



JOSHUA BASIN WATER DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS
WEDNESDAY, FEBRUARY 6, 2019, AT 6:30 PM
61750 CHOLLITA ROAD, JOSHUA TREE, CA 92252

AGENDA

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **DETERMINATION OF A QUORUM**
4. **APPROVAL OF AGENDA**
5. **PUBLIC COMMENT**

Members of the public may address the Board at this time with regard to matters within the Board's jurisdiction that are not listed on the agenda. State law prohibits the Board of Directors from discussing or taking action on items not included on the agenda. Members of the public will have the opportunity for public comment on any item listed on the agenda when it is addressed on the agenda. Please limit comments to three (3) minutes or less.
6. **CONSENT CALENDAR**

Matters on the Consent Calendar are considered routine in nature and will be enacted in a single motion without discussion. Any Board member or member of the public may request that an item be removed from the Consent Calendar and acted on separately.

 - Draft Minutes January 16, 2019, Regular Board Meeting
 - Draft Minutes January 23, 2019, Special Board Meeting
7. **PRESENTATION OF AWARD FOR PAST PRESIDENT MICKEY LUCKMAN FOR HER YEARS OF LEADERSHIP**– President Johnson
8. **CONSIDERATION OF RESOLUTION OF INTENT PURSUANT TO ELECTIONS CODE SECTION 10010(e)(3)(A) TO INITIATE PROCEDURES FOR ESTABLISHING AND IMPLEMENTING DISTRICT BASED ELECTIONS FOR BOARD MEMBERS (RESOLUTION NO. 19-994).** – Ms. Jennifer Farrell, Legal Counsel, Rutan & Tucker, LLP.
9. **DISTRICT GENERAL COUNSEL REPORT** – Mr. Gil Granito
10. **GENERAL MANAGER REPORT** – Curt Sauer
11. **DIRECTOR COMMENTS & REPORTS ON MEETINGS ATTENDED**
 - Public Outreach Consultant – Kathleen Radnich
 - Mojave Water Agency Board of Directors Meeting – January 24, 2019 – Director Unger

Pages 3-4
Page 5

Pages 6-33

12. **FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES**

- Mojave Water Agency Technical Advisory Committee (TAC) – February 7, 2019, at 10:00 a.m. – Director Luckman
- Finance Committee – February 13, 2019, at 9:00 a.m.-President Johnson & Vice President Unger
- Water Resources & Operations Committee –February 13, 2019, at 10:30 a.m.- Director Luckman and Director Hund
- Mojave Water Agency Board of Directors Meeting- February 14, 2019, at 9:30 a.m. – President Johnson

13. **ADJOURNMENT-**

INFORMATION

The public is invited to comment on any item on the Agenda during discussion of that item.

Any person with a disability who requires accommodation in order to participate in this meeting should telephone Joshua Basin Water District at (760) 974-0072, at least 48 hours prior to the meeting in order to make a request for a disability-related modification or accommodation.

Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the District's office located at 61750 Chollita Road, Joshua Tree, California 92252 during normal business hours.

JOSHUA BASIN WATER DISTRICT
REGULAR MEETING MINUTES
WEDNESDAY, JANUARY 16, 2019

CALL TO ORDER/PLEDGE OF ALLEGIANCE

President Johnson called the meeting to order at 6:30 p.m.

DETERMINATION OF A QUORUM –President Johnson, Vice President Unger, Director Hund, Director Luckman, and Director Reynolds.

STAFF PRESENT -Curt Sauer, GM, Susan Greer, AGM/Controller, Beverly Waszak, Executive Assistant

CONSULTANTS PRESENT - Kathleen Radnich, Public Outreach

APPROVAL OF AGENDA –Director Reynolds made a motion to approve the Agenda. Director Luckman seconded.

MSC¹ (Reynolds/Luckman) motion carried by the following vote:

Ayes: Hund, Johnson, Luckman, Reynolds, and Unger

Noes: None

Absent: None

Abstain: None

PUBLIC COMMENT – None

CONSENT CALENDAR - Director Luckman made a motion to approve the Consent Calendar. Director Reynolds seconded.

MSC¹ (Luckman/Reynolds) motion carried by the following vote

Ayes: Hund, Johnson, Luckman, Reynolds, and Unger

Noes: None

Absent: None

Abstain: None

1ST QUARTER ENDING 9/30/18 FINANCIAL REPORT – AGM Greer gave a brief report on the 1st Quarter Financial Ending 9/30/18 and a short Q&A period followed with the Board. The 1st Quarter Financial 9/30/18 was reviewed previously by the Finance Committee on 1/9/19.

Vice President Unger made a motion to accept and file the 1st Quarter Financial Report ending 9/30/18. Director Luckman seconded.

MSC¹ (Unger/Luckman) motion carried by the following vote

Ayes: Hund, Johnson, Luckman, Reynolds, and Unger

Noes: None

Absent: None

Abstain: None

JOINING THE COMMUNITY WATER SYSTEMS ALLIANCE – GM Sauer gave an overview of the Community Water Systems Alliance. GM Sauer stated that the California Community Water Systems Alliance (CWSA) will be comprised of a group of special districts, county water districts, community service districts, and cities that serve smaller, older, and poorer communities around the state in alliance with CalMutuals. GM Sauer asked the Board to approve \$5,000 per year to support activities related to State legislation.

Director Luckman made a motion to approve an annual expenditure of \$5,000 per year to join the Community Water Systems Alliance. Director Hund seconded.

MSC' (Luckman/Hund) motion carried by the following vote

Ayes: Hund, Johnson, Luckman, Reynolds, and Unger
Noes: None
Absent: None
Abstain: None

PUBLIC COMMENT – Al Marquez, Joshua Tree, accused the Board of not keeping within the standards of the Brown Act.

DISTRICT GENERAL COUNSEL REPORT – None.

GENERAL MANAGER REPORT – GM Sauer discussed the following with the Board:

- Dates for review of the Admin Code Workshop
- ADHOC Committee for GM annual performance review and President Johnson appointed himself and Vice President Unger to the ADHOC Committee.
- Review of Water Treatment Strategy (last review was 10 years ago).
- Informed the Board of table top exercise combined with 29 Palms Water District and Oakdale Water District.
- Well 14 status.

DIRECTOR COMMENTS & REPORTS ON MEETINGS ATTENDED –

- Kathleen Radnich, Public Information Consultant reported on the Emergency Preparedness exercise with 29 Palms Water District and Oakdale Water District. Ms. Radnich stated that JBWD had a total of 43 people that received United Way Assistance since 2018.
- Vice President Unger gave a brief update on the Finance Committee.
- Director Hund reported on the WRO Committee and the MWA Board meeting he attended.
- Gayle Austin, CAC reported that Karen Tracy had been elected as Committee Chairperson and Tom Kayne as Committee Vice Chairperson and continued with a brief overview of the meeting.

FUTURE DIRECTOR MEETINGS AND TRAINING OPPORTUNITIES – President Johnson informed the Board on upcoming meetings.

ADJOURNMENT – At 7:15 p.m., Vice President Unger motioned to adjourn the Board meeting. Director Hund seconded.

MSC' (Unger/Hund) motion carried by the following vote

Ayes: Hund, Johnson, Luckman, Reynolds, and Unger
Noes: None
Absent: None
Abstain: None

Respectfully Submitted,

Curt Sauer, GM and Board Secretary

JOSHUA BASIN WATER DISTRICT
SPECIAL MEETING MINUTES
WEDNESDAY, JANUARY 23, 2019

CALL TO ORDER/PLEDGE OF ALLEGIANCE

President Johnson called the Special meeting to order at 5:45 p.m.

ROLL CALL

Directors Present – President Johnson, Vice President Unger, Director Hund, Director Luckman, and Director Reynolds.

STAFF PRESENT

Curt Sauer, General Manager, Susan Greer, Assistant General Manager-Finance, Beverly Waszak – Executive Assistant

LEGAL COUNSEL – Mr. Gil Granito, Redwine and Sherrill, LLP and Ms. Jennifer Farrell, Rutan & Tucker, LLP

APPROVAL OF AGENDA – Director Reynolds made a motion to approve the Agenda. Vice President Unger seconded.

MSC' (Reynolds/Unger) motion carried by the following vote

Ayes: Hund, Johnson, Luckman, Reynolds, and Unger
Noes: None
Absent: None
Abstain: None

PUBLIC COMMENT – None

CLOSED SESSION – Conference with Legal Counsel – Potential Litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9.

Immediately following Public Comment of the Special Agenda, the Board went into Closed Session at approximately 5:51 p.m. to consult with Legal Counsel pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9, pertaining to potential litigation, (1) matter. The Closed Session ended at approximately 6:25 p.m. and the Board returned to Open Session. No reportable action was taken.

ADJOURNMENT – Director Luckman made a motion to adjourn the Special Board meeting at 6:26 p.m. Vice President Unger seconded the motion.

MSC' (Luckman/Unger) motion carried by the following vote

Ayes: Hund, Johnson, Luckman, Reynolds, and Unger
Noes: None
Absent: None
Abstain: None

Respectfully Submitted:

Curt Sauer, Board Secretary, and General Manager

JOSHUA BASIN WATER DISTRICT

AGENDA REPORT

DATE: JANUARY 30, 2019

TO: BOARD OF DIRECTORS

FROM: SPECIAL COUNSEL, RUTAN & TUCKER, LLP

SUBJECT: POTENTIAL TRANSFER TO
BY-DISTRICT BOARD MEMBER ELECTIONS

RECOMMENDED ACTION:

That the Board 1) hold a public meeting adopt a Resolution of Intention pursuant to Election Code section 10010(e)(3)(A), to consider the transition from an at-large to district-based elections entitled:

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE JOSHUA BASIN WATER DISTRICT EXPRESSING ITS INTENTION, PURSUANT TO ELECTIONS CODE SECTION 10010(e)(3)(A), TO INITIATE PROCEDURES FOR ESTABLISHING AND IMPLEMENTING BY-DISTRICT ELECTIONS FOR DISTRICT BOARD MEMBERS

BACKGROUND AND DISCUSSION:

On December 26, 2018, Joshua Basin Water District received a letter from attorney Ron Shenkman of the law firm Shenkman and Hughes threatening to sue the District for alleged violations of the California Voting Rights Act ("CVRA") (Elec. Code §§ 14025-14032) unless the District voluntarily converts to a by-district election system. The CVRA only applies to jurisdictions, like the District, that utilize an at-large election method, where voters of the entire jurisdiction elect each of the members of the District Board. Similar letters have been served and lawsuits have been filed in recent years against dozens of cities and other public agencies for alleged CVRA violations, including many nearby cities. Every public agency defendant in the history of the CVRA that has challenged the conversion to district elections has either lost in court or settled/agreed to implement district elections, and been forced to pay at least some portion of the plaintiffs'

attorneys' fees and costs. A copy of Mr. Shenkman's letter is attached to this staff report (Attachment B).

The CVRA was enacted in 2002 with the specific intent of facilitating private suits to force public entities to shift from "at-large" to "by-district" elections. It does so by eliminating several key burden of proof requirements that exist under the Federal Voting Rights Act of 1965 ("FVRA") (52 U.S.C. § 10301 *et seq.*) after several jurisdictions in California successfully defended themselves in litigation brought under the FVRA. Under the FVRA, four factors must be met in order to establish a violation. The CVRA removes two of these factors: (1) the "geographically compact" FVRA precondition (e.g., can a majority- minority district be drawn?), and; (2) the "totality of the circumstances" or "reasonableness" test. Instead, under the CVRA, the only "element" a plaintiff must establish is that racially polarized voting occurs in a jurisdiction with at-large elections. This threshold for establishing liability under the CVRA is extremely low, and prevailing CVRA plaintiffs are guaranteed to recover their attorneys' fees and costs. As a result, the CVRA is tilted heavily in favor of plaintiffs' attorneys, which is no surprise, as it was enacted with that specific intent in mind. Despite its removal of key safeguards contained in the FVRA, the California courts have held that the CVRA is constitutional. (See *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660.) An article that may be of interest on the background of the CVRA is attached (Attachment D).

Over the relatively short 15-year history of the CVRA, and only after an initial challenge to it was resolved in 2006, plaintiff public agencies have paid over \$15 million to CVRA plaintiff attorneys, including a recent settlement in West Covina for \$220,000. (See Table of Results of CVRA Litigation (Attachment C).) The City of Modesto, which challenged the CVRA's constitutionality, ultimately paid \$3 million to the plaintiffs' attorneys, and the cities of Palmdale and Anaheim, who also aggressively litigated CVRA claims, ultimately paid \$4.5 million and \$1.2 million in attorneys' fees, respectively. Importantly, these figures do not include the tens of millions of dollars spent by government agency defendants paying for their own attorneys and associated defense costs.

Recognizing the heavy cost burden it had assigned under the CVRA to at-large jurisdictions facing challenge, in 2016, the California Legislature amended the Elections Code to simplify the process of converting to by-district elections and to provide a "safe harbor" process to protect agencies from litigation. If a local agency like the District receives a demand letter, such as the case here, then the District is given 45 days of protection from litigation to assess its situation. If within that 45 days, the District adopts a resolution declaring the Board's intent to transition from at-large to district based elections, outlining the steps to be taken, the potential plaintiff is prohibited from filing a CVRA action for an additional 90 day period during which the process outlined below must occur. (Elec. Code§ 10010(e)(3).)

In light of the foregoing, staff recommends that the District Board consider taking advantage of the above-described "safe harbor" provisions by adopting the attached draft resolution of intention (Attachment A) and commence to process of voluntarily implementing a by- district election system. This is the safest course of action to protect the District's taxpayers from the risk of future litigation costs.

This recommendation is not based on any admission or concession that the District would ultimately be found to have violated the CVRA; rather, the risks and costs associated with protracted CVRA litigation - particularly in light of the adverse results in all other cities that have fought to retain at-large voting - cannot be ignored. The public interest may be ultimately better served by a by-district electoral system if converting to that system avoids a significant attorneys' fees and cost award.

The attached resolution, if approved, would affirm Board's intent to adopt a by-district election system. The draft resolution also includes, as an attachment, the tentative timeline for implementing transition to by-district elections, including the schedule for the required public hearings. The timeline proposes holding public hearings on February 20, 2019, March 6, 2019, March 20, 2019, and April 3, 2018.

If the District Board adopts the attached resolution, pursuant to Elections Code 10010(a), the Board must hold a total of five public hearings (to which the above noted proposed schedule would apply) before a by-district electoral system can be adopted: two must be held before any proposed district boundaries have been drawn (February 20 & March 6), two must be held after proposed district maps have been generated (March 20 & April 3) and finally, the Board must consider the actual ordinance that would establish district based elections at a fifth public hearing (which can occur on the same date as the final public hearing noted above (April 3) unless changes are made to the proposed map at the second public hearing, in which case it needs to occur at a later date (we would suggest April 17.) The proposed schedule, if followed, would result in the completion of the transition to district based elections within the 90 day "safe harbor" period.

The District through special counsel is in the process of retaining an expert districting consultant and demographer to evaluate the District's position under the CVRA and to advise on risks and potential liabilities. If the District Board elects to transition to by-district elections, the demographer will draw proposed districts after the first two public hearings, and present the maps to the Board, along with any legally adequate maps submitted by members of the public. The Board will have the ability to request modifications to the options presented or a different option. A representative from the demographer's office will be present at all of the hearings set forth in Exhibit 1 to the proposed resolution (Attachment C) to present demographic data and proposed districts, as well as address questions from the Board and the public.

ALTERNATIVE ACTIONS

Other Board-directed action

ACTION DOCUMENTS:

- A. Draft Resolution of Intention**

SUPPORTING DOCUMENTS:

- B. Letter from Shenkman and Hughes (hard copy attached)**
- C. Table of Results of CVRA Litigation (hard copy attached)**
- D. Article on CVRA (hard copy attached)**

ACTION DOCUMENT A

RESOLUTION NO. 19-994

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE JOSHUA BASIN WATER DISTRICT EXPRESSING THE BOARD'S INTENTION, PURSUANT TO ELECTIONS CODE SECTION 10010 (e)(3)(A), TO INITIATE PROCEDURES FOR ESTABLISHING AND IMPLEMENTING DISTRICT-BASED ELECTIONS FOR BOARD MEMBERS

WHEREAS, the Joshua Basin Water District, ("District") is duly organized under the constitution and laws of the State of California; and

WHEREAS, the members of the Board of Directors of the District are currently elected in at-large elections, in which each Board member is elected by all registered voters of the entire District; and

WHEREAS, Section 10650 of the Elections Code authorizes any district change to a district-based system without the need to put such a change to voters; and

WHEREAS, the District Board of Directors has determined that it is in the best interest of the District to move from its current at-large electoral system to a district-based election for members of the District Board, in response to the provisions of the California Voting Rights Act (CVRA); and

WHEREAS, the District intends to make the transition from an at-large system to a district-based system in accordance with the procedural rules outlined in Election Code 10650 and Elections Code 10010; and

WHEREAS, the District received a letter threatening action under the California Voting Rights Act on December 26, 2018 less than forty-five (45) days before the date of this Resolution; and

WHEREAS, the District will begin by working with an experienced demographer to assist the District in establishing maps for a district-based electoral system; and

WHEREAS, before drawing a draft map of the proposed boundaries of the districts, the District will hold at least two (2) public hearings over no more than thirty (30) days, at which time the public is invited to provide input regarding the composition of the districts; and

WHEREAS, the District will then publish and make available for release at least one (1) draft map of the new electoral districts, including the potential sequence of elections shown; and

WHEREAS, once the draft map(s) have been publicized for at least seven (7) days, the District will hold at least two (2) additional public hearings, over no more than forty-five days, at which time the public is invited to provide input regarding the content of the draft map and the proposed sequence of elections prior to the public hearing at which the District Board of Directors adopts a map; and

WHEREAS, if a draft map is revised at or following a public hearing, the revised map will be published and made available to the public at least seven (7) days before the District chooses to adopt it; and

WHEREAS, in determining the final sequence of staggered District elections, the District Board of Directors will give special consideration to the purposes of the CVRA, and will take into account the preferences expressed by the public; and

NOW, THEREFORE, BE IT RESOLVED by the Board of the Joshua Basin Water District, as follows:

1. The above recitals are true and correct and are incorporated herein by this reference.
2. The Board of Directors hereby resolves, pursuant to Elections Code section 10010, to consider adopting a district-based election system by ordinance as authorized by California Elections Code section 10650, for use in the Districts General Election for Board Members.
3. The Board of Directors further resolves to retain a qualified demographer, hold at least five (5) public hearings and publish at least one (1) draft map and staggering sequence, pursuant to the proposed tentative hearing schedule attached hereto as Exhibit "1".
4. The District's redistricting/demographic consulting firm, acting under the supervision of special counsel, is hereby authorized to direct and formulate one or more electoral district scenarios for review by the public and Board at two or more public hearings if necessary, in accordance with the District's proposed tentative timeline.
5. Working with the demographic consulting firm, staff is directed to publicize relevant maps, information, notices, agendas and other materials regarding District-based elections and to establish means of communication to answer questions from the public.

6. All public hearings shall be noticed on the District's website, and in addition, as follows: posting on the District's website at least ten (10) calendar days in advance of the hearing and publication at least ten (10) days in advance of the hearing in the newspaper adjudicated to provide notice within the District.
7. The General Manager is authorized to take any and all other necessary actions to give effect to this Resolution.
8. This Resolution shall become effective immediately upon its adoption.

PASSED, APPROVED AND ADOPTED at the Regular Meeting of the Board of Directors of the Joshua Basin Water District on the 6th day of February, 2019, by the following vote:

Bob Johnson, President
Joshua Basin Water District and of
the Board of Directors thereof;

ATTEST:

Curt Sauer, Secretary
Joshua Basin Water District and of
the Board of Directors thereof;

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF)

I, Curt Sauer, Secretary of the Board of Directors of the Joshua Basin Water District do hereby certify that the foregoing Resolution No.19-994 was duly adopted and passed at the regular meeting of the Board of Directors on the 6th day of February 2019, by the following vote to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Curt Sauer, Secretary
Joshua Basin Water District and of
the Board of Directors thereof;

EXHIBIT 1 TO ACTION DOCUMENT A

EXHIBIT 1
TENTATIVE TIMELINE

PROPOSED DATE	BOARD ACTION	NOTES
02/06/18	Public Meeting: Adopt Resolution of Intent to Convert to District Voting	<ul style="list-style-type: none"> • Must adopt resolution within 45 days (02/09/19) • If adopted, District gets additional 90 days of legal immunity (05/04/19)
02/20/19	Public Hearing #1: First of two public hearings before maps drawn	<ul style="list-style-type: none"> • PH 1 and PH 2 must be held within 30 days of each other • Notice for all PH must be published and posted 10 days prior
03/06/19	Hold Public Hearing #2: Second of two public hearings before maps drawn	
03/13/18	Release Draft Map(s): Post on District's website	<ul style="list-style-type: none"> • This must occur 7 days prior to public hearing
03/20/19	Public Hearing #3: First of two public hearings after maps drawn	<ul style="list-style-type: none"> • PH 3 and PH4 must occur within 45 days of each other
03/27/19	Release Revised/Amended/New Draft Map(s): Post on District's website	<ul style="list-style-type: none"> • Only if map revised after PH 3
04/03/19	Public Hearing #4: Second of two public hearings after maps drawn. Hold Public Hearing to introduce ordinance establishing districts	
04/17/19	Public Hearing #5: Final public hearing; introduce ordinance establishing district	<ul style="list-style-type: none"> • Only needed if map amended after PH 4
04/17/19	Public Meeting: Second reading of ordinance establishing districts	<ul style="list-style-type: none"> • Effective Date: 05/17/19

PROPOSED DATE	BOARD ACTION	NOTES
05/01/19	Public Meeting: Second reading of ordinance establishing districts	<ul style="list-style-type: none"> • Only needed if map amended after PH 4. Effective date 5/3/19

SUPPORTING DOCUMENT B



28905 Wight Road
Malibu, California 90265
(310) 457-0970
kishenkman@shenkmanhughes.com

VIA CERTIFIED MAIL

JBWD
DEC 26 2018
RECEIVED BY: PE

December 21, 2018

Mickey Luckman, President
Curt Sauer, General Manager
Joshua Basin Water District
P.O. Box 675
61750 Chollita Road
Joshua Tree, CA 92252

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project and its members. The Joshua Basin Water District (“JBWD” or “District”) relies upon an at-large election system for electing candidates to its Board of Directors. Moreover, voting within the Joshua Basin Water District is racially polarized, resulting in minority vote dilution, and, therefore, the District’s at-large elections violate the California Voting Rights Act of 2001 (“CVRA”).

The CVRA disfavors the use of so-called “at-large” voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667 (“*Sanchez*”). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter’s district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control *every* seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted “at-large” election schemes for decades, because they often result in “vote dilution,” or the impairment of minority groups’ ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) (“*Gingles*”). The U.S. Supreme Court “has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting

strength” of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to “ignore [minority] interests without fear of political consequences”), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). “[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act (“FVRA”), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; *see also* Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, “[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965.” *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.” Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a “majority-minority district.” *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. *See* Cal. Elec. Code § 14028 (“A violation of Section 14027 *is established* if it is shown that racially polarized voting occurs ...”) (emphasis added); *also see* Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (“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).”)

To establish a violation of the CVRA, a plaintiff must generally show 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.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “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.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are

more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of the circumstances” test – “are probative, but not necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(e). These “other factors” include “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.” *Id.*

The Joshua Basin Water District’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of the District’s elections. The District serves the city of Joshua Tree. As of the 2010 Census, the City of Joshua Tree had a population of 7,414. According to this data, Latinos comprise approximately 18%. However, in the District’s history, there has not been a single Latino Board member. Therefore, not only is the contrast between the significant Latino proportion of the electorate and the absence of Latinos to be elected to the JBWD Board of Directors outwardly disturbing, it is also fundamentally hostile towards participation by members of this protected class.

The JBWD’s at-large election system has also impeded the emergence of Latino candidates from the community. Again, in the District’s history, there has only been one Latino who has emerged as a candidate for the JBWD Board. Opponents of fair, district-based elections may attribute the lack of Latinos vying for elected positions to a lack of interest in local government from these communities. On the contrary, the alarming absence of Latino candidates seeking election to the District’s Board reveals vote dilution. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

The District’s election history is additionally illustrative. Notwithstanding the fact that there has never been a Latino to serve on the JBWD’s Board, Al Marquez announced his candidacy in 2008 but lost that election. Once more, in 2010, Mr. Marquez ran for the Board and lost. Even still, Mr. Marquez declared his candidacy in 2012 and most recently in 2018. Despite support from the local Latino community in each of these four elections, Mr. Marquez lost each time. These four (4) elections evidence vote dilution which is directly attributable to the JBWD’s unlawful at-large election system.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale city council, with districts that combine all incumbents into one of the four districts.

More recently, this month, after a 7-week trial, we also prevailed against the City of Santa Monica, after that city needlessly spent millions of dollars defending its illegal election system – far in excess of what was spent in the Palmdale litigation - taxpayer dollars which could have been more appropriately spent on indispensable municipal services and critical infrastructure improvements. Just prior to the trial in that case, counsel for the City of Santa Monica – Kahn Scolnick, a partner at Gibson Dunn & Crutcher LLP proclaimed that, “the reality is that if Santa Monica fails the CVRA test, then no city could pass, because Santa Monica is doing really well in terms of full representation and success of minority candidates.” (“In Rare California Voting Rights Trial, Gibson Dunn Steps Up for Santa Monica”, Law.com, August 1, 2018). Notwithstanding Mr. Scolnick’s prediction, Plaintiffs succeeded in proving that Santa Monica’s election system was in violation of the CVRA and the Equal Protection Clause of the California Constitution.

Given the historical lack of Latino representation on the Joshua Basin Water District’s Board of Directors in the context of racially polarized elections, we urge the District to voluntarily change its at-large system of electing its Board members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than February 12, 2019 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,



Kevin I. Shenkman

SUPPORTING DOCUMENT C

City/Political	Subdivision Defendant Settlement Conditions	Attorneys' Fees	Notes
City of Palmdale	Agreed to have voters choose elected officials by districts, including two with Latino majorities	\$4,500,000	City lost trial on the merits, held an election that plaintiffs argued was illegal, and unsuccessfully challenged an injunction stopping the city from certifying the results of the election; settlement subsequently reached
City of Modesto	Moved to District elections; voters had already approved a move to districts before settlement	\$3,000,000	Settlement; Additional \$1,700,000 to defense attorneys
Madera Unified School District / Madera County Board of Education	Moved to "by trustee" area elections via admission of liability	\$162,500	Court award
City of Compton	Moved to by-district elections via ballot measure; kept mayor at large	Confidential	Settlement
Tulare Local Healthcare District	Agreed to hold an election re changing to district elections in 2012 and agreed to cancel 2010 elections	\$500,000	Settlement
City of Tulare	City agreed to place a ballot measure before voters regarding a move to district elections	\$225,000	Settlement
Hanford Unified School District	Agreed to move to by-trustee district elections	\$110,000	Settlement

City/Political	Subdivision Defendant Settlement Conditions	Attorneys' Fees	Notes
Compton Community College District	Agreed to move to by-district elections	\$40,000	Settlement
Ceres Unified School District	Moved to by-trustee district elections before litigation was filed	\$3,000	Settlement
Cerritos Community College District	Moved to by-district elections	\$55,000	Settlement
San Mateo County	County moved to by-district elections (through a ballot measure) and further agreed to redraw its previously-approved district boundaries by forming a nine-person redistricting committee	\$650,000	Settlement
City of Anaheim	Agreed to place ballot measure on November 2016 ballot re moving to by-district elections	\$1,200,000	Settlement after first litigating; expected costs include at least another \$800,000
City of Whittier	Case dismissed as moot when City changed voting system: unsuccessful post-election challenge re at-large mayor	\$1,000,000	Court awarded fees under catalyst theory. even though case was dismissed
Santa Clarita Community College District	Agreed to conduct cumulative voting, and by trustees	\$850,000	Settlement
City of Garden Grove	Moved to by-district elections via stipulated judgment	\$290,000	Settlement

City/Political	Subdivision Defendant Settlement Conditions	Attorneys' Fees	Notes
City of Escondido	Settled via court order (consent decree) after vote of the people failed to adopt by district elections	\$385,000	Settlement
City of Santa Clarita	Agreed to move to cumulative voting method	\$600,000	Settlement
City of Visalia	Stipulated judgment, court ordered by-districts	\$125,000	Settlement
City of Santa Barbara	Agreed to move to by-district; major remained elected at-large	\$599,500	Settlement
City of Fullerton	Agreed to pay attorneys' fees – negotiate in good faith; required placing measure on November 2016 ballot to move to districts	Undisclosed	Settlement
City of Merced	Settled before lawsuit filed; agreed to ballot measure	\$43,000	Settlement
City of Bellflower	Agreed to place ballot measure on November 2016 ballot; measure adopted	\$250,000	Settlement
Sulphur Springs School District	Agreed to move to by-district elections	\$144,000	Settlement
City of Costa Mesa	Moved to districts before lawsuit was filed	\$55,000	Pre-Litigation Settlement

City/Political	Subdivision Defendant Settlement Conditions	Attorneys' Fees	Notes
City of West Covina	Waited until after lawsuit was filed to hire demographer and voluntarily move to by-district elections via ordinance	\$220,000	Settlement
City of Rancho Cucamonga	Ongoing; currently being litigated	Ongoing	Ongoing
City of San Marcus	Moved to districts within safe harbor before lawsuit could be filed	\$0	Transitioned to districts before lawsuit could be filed
City of Carlsbad	Moved to districts within safe harbor before lawsuit could be filed	\$0	Transitioned to districts before lawsuit could be filed
City of Poway	Ongoing; moved to districts within safe harbor	Ongoing	Ongoing
	TOTAL PAYMENTS TO PLAINTIFFS' ATTORNEYS	\$15,007,000	

SUPPORTING DOCUMENT D

SUPPORTING DOCUMENT D



Lawyers Earn \$4.3M in Fees From Law They Wrote
Published November 16, 2009

Associated Press

LOS ANGELES - Every lawsuit filed or even threatened under a California law aimed at electing more minorities to local offices - and all of the roughly \$4.3 million from settlements so far - can be traced to just two people; a pair of attorneys who worked together writing the statute, The Associated Press has found.

The law makes it easier for lawyers to sue and win financial judgments in cases arising from claims that minorities effectively were shut out of local elections, while shielding attorneys from liability if the claims are tossed out.

The law was drafted mainly by Seattle law professor Joaquin Avila, with advice from lawyers including Robert Rubin, legal director for the Lawyers' Committee for Civil Rights of the San Francisco Bay Area. Avila, Rubin's committee and lawyers working with them have collected or billed local governments about \$4.3 million in three cases that settled, and could reap more from two pending lawsuits.

That's only a fraction of what might come. Dozens of cities and school boards have been warned they could be sued under the 2002 California Voting Rights Act.

All the cases have been initiated by Rubin's committee or Avila, who also is a member of the lawyers' group, according to an Associated Press review of legal documents, correspondence and legislative records, and interviews with lawyers, school and government officials, current and former legislators and voting-rights experts.

There is nothing illegal about the lawyers profiting from a law they authored and state lawmakers approved. But it is unusual that after seven years all legal efforts are so narrowly focused, especially since Avila told lawmakers when he testified for the bill in 2002 that he expected other attorneys would take on cases because of favorable incentives written into the measure.

Avila said the complexity of the litigation and the fact few attorneys are experts in voting rights have limited the number involved so far.

"I anticipate there will be more cases filed by other parties," he said.

Avila and Rubin say their roles in crafting the law shouldn't overshadow its importance and the need to use lawsuits and threats to end years of injustice at the polls. Those they target dispute the need for the law. The number of minority officeholders was climbing even before it was enacted, and they claim the lawyers are using the statute to shake down local governments.

"It's a money grab," charged John Stafford, superintendent of the Madera Unified School District that was slapped with a \$1.2 million attorneys' bill even though it never contested a lawsuit.

The California statute targets commonly used "at-large" elections - those in which candidates run citywide or across an entire school district. Avila said that method can result in discrimination because whatever group constitutes the majority of voters can dominate the ballot box and block minorities from winning representation. As a remedy, the law empowers state courts to create smaller election districts favoring minority candidates.

Officials in several California communities said they never heard complaints of voter discrimination until the lawyers stepped forward. In one case, the Tulare Local Healthcare District, now known as Tulare Regional Medical Center, was sued even though its five-member governing board is a rainbow of diversity - two emigres from India, a Hispanic, a black and a white. The lawsuit argues Hispanics, who make up about a third of local voters, have been shortchanged,

That case could go to trial as early as January and is being closely watched by communities around the state. If the law is upheld, it could lead to a massive recasting of local election district boundaries, or more lawsuits.

Critics like Stafford see themselves as railroaded by lawyers armed with a law that's flawed and unnecessary. They say even if there's no discrimination, cash-strapped communities see little choice but to settle, given the risks of costly litigation and unwelcome publicity that comes with it.

A judge is reviewing the bill submitted to Madera. To pay, Stafford said the district would have to slash money for books and lunches for its mostly Hispanic students, an odd consequence for a law intended to aid Hispanics.

Though Hispanics constitute 76 percent of the city's population and a thin majority of its registered voters, according to court documents, the lawsuit claims Latinos are deprived of "the ability to meaningfully voice their preferences."

<http://www.foxnews.com/story/2009/11/16/lawyers-earn-43m-in-fees-from-law-wrote.print...> 2/6/2018

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"To say that a majority can vote and say they have been discriminated against by a minority, when the majority has the power to elect whomever they want, is ridiculous," said Hans von Spakovsky, a former assistant attorney general for civil rights in the George W. Bush administration.

"The California law essentially requires that the ethnic group be guaranteed that its choices be elected. This is a clear violation of 14th Amendment. It makes race a predominant factor in elections."

Attorney Marguerite Mary Leoni represented the Hanford Joint Union High School District in a lawsuit the community settled for about \$100,000, which it saw as cheaper than a court fight.

"It's a baffling law," she said. "I'm not quite sure it does anything to remedy discrimination." Avila and Rubin dispute that, saying the law ensures minority voices are heard on election day.

Avila said the provision under which plaintiffs' attorneys can collect fees, expenses and expert witness costs, but not pay them if they lose, is a needed incentive for lawyers to take on cases.

Avila, who bills at \$725 an hour, wouldn't disclose his earnings from the lawsuits. Though he drafted "probably the whole" law, "I don't think that should preclude me from enforcement," Avila said.

Rubin is paid a salary by the committee and can bill his legal work at \$700 an hour.

California is among the nation's most diverse states. The number of Hispanics, blacks and Asians have together outnumbered whites since 1998. And by 2020 the Hispanic population alone is expected to top whites.

Between 1996 and 2008, the number of Hispanic elected officials in California jumped 82 percent, from 693 to 1,265, according to the National Association of Latino Elected and Appointed Officials. The mayor of Los Angeles, Antonio Villaragosa, is Hispanic, as were three of the last six speakers in the state Assembly.

But a study released by the Latino Issues Forum in 2007 that found dozens of school districts with a majority of Hispanic students had, if any, Latino board members,

"When you look at the local elected leadership, most of it is still white," said Avila, who teaches at Seattle University School of Law.

There are other factors in play beyond the shape and racial composition of districts. Historically, Hispanics turn out on election day in smaller percentages than whites or blacks. While the state

population is about one-third Hispanic, they comprise only about two in ten of voters likely to turn out to vote, though that rate has been increasing.

Modesto was the first community targeted by a lawsuit from the lawyers' committee, which noted only one Hispanic was elected to the City Council since 1911 despite a significant Latino population. Modesto fought the case and Superior Court Judge Roger Beauchesne declared the law unconstitutional, saying it created preferential treatment for minorities without evidence of need. He also ruled the provision on attorneys' fees and expert witness costs amounted to illegal gifts of public money.

That decision was overturned on appeal, however, and the city eventually paid Avila, the lawyers' committee and a law firm working with them \$3 million in a settlement after the U.S. Supreme Court declined to hear the case.

In the Ceres Unified School District, about 60 percent of the students are Hispanic, The district had two Latinos on its seven-member board when it was contacted by the lawyers' committee, which sued, alleging violations of the law, school officials said,

Superintendent Walt Hanline said the district decided to settle rather than fight.

"We said, 'We're not going to take textbooks out of kids hands for this. Why battle this issue and take the risk of losing millions of dollars?'" Hanline said.

The district has not been billed, but Rubin says he expects it only will be a few thousand dollars because it quickly agreed to change the way it conducts elections. He said the much larger settlement amount in the Modesto case reflected the extensive legal fight that ended at the Supreme Court.

Modesto, which is about one-quarter Hispanic, did not see a rush of minority candidates after new City Council districts were established, Mayor Jim Ridenour said. In a low-turnout election this month, one seat in a new Hispanic-majority district was won by David Geer, a 67-year-old federal security officer who is white.

Rubin concedes breaking up at-large elections doesn't guarantee more minorities immediately will be elected. What can be expected, he said, is a trend toward more diversity over time,

"Just because an African-American was elected president certainly doesn't mean that racial discrimination has sunseted, just like Bill Cosby having his own TV show didn't bring the end of racial discrimination," Rubin said.

<http://www.foxnews.com/story/2009/11/16/lawyers-earn-43m-in-fees-from-law-vrote.print....> 2/6/2018