and the standard which the award in this case will set for similar awards in future cases. However, the record clearly indicates that the court considered all of these factors, among many others, in making its determination. Fundamental to its determination -- and properly so n23 -- was a careful compilation of the time spent and reasonable hourly compensation of each attorney and certified law student involved in the presentation of the case. That compilation yielded a total dollar figure of $ 571,172.50, of which $ 225,662.50 was applicable to Public Advocates, Inc., $ 320,710 to Western Center on Law and Poverty, and $ 24,800 to **[*49]** time **[***44]** spent by certified law students. Using these figures as a touchstone, the court then took into consideration various relevant factors, of which some militated in favor of augmentation and some in favor of diminution. Among these factors were: (1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them; (2) the extent to which the

nature of the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award; (4) the fact that an award against the state would ultimately **[**1317]** fall upon the taxpayers; (5) the fact that the attorneys in question received public and charitable funding for the purpose of bringing law suits of the character here involved; n24 (6) the fact that the monies awarded would inure not to the individual benefit of the attorneys involved but the organizations by which they are employed; and (7) the fact that in the court's view the two law firms involved had approximately an equal share in the success of the litigation. Taking all of these factors into consideration, **[***45]** the court proceeded to make a total award in the amount of $ 800,000, to be shared equally by each of the two law firms representing plaintiffs.

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n22 As indicated above, Western Center on Law and Poverty does not join in this contention.

n23 We are of the view that the following sentiments of the United States Court of Appeals for the Second Circuit, although uttered in the context of an antitrust class action, are wholly apposite here: "The starting point of every fee award, once it is recognized that the court's role in equity is to provide just compensation for the attorney, must be a calculation of the attorney's services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts." (*City of Detroit* v. *Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 470; see also *Lindy Bros. Bldrs., Inc. of Phila.* v. *American R. & S. San. Corp.* (3d Cir. 1973) 487 F.2d 161, 167-169; see generally Dawson, *Lawyers and Involuntary Clients in Public Interest Litigation, supra*, 88 Harv.L.Rev. 849, especially pp. 925-929.) **[***46]**

n24 While as we have indicated the fact of public or foundational support should not have any relevance to the question of eligibility for an award, we believe that it may properly be considered in determining the size of the award.

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The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." (*Harrison* v. *Bloomfield Building Industries, Inc.* (6th Cir. 1970) 435 F.2d 1192, 1196; see *Mandel* v. *Hodges, supra*, 54 Cal.App.3d 596, 624.) We find no abuse of discretion here.

VI.

As indicated at the outset of this opinion, in *Serrano II* we specifically reserved jurisdiction for the purpose of determining plaintiffs' motion filed in this court on January 28, 1977, for attorneys' fees for services rendered in connection with the *Serrano II* appeal-which appeal was prosecuted only by certain officers of the County of Los Angeles and certain intervening school districts. (See 18 **[***47]** Cal.3d at p. 777.) On July 7, 1977, plaintiffs filed a letter request, which we treat as a supplementary motion, seeking additional fees for services rendered in opposing an unsuccessful petition for writ of certiorari filed by the aforesaid appellants in the United States Supreme Court. Finally, on October 31, 1977, plaintiffs filed a motion in this court for attorneys' fees for services **[*50]** rendered in connection with the instant appeal-which appeal was prosecuted only by certain state officers. All of these motions are now before us for decision. We have determined, however, in the interest of avoiding further delay in the finality of the instant decision while permitting all parties to be fully heard in these matters, that all of the aforesaid motions should be remanded to the trial court with directions to hear and determine them in light of the principles set forth in this opinion. (See *Bozung* v. *Local Agency Formation Com.* (1975) 13 Cal.3d 483, 485; *No Oil,*

Inc. v. *City of Los Angeles* (1975) 13 Cal.3d 486, 487.) In each instance, the award of attorneys' fees, if any, shall be made and assessed only against said defendants and appellants appealing **[***48]** in the respective appeal, or such of them as the trial court in the exercise of its equitable discretion shall determine.

The order concerning attorneys' fees filed August 1, 1975 is affirmed. The cause is remanded to the trial court with directions to hear and determine plaintiffs' motions for attorneys' fees filed in this court on January 28, 1977, July 7, 1977, and October 31, 1977, in conformity with the views herein expressed and to make and enter all necessary and appropriate orders.

DISSENTBY: RICHARDSON; CLARK

DISSENT: RICHARDSON, J. I respectfully dissent. In the absence of any statutory authority therefor, the majority awards substantial attorneys' fees to plaintiffs on the ground that plaintiffs' counsel acted in the capacity of "private attorneys general" in vindicating constitutional rights for a large segment of our state's population. I have previously, in my **[**1318]** dissenting opinion in *Serrano II* (*Serrano* v. *Priest* (1976) 18 Cal.3d 728, 777-785 [135 Cal.Rptr. 345, 557 P.2d 929]), expressed the reasons for my disagreement with the majority's premise that plaintiffs were denied equal protection of the laws under the state Constitution.

However, **[***49]** accepting as I must the *Serrano II* holding of a constitutional infringement, again with due deference, in considering the majority's proposed "private attorney general" doctrine, I find more persuasive the rationale of the United States Supreme Court expressed recently in *Alyeska Pipeline Co.* v. *Wilderness Society* (1975) 421 U.S. 240 [44 L.Ed.2d 141, 95 S.Ct. 1612], in which it declined to approve the doctrine in the absence of statutory guidance in this area. In passing, I note a **[*51]** touch of irony in the fact that very recently we likewise and unanimously refused an invitation to adopt the identical "private attorney general" doctrine herein approved by the majority, observing that "the doctrine is currently under examination by the United States Supreme Court . . . and, pending an announcement by the high court concerning its limits and contours on the federal level, we decline to consider its possible application in this state." (*D'Amico* v. *Board of Medical Examiners* (1974) 11 Cal.3d 1, 27 [112 Cal.Rptr. 786, 520 P.2d 10].) The Supreme Court now has spoken, but the majority, ignoring its awaited reasoning and lessons, adopts a rule which the high **[***50]** court carefully considered and rejected. To me, *Alyeska's* thesis is both compelling and fully applicable here for reasons which I briefly develop.

First, the high court noted that "Although . . . Congress has made specific provision for attorneys' fees under certain federal statutes, it has not changed the general statutory rule that allowances for counsel fees are limited to the sums specified by the costs statute." (421 U.S. at pp. 254-255 [44 L.Ed.2d at pp. 151-152].) The high tribunal, cognizant of broad congressional authority over the matter of attorneys' fees and court costs, reasoned further that "Under this scheme of things, it is apparent that the circumstances under which attorneys' fees are to be awarded and the range of discretion of the courts in making those awards are matters for Congress to determine." (*Id.*, at p. 262 [44 L.Ed.2d at p. 156], fn. omitted.)

Similarly, California, acting through its Legislature in parallel fashion, has expressly limited the manner of the award of attorneys' fees. "*Except as attorney's fees are specifically provided for by statute*, the measure and mode of compensation . . . is left to the agreement, express **[***51]** or implied, of the parties . . . ." (Code Civ. Proc., § 1021, italics added.) As with the Congress under the federal scheme, the California Legislature has clearly and "specifically provided . . . by statute" for attorneys' fees to be recovered in particular actions; as examples, in the Code of Civil Procedure, defamation (§ 836), condemnation, abandonment and dismissal (§ 1268.610), wage claim in municipal court (§ 1031), partition (§ 874.010, subd. (a)), and, in the Civil Code, dissolution of marriage (§ 4370). It has not elected as yet to provide for such recovery in actions such as the present one. The federal

and California patterns are closely parallel. I think the better procedure is to accept the *Alyeska* model and, by recognizing the demonstrated legislative interest, to refrain from developing our own nonstatutory bases for such awards, thus deferring to the Legislature in this area in the same manner as the Supreme Court has deferred to the Congress.

[*52] Second, I am further persuaded of the wisdom of the *Alyeska* reasoning by the high tribunal's anticipation of the very considerable difficulty which courts would experience in attempting to "pick and **[***52]** choose," among the multitudinous enactments, those particular statutes in which the public policy at issue is sufficiently "important **[**1319]** " to justify recovery on a "private attorney general" theory. The Supreme Court voiced its legitimate concern in these words: "[It] would be difficult, indeed, for the courts, without legislative guidance, to consider some statutes important and others unimportant and to allow attorneys' fees only in connection with the former." (421 U.S. at pp. 263-264 [44 L.Ed.2d at p. 157].) We face identical obstacles which are not lowered because they are of state rather than federal origin.

Furthermore, and finally, the majority's proposed refinement, limiting awards to cases involving *constitutional* rights, fails to avoid the pitfalls readily foreseen in *Alyeska*. A glance at our state Constitution discloses in article I alone, numerous "rights" of varying degrees of importance, ranging from the inalienable right to life, liberty and property (§ 1) to the right to fish in public waters (§ 25). Each of them presumably is a "constitutional" right.

Will the ambit of "rights" to which the doctrine applies be narrow or wide ranging? The **[***53]** majority recognizes the need for refinement and limitation of the principle but defers the difficult inquiry for an appropriate case," finding that the present matter has a constitutional rather than a statutory basis. One's lingering unease is not entirely allayed, however, since the majority in *Serrano II* in the course of its determination of those rights which it deemed "fundamental" for equal protection purposes stated, "Suffice it to say that we are constrained no more by inclination than by authority to gauge the importance of rights and interests affected by legislative classifications wholly through determining the extent to which they are 'explicitly or implicitly guaranteed' . . . by the terms of our compendious, comprehensive, and distinctly mutable state Constitution." (*Serrano* v. *Priest, supra,* 18 Cal.3d 728, 767, fn. omitted.) The inescapable meaning of the foregoing language is that the "importance," nature and quality of "constitutional rights," in the sense used by the majority, is "open ended" -- a right is not necessarily "fundamental" merely because it is incorporated in the state Constitution. If such is the case, it is exceedingly difficult **[***54]** to understand why, for purposes of applying the "private attorney general" concept, vindication of every such "constitutional" right will be considered important enough to qualify for an award of attorneys' fees.

[*53] In view of the foregoing considerations and uncertainties, and particularly because of the force and clear legislative expression of section 1021 of the Code of Civil Procedure, and the cogent analysis of the United States Supreme Court in *Alyeska*, it seems to me much wiser to await further legislative guidance on the matter of attorneys' fees. In the final analysis, and as a practical matter, it is the Legislature, presumably, that must find the funds to pay the bill. The absence of any specific legislative authorization is especially troublesome in this case, because substantial sums ($ 800,000) are awarded from the public treasury to publicly or charitably supported attorneys to whom the plaintiffs themselves legally owe nothing for services. From a policy standpoint, other factors may render this result entirely appropriate but those considerations should be legislatively expressed and defined.

I would reverse the judgment and deny the motion for attorneys' **[***55]** fees on appeal.

CLARK J., Dissenting. While joining the dissent of Justice Richardson, I add several considerations. Establishing an open-ended monetary-reward program to subsidize lawyers who successfully prosecute constitutional litigation, the **[**1320]** majority opinion usurps the legislative function.

The majority opinion points to neither constitutional nor statutory requirement that attorneys be compensated for successfully pursuing constitutional litigation in behalf of what they deem to be the public interest. Moreover, in the instant case the majority opinion frankly concedes that neither taxpayer nor school child is assured of any concrete benefit by the *Serrano II* decision. n1 (*Ante*, p. 41.) Rather, the majority decide for policy reasons, usually reserved to the Legislature, that constitutional litigation should be promoted in circumstances where the only real winners can be the subsidized attorneys. If the majority's goal is to promote constitutional litigation, they have chosen a productive formula. The majority's view that vindication of constitutional rights is important and that litigation to that end should be encouraged is **[*54]** laudable. **[***56]** But the majority's financial backing of that view constitutes an improper judicial prerogative that is unacceptable.

- - - - - - - - - - - - - - - - - -Footnotes- - - - - - - - - - - - - - - - - -

n1 Essentially *Serrano II* requires a reallocation of tax resources and of educational funding. As pointed out in my dissent (*Serrano II*, 18 Cal.3d 728, 785 [135 Cal.Rptr. 345, 557 P.2d 929]), the reallocation will primarily involve taking from the poor and giving to those more economically fortunate. While some taxpayers and some students may be expected to profit by *Serrano II* and others suffer, members of the two groups cannot be precisely identified. The award of attorney fees runs against the stte generally with no effort to apportion it between winners or losers.

- - - - - - - - - - - - - - - - - -End Footnotes- - - - - - - - - - - - - - - - - -

Until today, California judges have entertained neither the dream nor the power to endorse a particular social program, appropriate the requisite money from the public treasury to fund it, and then order payment to those deemed deserving. I have always thought such authority to be vested exclusively in the Legislature. **[***57]** However, if the judiciary is to partake of the legislative process, should we not do so in a deliberative, parliamentarian manner? Should we not appoint committees and hold public hearings to determine whether, in the absence of reward money, charitable foundations, public-spirited attorneys or tax funded law firms, like the one before us, will adequately seek to vindicate constitutional rights? We should also be informed whether the subsidy will likely produce results commensurate with the costs, and whether other methods of financing constitutional litigation might be more effective. And the ultimate step in the budget-making process must be taken -- to determine whether other important social programs are more in need of limited tax funds. We, of course, have done none of these things because, unlike the Legislature, we are neither equipped nor empowered to do so.

Finally, the majority in recognition of the dangers inherent in the private attorney general concept, purport to limit the concept to only those instances when constitutional rights are vindicated in the face of legislative or executive default. Not only is this a limitation without bounds, but the reward **[***58]** becomes nothing more -- nor is it less -- than a bounty for searching out and invalidating constitutionally vulnerable legislative or executive action. Our Constitution, of course, establishes a government of three equal branches -- legislative, executive, and judicial. Is it any more appropriate for the judiciary to offer a bounty for legislative or executive hide, than it is for those branches to seek ours?

AMENDMENTS TO SENATE BILL NO. 976

Amendment 1

On page 2, strike out lines 9 to 13, inclusive, and insert:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

Amendment 2

On page 2, line 17, strike out "municipal"

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On page 2, line 22, strike out ""Municipal political" and insert:

"Political

Amendment 4

On page 2, line 23, strike out "municipal"

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On page 2, strike out lines 29 to 31, inclusive, and insert:

a difference in the choice of candidates between those who are members of a protected class that are preferred by the voters in the protected class, and those who are not members of the protected class that are preferred by the rest of the electorate.

Amendment 6

On page 2, lines 32 and 33, strike out "A municipal political subdivision may not be subdivided" and insert:

An at-large method of election may not be imposed or applied

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On page 2, line 35, after "color" insert a comma

Amendment 8
On page 2, line 35, after "group" insert:

, as provided in Section 14028

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and this section

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On page 3, line 20, strike out "in place of at-large districts"

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CHAIR, BUDGET SUBCOMMITTEE ON GENERAL GOVERNMENT
CHAIR, LATINO LEGISLATIVE CAUCUS
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LOCAL GOVERNMENT
PUBLIC SAFETY
TRANSPORTATION

California State Senate

Senate Majority Leader

SENATOR RICHARD G. POLANCO
TWENTY-SECOND SENATORIAL DISTRICT

Fax

To:	Darren Chesin	From:	Saeed
Fax:	4452496	Pages:	(including cover)
Phone:		Date:	4/10
Re:	SB 976	CC:	

☑ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

COMMENTS:

Darren:

Here are some amendments that clarify the bill — nothing too broad. We'd like to amend in Committee.

Saeed

SACRAMENTO, CALIFORNIA 95814-4906 • (916) 445-3456 PHONE • (916) 445-0413 FAX

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California Legislature

JOINT LEGISLATIVE COMMITTEE ON PRISON CONSTRUCTION AND OPERATIONS

SENATOR RICHARD G. POLANCO
CHAIRMAN

STATE CAPITOL
ROOM 400
SACRAMENTO, CA 95814
(916) 324-6175
(916) 327-8817 FAX

GWYNNAE BYRD
PRINCIPAL CONSULTANT

May 2, 2001

The Honorable Don Perata
Chair, Senate Elections & Reapportionment Committee
State Capitol
Sacramento, CA 95814

Re: Senate Bill 976 (Polanco)

Dear Senator Perata:

Due to a previous commitment in my district, I am unable to attend the Senate Elections & Reapportionment Committee hearing on May 2nd, 2001. I would like the Chair's permission for a member of my staff, Saeed Ali, to present my Senate Bill 976 before your committee.

Your favorable consideration is very much appreciated. Thank you.

Sincerely,

RICHARD G. POLANCO
Majority Leader

RGP:ib

Sacramento Satellite Office
926 J Street
Suite 408
Sacramento, CA 95814
Tel: 916.443.7531
Fax: 916.443.1541

National Headquarters
Los Angeles Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512
Fax: 213.629.0266

Chicago Regional Office
189 W. Randolph Street
Suite 1405
Chicago, IL 60601
Tel: 312.782.1422
Fax: 312.782.1528

San Antonio Regional Office
140 E. Houston Street
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476
Fax: 210.224.5382

San Francisco Regional Office
000 Market Street
Suite 206
San Francisco, CA 94104
Tel: 415.348.6865
Fax: 415.348.6816

Washington, D.C. Regional Office
1717 K Street, NW
Suite 311
Washington, DC 20036
Tel: 202.293.2828
Fax: 202.293.2849

Albuquerque Program Office
1006 Central Avenue, NE
Suite 201
Albuquerque, NM 87106
Tel: 505.843.8323
Fax: 505.246.9161

Houston Program Office
Ripley House
4401 Lovejoy, Suite 23
Houston, TX 77003
Tel: 713.928.6720
Fax: 713.928.0506

Phoenix Program Office
202 E. McDowell Road
Suite 170
Phoenix, AZ 85004
Tel: 602.307.8948
Fax: 602.307-5928

Atlanta Campus Office
3330 Lenox Road
Suite 750
Atlanta, GA 30326
Tel: 404.504.7020
Fax: 404.504.7021

May 2, 2001 **By Fax: (916) 445-2496**

The Honorable Richard Polanco
Senate Committee on Elections and Reapportionment
California State Senate
State Capitol, Room 5046
Sacramento, CA 95814

Re: SB 976 (Polanco) - Support

Dear Senator Polanco:

The Mexican American Legal Defense and Educational Fund (MALDEF) supports SB 976, your bill to provide state law protection against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of Latinos and other protected groups on local governing boards. Statewide, the underrepresentation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction. Thus, SB 976 is consistent with our programmatic goal of increasing the opportunity to fully participate in the political process.

We appreciate the opportunity to lend our support to this bill. Please add our names to the list of supporting organizations, community leaders and legislators who view this bill as a positive step toward increasing political participation among full enfranchisement of all our citizens.

Sincerely,

Elizabeth E. Guillen

Elizabeth Guillen
Legislative Counsel

cc: Senate Committee on Elections and Reapportionment
Senator Don Perata, Chair
Darren Chesin, Consultant

Celebrating Our 32nd Anniversary

LRI HISTORY LLC
PO BOX 2166, PLACERVILLE, CA 95667
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM

Office of Senate Floor Analyses

SOURCE:
CALIFORNIA STATE ARCHIVES

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

SB 976

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

CONTINUED

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City ofWatsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles(1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are

CONTINUED

members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

7. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

CONTINUED

B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

C. One which combines at-large elections with district-based elections.

2. "District-based election" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

3. "Political subdivision" 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.

4. "Protected class" as a class of voters who are members of a minority race, color or language group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

5. "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

Comments:

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

CONTINUED

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

DLW:jk 5/8/01 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** **END** ****

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR: 16-10, 5/30/01
AYES: Alarcon, Chesbro, Dunn, Escutia, Figueroa, Karnette, Kuehl, Murray, Peace, Polanco, Romero, Scott, Soto, Speier, Torlakson, Vincent
NOES: Ackerman, Brulte, Haynes, Johannessen, Knight, McClintock, McPherson, Morrow, Oller, Poochigian

SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is

CONTINUED

elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City ofWatsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles(1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

CONTINUED

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

7. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

CONTINUED

Comments:

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

DLW:jk 6/1/01 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

****** END ******

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
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(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 976
Author: Polanco (D)
Amended: 6/11/02
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR: 24-10, 1/30/02
AYES: Alarcon, Alpert, Bowen, Burton, Chesbro, Costa, Dunn, Escutia, Figueroa, Karnette, Kuehl, Machado, Murray, O'Connell, Ortiz, Perata, Polanco, Romero, Sher, Soto, Speier, Torlakson, Vasconcellos, Vincent
NOES: Ackerman, Battin, Brulte, Johannessen, Johnson, Knight, McClintock, McPherson, Morrow, Poochigian

ASSEMBLY FLOOR: 47-25, 6/20/02 - See last page for vote

SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

Assembly Amendment allows a member of a protected class to file a court action pursuant to the bill under specified conditions and makes clarifying changes.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are

CONTINUED

generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City ofWatsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles(1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

CONTINUED

2. Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

3. Establishes that voter rights have been abridged 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.

4. Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

5. Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

6. Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

7. Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

8. Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

CONTINUED

9. Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

10. Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

11. Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision.

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

   C. One which combines at-large elections with district-based elections.

2. "District-based elections" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

3. "Political subdivision" 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.

CONTINUED

4. "Protected class" as 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.).

5. "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state.

Comments:

According to the author, this bill "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/20/02)

Mexican American Legal Defense and Educational Fund
American Civil Liberties Union

CONTINUED

ASSEMBLY FLOOR:

AYES: Alquist, Aroner, Calderon, Canciamilla, Cardenas, Cardoza, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dutra, Firebaugh, Florez, Frommer, Goldberg, Havice, Hertzberg, Jackson, Keeley, Kehoe, Koretz, Longville, Lowenthal, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Reyes, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Thomson, Vargas, Washington, Wayne, Wiggins, Wright, Wesson

NOES: Aanestad, Ashburn, Bates, Bogh, Briggs, Bill Campbell, John Campbell, Cogdill, Cox, Daucher, Harman, Hollingsworth, La Suer, Leach, Leonard, Leslie, Mountjoy, Robert Pacheco, Rod Pacheco, Pescetti, Richman, Runner, Strickland, Wyland, Zettel

DLW:jk 6/21/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

SB 976

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: ~~5/17/01~~ 6/11/02
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

24-7 1/30/02
SENATE FLOOR: ~~16-10, 5/30~~/01
AYES: Alarcon, Chesbro, Dunn, Escutia, Figueroa, Karnette, Kuehl, Murray, Peace, Polanco, Romero, Scott, Soto, Speier, Torlakson, Vincent
NOES: Ackerman, Brulte, Haynes, Johannessen, Knight, McClintock, McPherson, Morrow, Oller, Poochigian

all vote 47-25 6/20/02

SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is

CONTINUED

elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City ofWatsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles(1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

(a)

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

CONTINUED

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

7. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

CONTINUED

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision, ~~and does not include any method of district-based elections~~:

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

   C. One which combines at-large elections with district-based elections.

2. "District-based election" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

3. "Political subdivision" 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.

4. "Protected class" as a class of voters who are members of a ~~minority~~ race, color or language group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

5. "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in ~~the~~ a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

as defined in case law regarding enforcement of the ~~fed~~ federal Voting Rights Act (42 U.S.C. 1973 et seq.),

CONTINUED

Comments:

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 1/8/02)

Mexican American Legal Defense and Educational Fund
American Civil Liberties Union

DLW:jk 1/8/02 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

SENATE THIRD READING
SB 976 (Polanco)
As Amended June 11, 2002
Majority vote

SENATE VOTE:24-10

ELECTIONS	5-1	JUDICIARY	8-4
Ayes:	Longville, Cardenas, Steinberg, Keeley, Shelley	Ayes:	Corbett, Dutra, Jackson, Longville, Shelley, Steinberg, Vargas, Wayne
Nays:	Ashburn	Nays:	Harman, Bates, Robert Pacheco, Rod Pacheco

SUMMARY: Establishes criteria by which local at-large elections may be found to have abridged the rights of certain voters and allows for remedies. Specifically, this bill:

2) Provides that an at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class.

3) Establishes that voter rights have been abridged 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.

4) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

5) Provides that the existence 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. In making such a determination the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of the political subdivision in question shall be probative.

6) Establishes that methodologies for estimating group voting behavior, as approved in applicable federal cases to enforce the federal Voting Rights Act (VRA), may be used to prove that elections are characterized by racially polarized voting.

7) Specifies that proof of an intent on the part of voters or elected officials to discriminate against a protected class is not required and that the fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.

8) Specifies that other factors, including the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, are probative but not necessary factors to establish a violation of voting rights.

9) Provides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.

10) Provides reasonable attorney fees and litigation expenses for the prevailing plaintiff party in an enforcement action. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

11) Authorizes any voter who is a member of a protected class and who resides in a political subdivision that is accused of a violation of this legislation to file an action in the superior court of the county in which the political subdivision is located.

EXISTING LAW:

1) Provides for political subdivisions that encompass areas of

minority community, and ordered the city to switch to single-member district elections. The plaintiffs in the Watsonville case were successful in establishing the three preconditions created in Gingles.

As noted above, the Supreme Court in Gingles established three conditions that a plaintiff must meet in order to prove that at-large districts diluted the voting strength of minority communities. This bill requires that only two of those conditions be met, and does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate. As such, this bill would presumably make it easier to successfully challenge at-large districts. Given that this bill applies to all local districts that elect candidates at-large, the impact of this bill could be significant. If the minority community is not sufficiently geographically compact, it is unclear what benefit would result from eliminating at-large elections.

AB 8 (Cardenas) of 1999, which was vetoed, sought to eliminate the at-large election system within the Los Angeles Community College District. In his veto message, the Governor stated that the decision to create single-member districts was best made at the local level, and not by the state. AB 172 (Firebaugh) of 1999, which was vetoed, proposed to prohibit at-large elections for specified K-12 school districts. That bill was approved by the Assembly, but was amended to an unrelated subject in the Senate Education Committee.

Analysis Prepared by: Willie Guerrero / E., R. & C. A. /
(916) 319-2094

FN: 0005396

representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large), from districts formed within the political subdivision (district-based), or by some combination thereof.

2) Allows voters of the entire political subdivision to determine via a local initiative whether public officials are elected by divisions or by the entire political subdivision.

FISCAL EFFECT: None

COMMENTS: According to the author, this bill "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem. In California, we face a unique situation where we are all minorities. We need statutes to ensure that our electoral system is fair and open. This measure gives us a tool to move us in that direction: it identifies the problem, gives tools to deal with the problem and provides a solution."

In Thornburg v. Gingles (1986) 478 U.S. 30, the United States Supreme Court announced three preconditions that a plaintiff first must establish to prove that an election system diluted the voting strength of a protected minority group:

1) The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2) The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3) There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for minority candidates.

In Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1417, cert. denied, 489 US 1080, the United States Supreme Court affirmed that at-large elections of city council members in Watsonville, California had diluted the voting strength of the

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

   C. One which combines at-large elections with district-based elections.

2. "District-based election" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

3. "Political subdivision" 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.

4. "Protected class" as a class of voters who are members of a minority race, color or language group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

5. "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

CONTINUED

AMERICAN CIVIL LIBERTIES UNION

CALIFORNIA LEGISLATIVE OFFICE

Francisco Lobaco, *Legislative Director*
Valerie Small Navarro, *Legislative Advocate*
Rita M. Egri, *Legislative Assistant*

1127 Eleventh Street, Suite 534
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

May 7, 2001

The Honorable Richard Polanco
State Capitol, Room 5046
Sacramento, CA 95814

Re: SB 976 (Polanco) -- Support

Dear Senator Polanco:

The American Civil Liberties Union supports SB 976, your bill to provide state law protection against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of African-Americans, Latinos, and other protected groups on local governing boards. Statewide, the underrepresentation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction. Thus, we support SB 976 because it increases the opportunity to fully participate in the political process.

If you or your staff have any questions or comments, please call us.

Sincerely yours,

Francisco Lobaco

FRANCISCO LOBACO
Legislative Director

V. Small Navarro

VALERIE SMALL NAVARRO
Legislative Advocate

ACLU OF NORTHERN CALIFORNIA
Dorothy M. Ehrlich, *Executive Director*
1663 Mission Street • Suite 460
San Francisco • CA 94103

ACLU OF SOUTHERN CALIFORNIA
Ramona Ripston, *Executive Director*
1616 Beverly Blvd
Los Angeles • CA 90026
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Linda Hills, *Executive Director*
P.O. Box 87131
San Diego • CA 92138-7131
(619) 232-2121

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are

CONTINUED

(a)

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3 - Provide that a violation of the bill may be established if it is shown that racially polarized voting occurs in elections for governing board of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision

This SFA has NOT been filed.

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478 Version:

SB 976

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of local at-large election systems can be challenged in court.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

CONTINUED

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

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Specifics of SB 976:

1. Provides that a local political jurisdiction may not employ an at-large method of election if it results in the dilution or the abridgement of the rights of any registered voter who is a member of a minority race, color or language group, by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.

2. Provides that a violation of this prohibition is established if it is shown that racially polarized voting occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the same jurisdiction.

3. Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by the voters in the protected class, and in the choice of

CONTINUED

candidates and electoral choices that are preferred by voters in the rest of the electorate.

4. Specifies the methodology by which racially polarized voting may be established.

5. Specifies 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. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

7. Delineates other factors that may be introduced as evidence in order to establish a violation.

8. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Comments:

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified >)

>

OPPOSITION: (Verified >)

>

ARGUMENTS IN SUPPORT: >

ARGUMENTS IN OPPOSITION: >

CONTINUED

DLW:jk 5/7/01 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

SUPPORT/OPPOSITION: NONE RECEIVED

****** END ******

SENATE FLOOR ANALYSES WORKSHEET CONSULTANT: _____

THIRD READING / CONSENT / (DO AHEAD)

Bill No.: SB 926
Author: Polanco (D)
Amended: as chaptered
Vote Required:: 21

SEN. E&R COM.: Vote 5-3, Date 5/3/01
SEN. APPROP. COM.: Vote _____, Date _____ / 28.8 / NONFISCAL
SEN. FLOOR: Vote _____, Date _____ / ASSY FLOOR: Vote _____, Date _____

SUBJECT: Elections / Rights of Voters
SOURCE: Author

DIGEST:

(a)

ANALYSIS: (b) (c) (d)

FISCAL EFFECT: Appropriation: No Fiscal Committee: No Local: No
SUPPORT: Verification Date 5/3/01

OPPOSITION: Verifification Date 5/3/01

ARGUMENTS IN SUPPORT:

ARGUMENTS IN OPPOSITION:

SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT
Senator Don Perata, Chair

BILL NO:	**SB 976**	HEARING DATE:	**5/2/01**
AUTHOR:	**POLANCO**	ANALYSIS BY:	**Darren Chesin**
AMENDED:	**AS TO BE AMENDED**		
FISCAL:	**NO**		

SUBJECT:

At large and district elections: rights of voters

BACKGROUND:

Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

- The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

- The minority community was politically cohesive, in that minority voters usually supported minority candidates.

- There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

PROPOSED LAW:

This bill would establish criteria in state law through which the validity of local at-large election systems can be challenged in court. Specifically, this bill does all of the following:

(a) Provides that a local political jurisdiction may not employ an at-large method of election if it results in the dilution or the abridgement of the rights of any registered voter who is a member of a minority race, color or language group, by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.

(b) Provides that a violation of this prohibition is established if it is shown that racially polarized voting occurs in elections for members of the governing body or in elections incorporating other electoral choices by the voters of the same jurisdiction.

(c) Defines "racially polarized voting" as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by the voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.

(d) Specifies the methodology by which racially polarized voting may be established.

(e) Specifies 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.

(f) States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(g) Delineates other factors that may be introduced as evidence in order to establish a violation.

(h) Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

COMMENTS:

1. According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

2. This bill establishes criteria when met, that would serve to prohibit the use of at-large elections in local jurisdictions. Unlike the preconditions established by the Supreme Court in Thornburg v. Gingles, this bill does not require that the minority community be geographically compact or concentrated. If a minority community is not sufficiently geographically compact to ensure that it can elect one of their members from a district, what is gained by eliminating the at-large election system?

3. Several bills seeking to promote the use of district-based elections over at-large elections have been pursued in the past. Last year, AB 8 (Cardenas) which sought to eliminate the at-large election system within the Los Angeles Community College District, was vetoed by the Governor. In his veto message, the Governor stated that the decision to create single-member trustee areas is best made at the local level, not by the state. AB 172 (Firebaugh) of 1999, which would have prohibited at-large elections for specified K-12 school districts, passed this committee but died in the Senate Committee on Education.

Sued

POSITIONS:

Sponsor: Joaquin Avila, former President, MALDEF; public interest attorney

Support: None received

Oppose: None received

Senate Committee on Elections and Reapportionment
May 2, 2001

Proposed Consent Items

LRI HISTORY LLC
INTENT@LRIHISTORY.COM
WWW.LRIHISTORY.COM
(916) 442-7660

Senate Republican Policy Office

SOURCE:
CALIFORNIA STATE ARCHIVES

SENATE COMMITTEE ON ELECTIONS AND REAPPORTIONMENT
Senator Don Perata, Chair

BILL NO:	**SB 976**	HEARING DATE:	**5/2/01**
AUTHOR:	**POLANCO**	ANALYSIS BY:	**Darren Chesin**
AMENDED:	**AS TO BE AMENDED**		
FISCAL:	**NO**		

SUBJECT:

At large and district elections: rights of voters

BACKGROUND:

Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City of Watsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles (1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

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PROPOSED LAW:

This bill would establish criteria in state law through which the validity of local at-large election systems can be challenged in court. Specifically, this bill does all of the following:

(a) Provides that a local political jurisdiction may not employ an at-large method of election if it results in the dilution or the abridgement of the rights of any registered voter who is a member of a minority race, color or language group, by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.

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(d) Specifies the methodology by which racially polarized voting may be established.

(e) Specifies 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.

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(h) Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

COMMENTS:

1. According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

2. This bill establishes criteria when met, that would serve to prohibit the use of at-large elections in local jurisdictions. Unlike the preconditions established by the Supreme Court in Thornburg v. Gingles, this bill does not require that the minority community be geographically compact or concentrated. If a minority community is not sufficiently geographically compact to ensure that it can elect one of their members from a district, what is gained by eliminating the at-large election system?

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POSITIONS:

Sponsor: Joaquin Avila, former President, MALDEF; public interest attorney

Support: None received

Oppose: None received

SB 976 (Polanco) **Oppose**
File Item #
Senate Elections & Reapportionment: X-X
(AYE: NO: ABS:)
Senate Appropriations: X-X
(AYE: NO: ABS:]
Vote requirement:
Version Date: 2/23/01 (as proposed to be amended)

Quick Summary

Creates a new state Voting Rights Act that goes far beyond current Supreme Court interpretations of the federal Voting Rights law. It will unnecessarily increase voting rights litigation in the state.

Digest

Enacts the California Voting Rights Act of 2001.

Provides that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a political subdivision.

Provides that intent to discriminate against a protected class is not required to establish a violation of its provisions.

Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing plaintiff party reasonable attorneys fees.

Background

Existing law provides for public officials in political subdivisions are generally elected in at large elections.

Existing law generally permits the voters of the entire political subdivision to decide the manner of election for the entire district.

Most school boards and city councils are elected in at-large elections.

Using the federal Voting Rights Act, several lawsuits have forced local jurisdictions to change their voting procedures. In *Thornburg v. Gingles,* the U.S. Supreme Court set out a three-part test to determine whether at-large elections violated the Voting Rights Act:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.
2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.
3. There was racially polarized voting among the majority community, which usually voted for majority candidates rather than for the minority candidates.

Applying the *Gingles* test in *Gomez v. City of Watsonville,* the United States Supreme Court affirmed that the at-large elections for city council violated the Voting Rights Act by diluting Hispanic voting strength. The Court ordered single-member district elections.

Analysis

This bill is unnecessary. The federal Voting Rights Act already protects minorities from harm created by at-large elections.

This bill does not require geographic concentration for a finding of racially polarized voting. If a minority group is not geographically concentrated, how will single-member districts change the results?

It also permits other factors to be considered including use of electoral devices or other voting practices or procedures; the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.

Add those factors to the provisions permitting attorneys' fees and this bill is the full-employment act for voting rights act lawyers and creates a whole new area for trial lawyers to have a field day.

Support & Opposition Received

None received.

Consultant: *Cynthia Bryant*

racially polarized voting - when 2 groups vote differently

- must prove racial bloc voting
- if proven, ct. imposes remedy.

SB 976
SENATE E&R COMMITTEE
WEDNESDAY, MAY 2, 2001, 9:30 A.M.
ROOM 3191

STATEMENT

MY NAME IS SAEED ALI AND, WITH THE CHAIR'S PERMISSION, I AM PRESENTING THIS MEASURE AT THE REQUEST OF SENATOR POLANCO WHO IS ABSENT TODAY.

THIS BILL ADDRESSES THE PROBLEM OF RACIAL BLOC VOTING. BLOCK VOTING, PARTICULARLY WHEN ASSOCIATED WITH RACIAL OR ETHNIC GROUPS IS HARMFUL TO A STATE LIKE CALIFORNIA DUE TO ITS DIVERSITY.

SN 976 PROVIDES A JUDICIAL PROCESS AND CRITERIA TO DETERMINE IF THE PROBLEM OF BLOCK VOTING CAN BE ESTABLISHED. THEN, THE BILL PROVIDES COURTS WITH APPROPRIATE LEGAL REMEDIES FOR THE PROBLEM. ONE OF THE REMEDIES IS ELECTION BY DISTRICT.

SPECIFICALLY, THIS BILL DOES ALL OF THE FOLLOWING:

1. PROVIDES THAT A LOCAL POLITICAL JURISDICTION MAY NOT DILUTE OR ABRIDGE THE RIGHTS OF ANY REGISTERED VOTER WHO IS A MEMBER OF A MINORITY RACE, COLOR OR LANGUAGE GROUP, BY IMPAIRING THEIR ABILITY TO ELECT CANDIDATES OF THEIR CHOICE OR BY IMPAIRING THEIR ABILITY TO INFLUENCE THE OUTCOME OF AN ELECTION.

2. PROVIDES THAT A VIOLATION OF THIS PROHIBITION IS ESTABLISHED IF IT IS SHOWN THAT RACIALLY POLARIZED VOTING OCCURS IN ELECTIONS FOR MEMBERS OF THE GOVERNING BODY OR IN ELECTIONS INCORPORATING OTHER ELECTORAL CHOICES BY THE VOTERS OF THE SAME JURISDICTION.

3. DEFINES "RACIALLY POLARIZED VOTING" AS VOTING IN WHICH THERE IS A DIFFERENCE IN THE CHOICE OF CANDIDATES OR OTHER ELECTORAL CHOICES THAT ARE PREFERRED BY THE VOTERS IN THE PROTECTED CLASS, AND IN THE CHOICE OF CANDIDATES AND ELECTORAL CHOICES THAT ARE PREFERRED BY

VOTERS IN THE REST OF THE ELECTORATE.

4. SPECIFIES THE METHODOLOGY BY WHICH RACIALLY POLARIZED VOTING MAY BE ESTABLISHED.

5. SPECIFIES 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. AUTHORIZES A COURT TO IMPOSE APPROPRIATE REMEDIES, INCLUDING DISTRICT-BASED ELECTIONS, AND TO AWARD A PREVAILING NON-STATE OR NON-LOCAL GOVERNMENT PLAINTIFF PARTY REASONABLE ATTORNEY'S FEES CONSISTENT WITH SPECIFIED CASE LAW AS PART OF THE COSTS.

COMMITTEE ANALYSIS

THE STAFF ANALYSIS POINTS OUT TWO ISSUES (ITEMS 2 AND 3)

1. THE ANALYSIS ASKS: IF A MINORITY COMMUNITY IS NOT SUFFICIENTLY GEOGRAPHICALLY COMPACT TO MEET THE THORNBURG V GINGLES REQUIREMENT SO THAT THE COMMUNITY CAN ELECT ONE OF THEIR MEMBERS FROM A DISTRICT, WHAT IS GAINED BY ELIMINATING THE AT-LARGE ELECTION SYSTEM?

THERE ARE THREE ANSWERS TO THIS QUESTION.
FIRST, THORNBURG V GINGLES IS LIMITED IN ITS SCOPE. IT APPLIES TO APPLICATIONS OF THE FEDERAL VOTING RIGHTS ACT. ANY STATE LAWS THAT EXPAND VOTING RIGHTS BEYOND THE FEDERAL STATUTES ARE NOT IMPACTED BY THE CASE.

SECOND, ALTHOUGH A PARTICULAR GROUP MAY BE TOO SMALL TO ENSURE THAT ITS OWN CANDIDATE IS ELECTED, THE GROUP MAY STILL BE ABLE TO *FAVORABLY INFLUENCE* THE ELECTION OF A CANDIDATE. THIS INFLUENCE MAY ONLY COME ABOUT WITH DISTRICT RATHER THAN AT-LARGE ELECTIONS.

THIRD, AND FINALLY, THIS LEGISLATURE CAN AND DOES ENACT LAWS THAT PROVIDE CALIFORNIANS WITH BETTER AND MORE

SPECIFIC STATUTES THAN THOSE IN SIMILAR FEDERAL LEGISLATION. FOR EXAMPLE, WE CREATED THE UNRUH CIVIL RIGHTS ACT AS WE NEEDED TO PROVIDE BETTER AND MORE SPECIFIC STATUTES SUITED TO OUR NEEDS THAN THOSE IN FEDERAL CIVIL RIGHTS STATUTES.

MEMBERS, AFTER THE 2000 CENSUS, IN CALIFORNIA, WE ARE FACING A UNIQUE SITUATION WHERE WE ARE ALL MINORITIES. WE NEED STATUTES TO ENSURE THAT OUR ELECTORAL SYSTEM IS FAIR AND OPEN. THIS MEASURE GIVES US A TOOL TO MOVE US IN THAT DIRECTION: IT IDENTIFIES THE PROBLEM, GIVES TOOLS TO DEAL WITH THE PROBLEM AND PROVIDES A SOLUTION.

2. FINALLY, THE COMMITTEE ANALYSIS REFERENCES SEVERAL BILLS THAT DEALT WITH PROMOTING THE USE OF DISTRICT-BASED ELECTIONS OVER AT-LARGE ELECTIONS.

THIS MEASURE IS DIFFERENT: IT DOES NOT SAY THAT DISTRICT ELECTIONS ARE THE ONLY MEANS. THIS MEASURE SAYS THAT WE NEED TO ATTACK BLOCK VOTING AND, IF BLOCK VOTING IS ESTABLISHED IN A COURT OF LAW, THEN IT ALLOWS A COURT TO IMPOSE REMEDIES INCLUDING DISTRICT ELECTIONS. AS YOU CAN SEE, THIS BILL IS QUITE DIFFERENT.
I HAVE TWO WITNESSES: JOAQUIN AVILA, A DISTINGUISHED VOTING RIGHTS ATTORNEY, FORMER GENERAL COUNSEL AT MALDEF AND A MACARTHUR FELLOW AND ALAN CLAYTON, LA COUNTY CHICANO EMPLOYEES ASSOCIATION and the CALIFORNIA LATINO REDISTRICTING COALITION.

I REQUEST AN AYE VOTE.

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

SB 976

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

CONTINUED

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City ofWatsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles(1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

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Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are

CONTINUED

members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

7. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

CONTINUED

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

DLW:jk 5/8/01 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** **END** ****

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: SB 976
Author: Polanco (D)
Amended: 5/1/01
Vote: 21

SENATE ELECTIONS & REAP. COMMITTEE: 5-3, 5/2/01
AYES: Alpert, Burton, Murray, Ortiz, Perata
NOES: Brulte, Johnson, Poochigian

SENATE FLOOR: 16-10, 5/30/01
AYES: Alarcon, Chesbro, Dunn, Escutia, Figueroa, Karnette, Kuehl, Murray, Peace, Polanco, Romero, Scott, Soto, Speier, Torlakson, Vincent
NOES: Ackerman, Brulte, Haynes, Johannessen, Knight, McClintock, McPherson, Morrow, Oller, Poochigian

SUBJECT: Elections: rights of voters

SOURCE: Author

DIGEST: This bill establishes criteria in state law through which the validity of at-large election systems can be challenged in court.

ANALYSIS: Existing law provides that the governing boards of local political jurisdictions (i.e., cities, counties, and school or other districts) are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based) or some combination thereof.

Existing law generally permits the voters of the entire local political jurisdiction to determine via ballot measure whether the governing board is

CONTINUED

elected at-large or by districts. The processes for placing one of these measures on the ballot varies according to the type of jurisdiction.

Most cities and school or other districts in California elect their governing boards using an at-large election system. The exceptions, those that elect by district, tend to be the very large cities and school districts.

One of the most frequently cited reasons for changing from at-large to district elections is the need to overcome a history or pattern of racial inequity. In some instances, election by districts may actually be required by the federal Voting Rights Act. In Gomez v. City ofWatsonville (1988), the United States Supreme Court affirmed that the at-large elections of city council members in Watsonville, California had diluted the voting strength of the minority community, and ordered the city to switch to single-member district elections. In Thornburg v. Gingles(1986), the Supreme Court announced three preconditions that a plaintiff first must establish to prove such a claim. The plaintiffs in the Watsonville case were successful in establishing these conditions, which were:

1. The minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate.

2. The minority community was politically cohesive, in that minority voters usually supported minority candidates.

3. There was racially polarized voting among the majority community, which usually (but not necessarily always), voted for majority candidates rather than for the minority candidates.

Specifics of SB 976:

1. Enacts the California Voting Rights Act of 2001.

2. Provides that an at-large method of election may not be imposed or applied in a manner that results in the dilution or abridgement of the right of registered voters who are members of a protected class by impairing their ability to elect candidates of their choice or to influence the outcome of an election.

CONTINUED

3. Provides that a violation of the bill is to be established if it is shown that racially polarized voting occurs in election for governing boards of a political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4. Specifies that the occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on this bill. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

5. States that proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

6. Specifies that other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

7. Authorizes a court to impose appropriate remedies, including district-based elections, and to award a prevailing non-state or non-local government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

CONTINUED

The bill defines:

1. "At-large method of election" as any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

   A. One in which the voters of the entire jurisdiction elect the members to the governing body.

   B. One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

   C. One which combines at-large elections with district-based elections.

2. "District-based election" as a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

3. "Political subdivision" 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.

4. "Protected class" as a class of voters who are members of a minority race, color or language group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.).

5. "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

CONTINUED

Comments:

According to the author, this bill addresses the problems associated with block voting, particularly those associated with racial or ethnic groups. This is important for a state like California to address due to its diversity.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

DLW:jk 6/1/01 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** **END** ****

BILL NUMBER: SB 976 INTRODUCED

BILL TEXT

INTRODUCED BY Senator Polanco

FEBRUARY 23, 2001

An act to add Chapter 1.5 (commencing with Section 14025) to Division 14 of the Elections Code, relating to voting rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 976, as introduced, Polanco. Elections: rights of voters.

Existing law provides for political subdivisions that encompass ~~municipal~~ areas of representation within the state. With respect to these ~~municipal~~ areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or from districts formed within the political subdivision (district-based).

Existing law generally allows the voters of the entire political subdivision to determine whether the elected public officials are elected by divisions or by the entire political subdivision.

This bill would provide that a ~~municipal~~ political subdivision may not ***may dilute or abridge*** ~~be subdivided in a manner that results in a denial or abridgment of~~ the right of a registered voter to vote on account of membership in a minority race, color or language group.

This bill would provide that a violation of its provisions shall be established if it is shown that racially polarized voting, as defined, occurs in elections for governing board members of a municipal political subdivision. It would provide that an intent to

discriminate against a protected class, as defined, is not required to establish a violation of this bill.

This bill would authorize a court to impose appropriate remedies, including district-based elections, and to award a prevailing nonstate or nonlocal government plaintiff party reasonable attorney's fees consistent with specified case law as part of the costs.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 1.5 (commencing with Section 14025) is added to Division 14 of the Elections Code, to read:

CHAPTER 1.5. RIGHTS OF VOTERS

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

~~(a) "At-large method of election" means any method of electing members to the governing body of a municipal political subdivision in which the voters of the entire jurisdiction elect the members of the governing body, and does not include any method of district-based elections.~~

a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire political subdivision elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the political subdivision and the voters of the entire political subdivision elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

(b) "District-based election" means a method of electing members to the governing body of a ~~municipal~~ political subdivision in which the candidate must reside within an election district that is a divisible part of the ~~municipal~~ political subdivision and is elected only by voters residing within that election district.

~~(c) "Minority language group" means persons who are American Indian, Asian American, Alaskan Native, or of Spanish heritage~~*~~", as these groups are referenced and defined in the federal Voting Rights Act, 42 U.S.C. 1973, et seq..~~*

~~(d)~~ *(c)* "~~Municipal p~~ *P*olitical subdivision" means a geographic area of representation created for the provision of ~~municipal~~ government services, including, but not limited to, a city, a school district, a community college district, or other ~~local~~ district *organized pursuant to the laws of the State of California.*

(e) "Protected class" means a class of voters who are members of a minority race, color or language group*, as this class is referenced and defined in the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et seq.*

(f) "Racially polarized voting" means voting in which there is ~~consistent difference in the way voters of an identifiable class based on a minority race, color or language group vote and the way the rest of the electorate vote in a municipal political subdivision.~~

a difference in the choice of candidates or other electoral choices ~~*between those who are members of a protected class*~~ *that are preferred by* ~~*the*~~ *voters in the protected class, and* ***in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.*** ~~*those who are not members of the protected class that are preferred by the rest of the electorate.*~~ *The methodologies* ***for estimating group voting behavior*** *as approved in applicable federal cases to enforce the federal Voting Rights Act, 42 U.S.C. Sec. 1973, et. seq. to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.*

14027. ~~A municipal political subdivision may not be subdivided in a manner that results in a denial or abridgment of the right of any registered voter to vote on account of membership in a minority race,~~

~~color or language group.~~ *An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgement of the rights of any registered voter who is a member of the protected class, as provided in section 14028,* ***by impairing their ability to elect candidates of their choice or by impairing their ability to influence the outcome of an election.***

14028. (a) A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of a ~~municipal~~ political subdivision *or in elections incorporating other electoral choices by the voters of the political subdivision.*

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class ***or elections involving ballot measures, or other electoral choices which affect the rights and privileges of members of the protected class.*** One circumstance that may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a ~~municipal~~ political subdivision that is the subject of an action based upon Section 14027 *and this section.* ***In multi-seat at-large elections, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by those candidate(s) from members of the protected class shall be the basis for the racial polarization analysis.***

(c) 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.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as the history of discrimination, the use of electoral devices ***or other voting practices or procedures that may*** ~~*which*~~ *enhance the dilutive effects of at-large elections, denial of access to* ***those processes determining which groups of candidates will receive financial or other support in a given election*** ~~*candidate slating groups*~~*, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.*

14029. Upon a finding of a violation of Section 14027 *and section 14028*, the court shall implement appropriate remedies, including the imposition of district-based elections ~~in place of at-large districts~~, that are

tailored to remedy the violation.

14030. In any action to enforce Section 14027, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, ~~at~~ *including* pages 48 and 49, as part of the costs. Prevailing plaintiff parties, other than the state or political subdivision thereof, shall recover their expert witness fees and expenses as part of the costs.

14031 The California Voting Rights Act of 2001 is enacted to enforce Article 1, Section 7 and Article 2, Section 2 of the California State Constitution.

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04/30/01 3:06 PM
RN0112871 PAGE 1
Substantive

AMENDMENTS TO SENATE BILL NO. 976

Amendment 1

On page 2, strike out lines 9 to 13, inclusive, and insert:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision, and does not include any method of district-based elections:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One which combines at-large elections with district-based elections.

Amendment 2

On page 2, line 15, strike out "municipal"

Amendment 3

On page 2, line 17, strike out "municipal"

Amendment 4

On page 2, strike out lines 19 to 21, inclusive, in line 22, strike out "(d) "Municipal political" and insert:

(c) "Political

Amendment 5

On page 2, line 23, strike out "municipal"

Amendment 6

On page 2, line 25, strike out "local district" and insert:

district organized pursuant to state law

Amendment 7

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acceptance 5/1/01

C31

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04/30/01 3:06 PM
RN0112871 PAGE 2
Substantive

On page 2, line 26, strike out "(e)" and insert:

(d)

Amendment 8
On page 2, line 27, after "group" insert:

, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.)

Amendment 9
On page 2, strike out lines 28 to 35, inclusive, and insert:

(e) "Racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in the protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that results in the dilution or the abridgment of the rights of registered voters who are members of the protected class, as provided in Section 14028, by impairing their ability to elect candidates of their choice of their ability to influence the outcome of an election.

Amendment 10
On page 3, lines 3 and 4, strike out "municipal political subdivision" and insert:

political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision

Amendment 11
On page 3, strike out lines 5 to 11, inclusive, and insert:

(b) The occurrence of racially polarized voting shall be determined from examining results of elections in which candidates are members of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of the protected class. One circumstance that

may be considered is the extent to which candidates who are members of a protected class have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multi-seat at-large districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative group-wide support received by candidates from members of the protected class shall be the basis for the racial polarization analysis.

Amendment 12
On page 3, between lines 17 and 18, insert:

(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of the protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns, may also be introduced as evidence but these factors are not necessary to establish a violation of this section.

Amendment 13
On page 3, line 18, after "14027" insert:

and Section 14028

Amendment 14
On page 3, line 20, strike out "in place of at-large districts"

Amendment 15
On page 3, line 25, strike out "at" and insert:

including

Amendment 16
On page 3, below line 28, insert:

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section of Article II of the California Constitution.

- 0 -

MALDEF
Mexican American Legal Defense and Educational Fund

OK to file

Sacramento Satellite Office
926 J Street
Suite 406
Sacramento, CA 95814
Tel: 916.445.7631
Fax: 916.443.1541

National Headquarters
Los Angeles Regional Office
634 S. Spring Street
Los Angeles, CA 90014
Tel: 213.629.2512
Fax: 213.629.0266

Chicago Regional Office
188 W. Randolph Street
Suite 1406
Chicago, IL 60601
Tel: 312.782.1422
Fax: 312.782.1128

San Antonio Regional Office
140 E. Houston Street
Suite 300
San Antonio, TX 78205
Tel: 210.224.5476
Fax: 210.224.5382

San Francisco Regional Office
634 Market Street
Suite 206
San Francisco, CA 94104
Tel: 415.543.5598
Fax: 415.543.5816

Washington, D.C. Regional Office
1717 K Street, NW
Suite 311
Washington, DC 20036
Tel: 202.293.2828
Fax: 202.293.2849

Albuquerque Program Office
1009 Central Avenue, NE
Suite 201
Albuquerque, NM 87106
Tel: 505.848.8888
Fax: 505.246.9161

Houston Program Office
Ripley House
4401 Lovejoy, Suite 23
Houston, TX 77003
Tel: 713.928.6789
Fax: 713.928.6506

Phoenix Program Office
302 E. McDowell Road
Suite 170
Phoenix, AZ 85004
Tel: 602.307.5018
Fax: 602.307-5928

Atlanta Census Office
3535 Lenox Road
Suite 750
Atlanta, GA 30326
Tel: 404.504.7020
Fax: 404.504.7021

May 2, 2001 **By Fax: (916) 445-2496**

The Honorable Richard Polanco
Senate Committee on Elections and Reapportionment
California State Senate
State Capitol, Room 5046
Sacramento, CA 95814

Re: SB 976 (Polanco) - Support

Dear Senator Polanco:

The Mexican American Legal Defense and Educational Fund (MALDEF) supports SB 976, your bill to provide state law protection against the vote dilution caused by racially polarized voting. When such voting patterns persist in at-large elections, they result in severe underrepresentation of Latinos and other protected groups on local governing boards. Statewide, the underrepresentation of minority groups on those boards has been dismally and consistently low for decades. Where racially polarized voting has led to the exclusion of minority-preferred candidates, this law provides for changes in the electoral system so that it more fairly represents the constituencies within each jurisdiction. Thus, SB 976 is consistent with our programmatic goal of increasing the opportunity to fully participate in the political process.

We appreciate the opportunity to lend our support to this bill. Please add our names to the list of supporting organizations, community leaders and legislators who view this bill as a positive step toward increasing political participation among full enfranchisement of all our citizens.

Sincerely,

Elizabeth E. Guillen

Elizabeth Guillen
Legislative Counsel

cc: Senate Committee on Elections and Reapportionment
Senator Don Perata, Chair
Darren Chesin, Consultant

Celebrating Our 32nd Anniversary
Protecting and Promoting Latino Civil Rights

No. S263972

In the

Supreme Court

of the

State of California

Pico Neighborhood Association, *et al.,*
Plaintiffs and Petitioners,
v.
City of Santa Monica,
Defendant and Respondent,

[PROPOSED] ORDER GRANTING PETITIONERS' MOTION FOR JUDICIAL NOTICE

After a Decision of the Court of Appeal
Second Appellate District, Division Eight
Case No. BC295935 (DEPUBLISHED)

Appeal from the Superior Court of Los Angeles
Case No. BC616804
Honorable Yvette M. Palazuelos

The Court grants Petitioner's motion and takes judicial notice of the legislative record of Senate Bill 976 (2001-02).

IT IS SO ORDERED.

Dated: _____, 2021

_____
The Honorable Tani Cantil-Sakauye
Chief Justice of the Supreme
Court of California

PROOF OF SERVICE

I am a citizen of the United States, am over the age of 18 years, and not a party to the within entitled action. My business address is 155 Grand Avenue, Suite 900, Oakland, CA 94612. I declare that on the date hereof I served the following documents:

PETITIONERS' MOTION FOR JUDICIAL NOTICE; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KEVIN SHENKMAN; AND [PROPOSED] ORDER THEREON

☒ **By Electronic Service:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service address(es) as set forth below

Via Electronic Filing/Submission:
(Via electronic submission through the TrueFiling web page at www.truefiling.com)

Appellant's Counsel

CITY OF SANTA MONICA
GEORGE CARDONA (135439)
Interim City Attorney
George.Cardona@smgov.net
1685 Main Street, Room 310
Santa Monica, CA 90401
Telephone: (310) 458-8336

GIBSON, DUNN & CRUTCHER LLP
THEODORE J. BOUTROUS JR. (132099)
TBoutrous@gibsondunn.com
MARCELLUS A. MCRAE (140308)
MMcrae@gibsondunn.com
KAHN A. SCOLNICK (228686)
KScolnick@gibsondunn.com
TIAUNIA N. HENRY (254323)
THenry@gibsondunn.com
DANIEL R. ADLER (306924)
DAdler@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520

☒ BY U.S. MAIL: By placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Oakland, California addressed as set forth below.

HON. YVETTE M. PALAZUELOS
Judge Presiding
Los Angeles County Superior Court
312 North Spring Street
Los Angeles, CA 90012
Telephone: (213) 310-7009

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 12th day of May 2021, at Oakland, California.

Stuart Kirkpatrick