SECTION 12

MISCELLANEOUS

Wednesday, September 14, 2011

2011 California Voting Rights Act: An $8 Million Bill for Taxpayers

By Carolyn Schuk

Nearly ten years after the California Voting Rights Act (CVRA) was passed into law, CVRA lawsuits and threats of lawsuits have cost California taxpayers over $8 million.

When the 2002 law was enacted, municipalities didn't recognize its implications, Fresno County schools superintendent Larry Powell told the Fresno Bee in 2009. Things changed in 2003, when Robert Rubin and Joaquin Avila of the San Francisco-based Lawyers Committee for Civil Rights (LCCR) – drafters of the law – started bringing CVRA lawsuits against all kinds of elected bodies.

Most California school districts use at-large election systems and are, thus, potential LCCR targets – a 2006 report by the Latino Issues Forum identified 158 school districts where Latinos were "under-represented." Despite California's diversity and status as a minority-majority state, the LCCR's lawsuits and threats appear to focus almost exclusively on electing Latinos to public office.

For example, the LCCR sued the Tulare Local Healthcare District even though its five-member governing board includes two Indian-Americans, one Latino, and an African-American. The claim? That Latinos – one third of the district's residents – were "shortchanged."

The LCCR also threatened Gustine Unified School District in Merced County with a CVRA lawsuit, even though the district has a large Portuguese-American population and three of the district's five trustees – a majority – are Portuguese, according to a Feb. 24, 2010 Modesto Bee report.

CVRA lawsuits have been brought against the City of Modesto, Madera Unified School District, Hanford Joint Union School District, the Tulare Local Healthcare District and the San Mateo County Board of Supervisors – all by the LCCR. And many other California elected bodies have been threatened by the LCCR (or an LCCR law firm partner) including Ceres, Gustine, Whittier and Santa Clara. In all cases, the LCCR demanded district elections replace at-large systems.

The outcomes of these lawsuits aren't encouraging for elected bodies. Indeed, the LCCR boasts of its record. "We have filed five cases under the…California Voting Rights Act, and have prevailed in each ruling," says the organization's website.

The first settled CVRA lawsuit was Gomez v. Hanford Joint Union School District, where the LCCR charged that polarized voting blocked Latinos from election to the school board. Nearly 40 percent of the district's residents were Latino, but there hadn't been a Latino school board member in two decades. Although the district chose to settle, it nonetheless had to pay the $110,000 in plaintiffs' legal fees.

In Sanchez v. The City of Modesto, the LCCR charged that Modesto's at-large system was blocking the election of Latinos, evidenced by the fact that the city had had only one Latino Council member since 1991, while the city's Latino population is more than 25 percent.

Stanislaus County Superior Court Judge, Roger Beauchesne, sided with the city, ruling that the CVRA was unconstitutional. On appeal, the 5th District Court of Appeals struck down

Beauchesne's ruling. The city appealed, but both the California and the U.S. Supreme Courts refused to hear the case. Modesto settled, voting on a ballot measure to change to district elections, and paying $3 million in legal fees to the plaintiffs. Modesto also paid $1.7 million to its own lawyers.

In the 2008 case Rey v. Madera Unified School District, the LCCR charged that while more than 80 percent of the district's students were Latino, only one of seven at-large school board members were. The city agreed to draw district lines, rather than going to court – a district spokesman called it a "business decision."

Nonetheless, the LCCR asked the court to throw out the coming election, and the Judge ruled against the school board. This ruling officially made the district the losing party, and required it to pay $1.2 million in plaintiff's lawyer fees.

In June 2010, the Tulare Regional Medical Center agreed to pay a $500,000 settlement and to hold a referendum on changing to district elections. However, if voters oppose district elections, the LCCR has indicated it intends to file a new lawsuit.

As the only county in California that still elects its Board of Supervisors at-large, San Mateo County was a predictable target for the LCCR. Sure enough, in 2010 San Mateo received the LCCR's standard threat letter from then-LCCR Community Initiatives Director, Jane Kim. (In November, Kim was elected to the San Francisco Board of Supervisors in District 6 – which includes Hunters Point, a site that continues to be actively talked up as a location for a 49ers football stadium).

Although non-Latino whites are a minority in San Mateo County (43 percent), four of the five current supervisors are white. The fifth is an African-American appointed to a vacant seat in 1999 – something LCCR Director Rubin dismisses as indicating a "plantation mentality," according to a May 14, 2011 New York Times report.

Despite the recommendation of the county's charter review committee and a civil grand jury that San Mateo put the question of district elections to voters, the Board of Supervisors voted 4-1 against the referendum.

In a demonstration of myopia likely to earn San Mateo County no points in any future legal battle, Supervisor Adrienne Tissler was emphatic in supporting the status quo. "I believe we shouldn't change because we have the best of both worlds, we have also been very fortunate in this County that we have a reputation for being a sterling County," she said, according to a report posted July 10, 2010 in Coastinsider.com.

Predictably, in April 2011, the LCCR filed a lawsuit against San Mateo County. The county has asked San Mateo County Superior Court to dismiss the case.

Want to know more about the California Voting Rights Act? The California League of Cities (www.cacities.org) has published analysis of the CVRA

Santa Clara Weekly

Wednesday, September 14, 2011

City Desk

By Carolyn Schuk

Charter Review Committee Off and...Plodding

On Sept. 1 the Santa Clara Charter Review Committee (SCCRC) began work in earnest reviewing the city's at-large election system and possible alternatives. Unfortunately for those who hoped for actual discussion about the city's elections, a considerable part of the Thursday night meeting was devoted to process and procedure – including a lengthy discussion about California's Brown Act and whether the committee's assignment included term limits.

Two speakers were on the agenda: Steve Chessin President, Californians for Electoral Reform (www.cefr.org); and Robert Rubin, legal director of the San Francisco-based Lawyers Committee for Civil Rights (LCCR), the organization that's threatening Santa Clara with a California Voting Rights (CVRA) lawsuit.

The challenge that has always faced democracies since the ancient Athenians first advanced the idea is choosing representatives that properly represent those governed.

One such attempt is the U.S.'s Electoral College, whose ostensible justification was preventing large population centers from stifling the voices of smaller communities. In practice the Electoral College turns out to be an ineffective tool for ensuring that minority voices are heard, but can be gamed to subvert majority sentiment. This alone should be a caution to those seeking a formula for making elected bodies more representative.

The most familiar alternative to at-large election systems is the geographic district system. Geographically concentrated populations – some would call those ghettoes, and thus repugnant to American notions of equality and personal liberty – are necessary for districts to be representative. Lacking that population concentration, districts deliver the same results as at-large elections, said Chessin.

The alternative is some form of proportional representation, which comes in several forms, Chessin explained: party list, ranked choice voting, and cumulative voting. Party list and ranked choice voting – also called "instant run-off" – are the most familiar examples of proportional representation. (See the sidebar for more information).

The second speaker was Robert Rubin, legal director of the San Francisco-based Lawyers Committee for Civil Rights (LCCR), the organization that's threatening to bring a California Voting Rights (CVRA) against Santa Clara.

Admitting that he was probably the "most unpopular person in the room" that evening, Rubin spoke briefly to argue for geographic election districts on the grounds that proportional voting systems are too complicated for voters to understand.

San Francisco – Rubin's home – combines district elections with ranked choice voting to elect its Board of Supervisors on a district. So perhaps he knows what he's talking about, and it's this complexity that explains the endemic cronyism and pettiness characterizing that body (which a

few weeks ago put aside trivialities like the city budget to declare Sept. 13, 2011 Jimmy Hendrix Day).

However, some say that it's not the process for electing candidates that's the problem, but the willingness/reluctance of representative members of the community to run for office. "The real issue is getting minorities to run for election," says Santa Clara resident Jim Mathre, "and changing the [city] charter doesn't do anything towards that [goal]. "

The next meeting of the Charter Review Committee is Thursday, Sept. 22 at 5:30 p.m. in the City Council chambers. The community is encouraged to attend. You can review all of the Charter Review Committee's information at by visiting santaclaraca.gov, selecting the What's New tab, and scrolling down the news page to select "Charter Review Committee Binder."

Three Main Types of Proportional Election: Party List, Ranked Choice, Cumulative Voting

In a party list system, political parties make lists of candidates, and seats are allocated to each party in proportion to the number of votes the party receives. Thus any party receiving more than a specified percentage of the vote is guaranteed representation.

South Africa and Israel are among the countries that use a party list system. The disadvantages of this type of election system is that it weakens the links between legislators and constituents, increases the party control and entrenchment, and, can, through alliances that are needed to obtain a governing majority, endow splinter groups and extreme positions with disproportionate power.

Ranked choice – also called instant-runoff voting – lets voters rank candidates by preference, and ballots count for the first choice candidate on the first round of counting – a candidate with a majority of the votes on the first count wins.

If there's no majority winner, a new round of counting takes place in which the candidate with the fewest votes is eliminated and the second choice on those ballots is counted. The counting continues until a candidate gets a majority of the vote. Regardless of the iterations, each ballot, ultimately, only counts for one candidate.

Ranked choice has long been used in Australia and is used locally in San Francisco and Oakland. Ranked choice makes it "safer" to vote for third party and independent candidates, but it's no guarantee of proportional representation.

Cumulative voting lets voters distribute their share of votes. In other words, if there are four open seats, voters can place one vote for each of four candidates, four votes for one candidate, or any other combination. Cumulative voting offers a method for achieving proportionality because a group of voters can pool all their votes for one candidate. However, cumulative voting lends itself to "tactical voting" – some would call it gaming the system – by spreading out votes to ensure a like-minded governing body, or concentrating them to ensure a win by one candidate.

"Failed Term Limits" Bigger Concern than At-Large Elections to Some Santa Clarans

While Robert Rubin thinks Santa Clara needs electoral districts, some actual city residents are concerned about something else: What former Santa Clara Mayor and Council Member Larry Fargher called "a failed term limit system" in his August 26 letter to the Charter Review Committee.

"Every one of the Council is finishing two terms, or has already served more than that. Our senior Councilman is now in her 18th year. How can any new candidate hope to be successful against such seasoned campaigners?"

Fargher recommends that the city's term limits for mayors and council members – which currently prohibit more than two "consecutive" terms – be changed to an absolute two-term limit. "If we had a valid term limit…we would have new faces on the Council. It is incredible that the minimum service is 8 years and the maximum in 18 years on the present council."

Despite the fact that this could be a fundamental defect in Santa Clara's election system, term limits fall outside the scope of the current committee. So unless the California Voting Rights Act is amended to include "perpetuity in office" as a form of voter suppression – in which case Robert Rubin will threaten a lawsuit – don't expect the City Council's "musical chairs" to change soon

---

Letters to the Editor (Wednesday, September 21, 2011)

Re: Charter Review Committee Off and...Plodding
Aside from the obvious bias against PR (only criticisms of the various systems are given, not their advantages), it confuses the majoritarian (non-PR) system of instant runoff voting (IRV, also called by some "ranked choice voting" or RCV) with the fully-proportional Choice Voting system. While there is some similarity between Choice Voting and IRV (both use ranked ballots, both require the voters to rank their choices, and both transfer ballots similarly when eliminating defeated candidates), IRV is used to elect a single winner (either to a city-wide seat, such as Mayor, or to a district-wide seat), whereas Choice Voting is used to elect multiple winners simultaneously. It is the feature of Choice Voting in transferring the surplus votes received by winning candidates that makes it fully proportional.

The column also calls cumulative voting a proportional system; it is not. It is a semi-proportional system in that it allows for, but does not guarantee, proportional results.

There is no perfect electoral system; if there were, everyone would be using it. The choice of an electoral system therefore is a values-based choice.
The current system used by Santa Clara allows the majority of the voters, or in some cases just the largest faction, to elect all the city council members, shutting out electoral minorities, ethnic or otherwise. Proportional systems, while still upholding majority rule, guarantee fair representation for electoral minorities, in direct proportion to how people vote.

Sincerely,
Steve Chessin
President, Californians for Electoral Reform

Wednesday, September 21, 2011

Verdict on the California Voting Rights Act: The Jury is Still Out

By Carolyn Schuk

Don't say the 2002 California Voting Rights Act (CVRA) hasn't had results. It's just that results aren't necessarily those civil rights activists are looking for.

One clear winner is the Lawyers Committee for Civil Rights (LCCR), which has collected over $4 million in legal fees from settlements under the law, according to a 2009 AP report. That money comes out of school district, city and county budgets – adding up to less investment in education, infrastructure and services.

"We are acutely aware of the importance of ensuring that our limited resources are devoted to the education of children," Madera schools superintendent John Stafford wrote in a 2009 letter to the Fresno Bee about the 2008 CVRA lawsuit Rey v. Madera Unified School District, "not taking them out of the classroom to pay for litigation."

Stanislaus County's $1.75 million in legal fees stemming from CVRA come from the county's infrastructure fund, according to the December 6, 2009 Modesto Bee. That's the same fund that the LCCR charged wasn't spending enough on infrastructure improvements in unincorporated Latino neighborhoods.*

But when it comes to measuring actual representational diversity – even by the exceedingly narrow standard used by the LCCR, namely the number of superficially identifiable Latinos elected to public office – the bottom line is far less clear.

Consider what happened in Modesto, which replaced at-large City Council seats with district seats, and created a majority-Latino district (Modesto District 2). In 2010 by a sold majority, that district elected a white Republican with deep neighborhood roots, Dave Geer, over a Latino Democrat, Al Nava.

Then there's the apparent CVRA backfire in the Ceres Unified School District, which serves a student population that is 48 percent Latino. Ceres preemptively changed its at-large school board seats to district seats to avoid litigation.

Before changing, three of the seven school board members were Latino, reported the Dec. 6, 2009 Modesto Bee. After the new districts were put in place, Latino representation on the board dropped to two.

But there's also evidence that district seats are successful in increasing diversity.

Following the LCCR's lawsuit, the Madera Unified School District changed to district seats in 2008. Despite the fact that its student body was 80 percent Latino, there was only one Latino on the district's board. After the 2010 election, four of the board's seven members were Latino.

Another place where replacing at-large seats with geographic election districts had a measurable impact on representation is Watsonville. In 1989, the Pajaro Valley town changed its system

following a lawsuit under the 1965 federal voting rights act – the same law that the plaintiff's lawyer (and CVRA author) Joaquin Avila claimed in 2001 didn't serve Latinos.

The landmark case went all the way to the U.S. Supreme Court and set precedent for district elections as a remedy for demonstrably discriminatory at-large elections. At the time, Latinos comprised more than half of Watsonville's population, but no Latino had ever been elected to the City Council.

District elections increased voter turnout, which led to the election of one Latino council member in 1989 and a Latino mayor in 1991, according to a 1999 UC San Diego study, "Remedying Racial and Ethnic Inequality in California Politics: Watsonville Before and After District Elections," by Paule Cruz Takash.

Watsonville exemplified the explicit racism and polarized voting that the federal voting rights act aimed to combat. There was ample evidence of "remediable racial injury" in Watsonville's history – for example, the Watsonville Elks Club was explicitly "whites only" into the 1970s.

One persuasive argument that Watsonville's at-large elections were discriminatory was a study showing a widespread double standard for measuring Latino and white candidates. Latino candidates were expected to have served on city commissions, while white candidates didn't face the same requirement for commission experience.

So why does California need its own voting rights law? California's law explicitly eliminates the requirement to prove intentional discrimination – and this makes it easier to win lawsuits.

Critics say that's unconstitutional: "a retreat from 14th Amendment limitations designed to ensure that liability is imposed only where there is a remediable racial injury rather than directed to racial balancing, proportional representation objectives," is how Attorney John McDermott, Modesto's defense attorney in Sanchez v. Modesto, put it in a paper presented to the February 2008 Continuing Education conference of the League of California Cities. Making it easier to win cases, McDermott said, "is not a compelling interest."

McDermott in no novice about voting rights legislation. He represented disability rights groups in a 2004 federal charging that lack of accessible voting equipment violated the rights of disabled voters. The federal district court decided against McDermott's client.

*These unincorporated pockets, with their substandard infrastructure, developed in the 1930s and 1940s to house Dust Bowl migrants – suggesting economic and class, rather than ethnic, discrimination.

Carolyn Schuk can be reached at cschuk@earthlink.net.

Tuesday, August 16, 2011
San Jose Mercury News
Local News

SANTA CLARA

Council to round out election task force

Two months after the city of Santa Clara received a threatening letter about the lack of diversity on its City Council, the council is poised Tuesday night to select a task force to look at the fairness of the election process.

The seven members of the council already have selected one person each to sit on the 15-person committee. Now the remainder of the task force will be chosen.

Santa Clara's new "charter review committee" is being formed as the direct result of a letter the city received in early June from Robert Rubin, a civil rights attorney with the Lawyers' Committee for Civil Rights. Rubin didn't specify a lawsuit in the letter, but he did allege that the city's at-large council system appears to violate the California Voting Rights Act.

All seven council members are white. The city in July voted to form a committee to review if indeed the elections process could be more fair, recognizing the large Asian and Latino populations in Santa Clara.

— Lisa Fernandez, Staff

Thursday, August 18, 2011
San Jose Mercury Newspaper
Our Communities in brief

SANTA CLARA

New charter review committee formed

The Santa Clara City Council has named 16 people to review the city's election process, responding to a letter from a civil rights attorney criticizing the all-white composition of the council in a city that is only 36 percent white.

Members of the new charter review committee, made official Tuesday night, are: Yuki Ikezi, Keith Stattenfield, Mohammed Nadeem, Vilma Kennedy Pallette, Eric Stroker, Sameena Usman, Peter Yoon, Teresa O'Neill, David C. DeLozier, Gary Alver, Raj Chahal, Karen Hardy, Michael E. O'Halloran, James Rowen, Steven Silva and Ralph Sivilla.

Nadeem and O'Neill both ran for council in 2010 and lost. And Stroker was a paid "field organizer" for the "Yes" campaign to promote the future 49ers stadium.

The formation of the committee was in response to a letter sent in June by Robert Rubin with the Lawyers' Committee for Civil Rights. Rubin alleged that the city's at-large council system appears to violate the California Voting Rights Act.

— *Lisa Fernandez, Staff*