

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: February 21, 2019

Item description/summary:

Receive report on pending federal legislation regarding Voting Rights Act and Status of California Voting Rights Act (Strategic Plan VS-6, CV-1, 6.0, 8.0).

Federal Voting Rights Act:

House Democrats on January 5, 2019 introduced a legislative package of reforms emphasizing voting rights, marking the next step in a process by which Democrats hope to restore a provision of the Voting Rights Act that was dismantled by the Supreme Court in 2013.

Two bills will be proceeding on separate tracks.

We The People Bill

The first bill — known as “We the People Democracy Reform Act” or HR1 — makes a congressional finding that the 2013 decision in *Shelby County v. Holder* led to a wave of voter suppression and instructs Congress to build a record upon the finding.

The “We the People” legislation includes several other provisions expanding the franchise that have been championed by voting rights activists, such as automatic voter registration, same day voter registration, mandated early voting, a requirement that states set up independent redistricting commissions to prevent gerrymander, and a campaign finance overhaul.

H.R.1 - For the People Act of 2019

<https://www.congress.gov/bill/116th-congress/house-bill/1/text?q=%7B%22search%22%3A%5B%22VRAA%22%2C%22VRAA%22%5D%7D>

Status

<https://www.congress.gov/bill/116th-congress/house-bill/1/all-actions-without-amendments?q=%7B%22search%22%3A%5B%22VRAA%22%2C%22VRAA%22%5D%7D>

Voting Rights Restoration Act

A separate bill that would restore the provision of the Voting Rights Act that required states and localities with a history of racial voter discrimination to get election policy changes pre-approved by the federal government is moving on its own track so the House can build a record of voter challenges that have occurred since the decision was handed down by the U.S. Supreme Court in 2013. Such a public record could forestall future challenges to Voting Rights Act revisions, if passed.

H.R.196 - Democracy Restoration Act of 2019

<https://www.congress.gov/bill/116th-congress/house-bill/196/text?q=%7B%22search%22%3A%5B%22Sewell%22%5D%7D>

Status:

<https://www.congress.gov/bill/116th-congress/house-bill/196/all->

[actions?q=%7B%22search%22%3A%5B%22Sewell%22%5D%7D&overview=closed#tabs](#)

A 2017 bill called the Voting Rights Restoration Act, on which no action has been taken in the last year, also proposed a new set of criteria for what would trigger the requirement — known as “preclearance” — that states and localities get approval either from the Justice Department or a federal court to change their election policies. That is because since the *Shelby* decision, there have been a number of voting restrictions — including tougher voter ID laws, cutbacks to early voting, and the closure of voting locations — implemented in places that were previously required to get preclearance for election changes. The Justice Department, along with private civil rights organizations, succeeded in getting courts to block those requirements. For instance, a North Carolina voter restriction package the GOP legislature passed weeks after the Shelby decision was struck down in 2016 by an appeals court, which said the law targeted minority voters with “almost surgical precision.” Similarly, a voter ID law that Texas implemented after *Shelby*, that had previously been rejected twice in preclearance, was invalidated by the 5th U.S. Circuit Court of Appeals.

H.R.2978 - Voting Rights Advancement Act of 2017

<https://www.congress.gov/bill/115th-congress/house-bill/2978/text?q=%7B%22search%22%3A%5B%22Sewell%22%5D%7D>

California Voting Rights Act

California already has a Voting Rights Act (Elections Code Sections 14025, et seq.) that is intended to protect the rights of voters and to avoid “racially polarized” voting. For special districts that have or will receive the letter from an out-of-town attorney claiming that their at-large voting system violates the California Voting Rights Act (“CVRA”), the requisite timeline for implementing the transition to district-based elections can be daunting.

As reported to the Board of Directors last year, the passage of AB 2123 (Cervantes) provided some desired relief. Effective January 1, 2017, the Elections Code has been amended to allow special districts to change from at-large voting to a by-district voting by resolution rather than by requiring an election to vote on the change. Elections Code Section 10650 permits a governing body of a special district to require, by resolution, that members of its governing body be elected using district-based elections without being required to submit the resolution to voters for approval. A resolution adopted pursuant to this provision must include a declaration that the change in the method of electing members of the governing body is being made in furtherance of the purposes of the California Voting Rights Act of 2001.

On February 8, 2019, a federal judge dismissed a constitutional challenge to the California Voting Rights Act brought in the wake of the U.S. Supreme Court’s *Shelby* decision in *Higginson v. Becerra*, 17-CV2032.

Fiscal Analysis:

None.

Employee Feedback

None.

Sample Motion:

N/A

Prepared by:

Deirdre Joan Cox, OPUD Legal Counsel

Citrus Heights will now elect council members by district, following legal challenge

BY ALEXANDRA
YOON-HENDRICKS
ayoon-hendricks@sacbee.com

Citrus Heights unanimously approved starting the process of changing its election system to a “by-district” model, splitting the city into five districts where only voters from those areas can elect council members who also reside in the district.

Currently the city uses an “at-large” model, where voters choose from a field of candidates to fill City Council seats. The new model would take effect by the 2020 election, but the three council members elected in 2018 — Mayor Jeannie Bruins, Porsche Middleton and

Steve Miller — will still finish out their four-year terms.

The switch comes after being threatened with a lawsuit from Malibu-based lawyer Kevin Shenkman over claims that the city’s current model disenfranchises Latino voters under the California Voter Rights Act. The law, which took effect in 2003, made it easier for voters to protest at-large election systems if evidence indicated such voting impaired the ability of minority groups to elect candidates.

“I really feel like we’re being held hostage,” said Mayor Jeannie Bruins at Thursday’s meeting.

About 13 percent of the voting age population of

Citrus Heights identifies as Hispanic, according to 2017 U.S. Census Bureau estimates.

Bruins previously told The Bee that “we may have 15 percent of the population (Hispanic), but they’re spread throughout the city, so districting is not going to establish any voting rights or representation that doesn’t already exist.”

Still, the threat of an expensive — and losing — legal battle over the switch was ultimately too strong for council members to bear.

“Our position is not that a violation has occurred,” Citrus Heights city attorney Ruthann Ziegler said at Thursday’s meet-

ing. “There are no cases of which I’m aware, and trust me I’ve done a lot of research on this, where a city or other public agency has successfully defended itself against a demand under this particular statute.”

Settlement fees for cities attempting to defend against a Voter Rights Act lawsuit have at times cost millions. In 2008, Modesto was forced to pay \$3 million. In 2015, Shenkman’s firm won its legal battle against Palmdale, costing \$4.5 million.

Additionally, a judge ordered the city of Santa Monica to end its use of at-large elections, with the city’s legal fees ranging from \$2 million to \$4

million, according to the Citrus Heights staff report.

Between 80 and 90 cities in California have switched to at-district election systems as a result challenges under the law, Ziegler said.

U.S. Census estimates from 2017 do not show any “block groups,” the smallest geographical area the bureau tracks, in Citrus Heights that contain a majority Hispanic population.

Still, Shenkman previously told The Bee that even when cities using by-district elections lack minority-majority districts, his firm has found the number of Latinos elected increases because district elections may encourage and support lower-cost forms of campaigning, such as canvassing.

“Not only is the contrast between the significant Latino portion of the electorate and absence of Latinos to be elected to the Citrus Heights City Council outwardly disturbing, it is also funda-

mentally hostile towards Latino participation,” the demand letter reads.

City staff estimates transitioning to a by-district election system would cost Citrus Heights \$50,000 to \$100,000, including a payment to Shenkman’s law firm capped at \$30,000 and hiring a demographer to assist with drawing boundaries.

“I don’t think any of us up here are happy about this, to be honest with you,” Vice Mayor Jeff Slowey said.

District boundaries have yet to be determined, Ziegler said, but she said they will have roughly equal population sizes and attempt to follow “natural” dividers such as creeks and highways. Race cannot be the predominant factor in drawing districts under the state law.

Alexandra
Yoon-Hendricks:
916-321-1815,
@ayoonhendricks

Activist likely to appeal voting rights decision

By Blaise Scemama
Daily Journal Staff Writer

A federal judge dismissed a constitutional challenge to the California Voting Rights Act, designed to empower minority groups in local elections by requiring cities to switch from at-large to district voting in local elections.

However, conservative litigation strategist Edward Blum, who won a U.S. Supreme Court ruling striking down key sections of the federal voting rights law, said he and his

organization, Project for Fair representation, would appeal the decision to the 9th U.S. Circuit Court of Appeals.

"While we are disappointed with the district court ruling, we look forward to making our appeals in the 9th Circuit and beyond if necessary," Blum said Wednesday. *Higginson v. Becerra*, 17-CV2032 (S.D. filed Oct. 4, 2017).

The California Voting Rights Act of 2001, designed to prevent voter dilution among minority populated

districts, sparked several lawsuits against cities using at-large voting systems in local elections.

The leader of this voting-rights litigation effort, Malibu civil rights attorney Kevin Shenkman of Shenkman & Hughes LLP, has sent letters threatening litigation if cities do not adopt district voting. Most cities who receive letters adopt district voting to avoid litigation, but a few have gone to court.

Santa Monica waged a costly six-week bench trial that it lost. Los An-

geles County Superior Court Judge Yvette Palazuelos ruled the city violated the voting rights act and ordered it to switch to district voting.

In 2017, Blum's group filed a complaint on behalf of Don Higgins, the former mayor of the San Diego County community of Poway, which after receiving a threatening letter from Shenkman, switched to district voting.

Higginson, represented by Washington, D.C.-based Bryan K. Weir of Consovoy McCarthy Park PLLC,

argued the newly drawn districts harmed him and were a form of racial gerrymandering.

U.S. District Judge William Q. Hayes of San Diego said in his order Monday Higginson failed to present evidence Poway or state lawmakers had drawn new districts on the basis of race. Higginson failed to "state a racial gerrymandering claim subject to strict scrutiny analysis under the Equal Protection Clause," the judge ruled.

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Voting rights case likely headed to 9th Circuit

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Asked for comment, the state attorney general's office said in an email it "will let the ... order, granting the motion to dismiss, speak for itself."

Blum is not a lawyer but is known for being an outspoken civil rights activist who funds litigation against laws involving race and ethnicity. He argued that while district voting might be legally required in rare instances, it results in further racialization of politics.

"They have had the effect of

forcing whites into their corners of communities, African-Americans into their corners, and Hispanics into theirs, thus reinforcing what divides us as citizens of towns and cities," Blum wrote in an email Wednesday.

If Blum makes good on his promise to appeal, it would be the second time he and his group has done so. Supported by Blum, Higginson previously appealed Hayes' decision to dismiss the case for lack of standing. The 9th Circuit reversed and remanded the case.

But according to Justin Levitt, a constitutional law scholar and professor at Loyola Law School who testified as an expert witness in the Santa Monica voting rights case, it did not offer much in the way of an explanation.

"I thought the trial court was right the first time. The 9th Circuit reversed but didn't make clear why," he said.

Levitt argued Blum's assertion that the California Voting Rights Act divides cities by race is unfounded because according to him

before plaintiffs could sue a city under the act they must prove a minority group's vote was actually diluted.

"Plaintiffs have to prove that the minority in town has different voting preferences than the majority and that the minority as result is losing elections," Levitt said. "It's usually just the non-minority that happens to be winning rather than everybody agreeing who should be elected."

blaise_scemama@dailyjournal.com