

**REPORT ON  
OBJECTIONS TO AT-LARGE ELECTION SYSTEM  
IN PROPOSED HOLLYWOOD CITY**

**I**

**BACKGROUND**

On June 5, 2002, the Local Agency Formation Commission of Los Angeles County (“LAFCO”) adopted its resolution making determinations for approval of the Hollywood Special Reorganization. That action was authorized under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (*Cal. Gov. Code* § 56001 et seq.) LAFCO’s approval provided that the legislative body of the new city shall consist of five (5) members elected at large, and that the first election of city council members shall be held concurrently with the election on the question of special reorganization.

Prior to adoption of the LAFCO resolution, Mr. Alan Clayton, Research Chairperson of the California Latino Redistricting Coalition submitted a proposed districting plan establishing five (5) single member districts for the election of city council members in the proposed city. After consideration, LAFCO did not adopt this proposal.

Also on June 5th, the Mexican American Legal Defense and Educational Fund (“MALDEF”) submitted written opposition to the adoption of an at-large voting system for the election of city council members for the proposed Hollywood city. That opposition was based on MALDEF’s contention that implementation of an at-large voting system may violate Section 2 of the Voting Rights Act of 1965, as amended. MALDEF’s opposition was noted in the record prior to adoption of the resolution making determinations.

On June 6, 2002, MALDEF submitted a letter requesting that LAFCO conduct a review of voting rights issues pertaining to the proposed at-large voting system during the period of reconsideration of LAFCO’s approval of the Hollywood application. This letter raised the identical issues set forth in its prior opposition and alleged that:

- < There is a significant, geographically compact, Latino population in the southeastern part of the proposed city;
- < In the proposed city, Latinos constitute almost forty percent (40%) of the total population and thirty-three percent (33%) of the voting age population;
- < The southeastern portion of the proposed city has distinct communities of interest and concerns that are different from much of the rest of Hollywood in the areas of

educational attainment, affordable housing availability, and the quality of city and neighborhood services;

- < The southeastern portion of the proposed city contains populations that are characterized by lower per capita incomes and educational attainment levels than the rest of the proposed city;
- < Latino registered voters would constitute approximately seventeen percent (17%) of the proposed city; and
- < Under an at-large voting system, it is possible that the Latino community would be unable to elect any candidates of choice to the city council.

In light of MALDEF's request, the Executive Officer commissioned an electoral analysis in order to consider the effects that an at-large election system would have in the proposed Hollywood city.

Subsequently, on or about July 5, 2002, the City of Los Angeles submitted a letter requesting reconsideration of the Commission's decision approving the petition for special reorganization. This letter requested, among other things, reconsideration of the determination that the city council members be elected at-large, rather than by districts. In its letter, the City of Los Angeles reiterated the concern expressed by MALDEF that LAFCO should not adopt an at-large voting system without consideration of voting rights issues.

In response to these concerns, Stephen P. Klein, Ph.D., prepared the attached report dated July 7, 2002, regarding the success of candidates preferred by Latino/Hispanic voters in the Special Reorganization Area. This report analyzed the results of six recent local and state contests and concluded that an at-large system of voting would not result in the dilution of Hispanic votes in a new Hollywood city – in other words, creation of an at-large voting system would not have an adverse effect on the ability of Hispanics in a new Hollywood city to participate in the political process and elect candidates of their choice.

## II

### LEGAL PRINCIPLES

#### A. *Introduction*

In responding to concerns raised by MALDEF and the City of Los Angeles regarding the creation of an at-large election system for a Hollywood city, LAFCO must be guided by applicable legal requirements including provisions of the *California Government and Elections Codes*, which expressly

govern the manner in which special reorganizations are to be considered, and federal law, including the Voting Rights Act (42 U.S.C. § 1971 et seq.)

B. *California Law*<sup>1</sup>

State law establishes specific requirements for reviewing and considering applications for special reorganization such as that now pending before the commission. (See, *Cal. Gov. Code* § 56000 et seq. [Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000].)

In addition, *Government Code* section 36501 provides that the government of a general law city shall be vested in, among others, “[a] city council of at least five members.”

Furthermore, *Government Code* section 57377, expressly provides:

“Officers, except members of the city council, shall hold office until the first succeeding general municipal election held in the city and until their successors are elected and qualified. Of the five elected members of the city council, the three receiving the lowest number of votes shall hold office until the first succeeding general municipal election held in the city and until their successors are elected and qualified, and the two receiving the highest number of votes shall hold office until the second succeeding general municipal election held in the city and until their successors are elected and qualified. If two or more members of the city council are elected by the same number of votes, the terms of each shall be determined by lot. The members of the city council elected to succeed the members elected at the incorporation election shall hold office for four years from the Tuesday succeeding their election, and until their successors are elected and qualified.”

C. *Voting Rights Act*

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<sup>1</sup> This report does not address the California Voting Rights Act of 2001 (Chapter 129, Statutes of 2002 [Senate Bill No. 976]), which was approved by the Governor on July 9, 2002. That act, which adds Chapter 1.5 to Division 14 of the *California Elections Code*, provides that an at-large system of electing members of a governing body of a political subdivision cannot be imposed or applied in a manner that results in the impairment or abridgement of the voting rights of members of a protected class to elect candidates of their choice or influence the outcome of an election. A violation of the new California Voting Rights Act is established if there is a showing of racially polarized voting in such an election.

The newly enacted legislation will not become effective until January 1, 2003. (*Cal. Gov. Code* § 9600(a).) Should the voters approve special reorganization, the city council of the new city may choose to review potential issues that may arise under this legislation.

The Voting Rights Act of 1965, as amended, (42 U.S.C. § 1971 et seq.) prohibits states and their political subdivisions from denying or abridging citizens' rights to vote "on account of race or color" (42 U.S.C. §§ 1973a, 1973c) or membership in a "language minority group" (42 U.S.C. § 1973b(f)(2)).

Of primary concern in LAFCO's consideration is Section 2 of the Voting Rights Act. That Section, as amended, declares:

"(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title,<sup>[2]</sup> as provided in subsection (b) of this section.

"(b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."

(42 U.S.C. § 1973.)

In interpreting Section 2, with respect to at-large or district election plans or procedures, the United States Supreme Court has held that a plaintiff must satisfy three (3) preconditions (commonly referred to as "*Gingles* preconditions") before a court will undertake a detailed analysis of a challenged plan or procedure. (*Thornburg v. Gingles*, 478 U.S. 30 (1986).) A plaintiff must show that the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; that it is politically cohesive; and that, in the absence of special circumstances, bloc voting by the white majority usually defeats the minority's preferred candidate. (478 U.S. at 50-51.) Vote dilution under Section 2 is not automatically established even if all three *Gingles* preconditions are established. (*Johnson v. DeGrandy*, 512 U.S. 997 (1994).)

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<sup>2</sup> 42 U.S.C. § 1973b(f)(2) states: [¶] "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."

If the three *Gingles* preconditions are satisfied, a court will then conduct a detailed analysis of a challenged plan or procedure under the “totality of the circumstances” standard. (42 U.S.C. § 1973(b); *Thornburg v. Gingles*, supra, 478 U.S. at 36-37.) This analysis looks to a number of objective factors (also known as “Senate factors”), including whether there is any history of official discrimination; whether racially polarized voting exists; whether voting practices exist that enhance opportunity for discrimination; whether there is a denial of access to candidate slating process; whether members of a minority group bear lingering effects of discrimination in education, employment, and health, which hinder effective participation; whether political campaigns have been characterized by racial appeals; the extent to which members of the protected class have been elected; whether there is a significant lack of responsiveness by elected officials to the particularized needs of the group; and whether the policy underlying the use of the voting qualification, standard, practice or procedure is tenuous. (478 U.S. at 36-37.; *DeGrandy*, supra, 512 U.S. at 1013.)

Racially polarized voting is indicative of the presence of the second and third *Gingles* preconditions relating to political cohesiveness of the minority group and the prevalence of majority white bloc voting. (*Thornburg v. Gingles*, supra, 478 U.S. at 56.) In discussing polarized voting, Justice Brennan stated:

“A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and, consequently, establishes minority bloc voting within the context of § 2. And, in general, a white bloc vote that normally will defeat the combined strength of minority support plus white ‘crossover’ votes rise to the level of legally significant white bloc voting. The amount of white bloc voting that can generally ‘minimize or cancel’ black voters’ ability to elect representatives of their choice, however, will vary from district to district according to a number of factors, including the nature of the allegedly dilutive electoral mechanism; the presence or absence of other potentially dilutive electoral devices . . . ; the percentage of registered voters in the district who are members of the minority group; [and] the size of the district[.]”

(*Thornburg v. Gingles*, supra, 478 U.S. at 56 (citations omitted).)

However, it is clear that a pattern of racial bloc voting extending over a period of time is more probative in determining the validity of a claim of polarization than are the results of a single election. (*Id.* at 57; see, e.g., *United States v. Virginia*, 518 U.S. 515, 561 (1996) (Rehnquist, C.J., concurring); *Commissioner v. Wodehouse*, 337 U.S. 369, 415 (1949) (Frankfurter, J., dissenting); see also, *Uno v. City of Holyoke*, 72 F.3d 973, 985 (1st Cir. 1995) [“the results of a single election are unlikely, without more, to prove the existence or nonexistence of embedded racial cleavages. . . . After all, to be legally significant, racially polarized voting in a specific community must be such that, over a period of years, whites vote sufficiently as a bloc to defeat minority candidates most of the time.”]; *Cano v. Davis*, 2002 U.S. Dist. LEXIS 12102 (C.D. Cal. June 12, 2002), citing *NAACP v. City of Niagara Falls, New York*, 65 F.3d

1002, 1009 (2d Cir. 1995) [voting rights plaintiffs cannot prevail by demonstrating that the minority group's candidate of choice was defeated in a single election].)

D. *Equal Protection Clause*

The United States Supreme Court has held that a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution may exist where a voting scheme is “conceived or operated as [a] purposeful device[] to further racial discrimination’ by minimizing, cancelling out or diluting the voting strength of racial elements in the voting population. *Whitcomb v. Chavis, supra*, at 149. See also *White v. Regester, supra*, at 765.” (*Rogers v. Lodge* (1982) 458 U.S. 613, 617.) In such instances, the Equal Protection Clause is violated if it is shown that “the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose.” (*Id.* (citation omitted).)

However, with respect to at-large voting schemes, the Supreme Court has expressly stated that such systems of voting are not *per se* unconstitutional:

“At-large voting schemes and multimember districts tend to minimize the voting strength of minority groups by permitting the political majority to elect *all* representatives of the district. A distinct minority, whether it be a racial, ethnic, economic, or political group, may be unable to elect any representatives in an at-large election, yet may be able to elect several representatives if the political unit is divided into single-member districts. The minority's voting power in a multimember district is particularly diluted when bloc voting occurs and ballots are cast along strict majority-minority lines. While multimember districts have been challenged for ‘their winner-take-all aspects, their tendency to submerge minorities and to overrepresent the winning party,’ *Whitcomb v. Chavis*, 403 U.S. 124, 158-159 (1971), this Court has repeatedly held that they are not unconstitutional *per se*. *Mobile v. Bolden, supra*, at 66; *White v. Regester*, 412 U.S. 755, 765 (1973); *Whitcomb v. Chavis, supra*, at 142.”

(*Rogers v. Lodge, supra*, 458 U.S. at 616-617.)

### III

## DISCUSSION

Both MALDEF and the City of Los Angeles have expressed concern that creation of an at-large system of voting in a new Hollywood city may deprive minority groups of the opportunity to participate in the political process and elect candidates of their choice. The primary reason for these concerns is the same – courts have found some at-large voting systems to violate the Voting Rights Act because under such systems, minority groups were unable to elect any candidate of their choice but were able to do so

if the voting system were by district. MALDEF also noted that the Hollywood area contains a significant percentage of Hispanic/Latino population.

To assist LAFCO in addressing these concerns, Dr. Klein performed an electoral analysis of certain recent contests to determine whether an at-large system would result in the “dilution” of the Hispanic votes in the Hollywood area. Specifically, he analyzed the results of six electoral contests, three of which were local, non-partisan contests – the 1998 contest for Los Angeles County Sheriff, 2001 contest for Mayor of the City of Los Angeles, and 2001 Los Angeles City Attorney contest. The other three were statewide, partisan contests held in 1998: Lieutenant Governor, Attorney General, and Insurance Commissioner.

Dr. Klein examined these results to determine whether Hispanic-preferred candidates consistently lost throughout the area but won decisively in the majority-minority district proposed by Mr. Clayton (designated as District 5) and found that:

- < Hispanic-preferred candidates won in three of six races analyzed (Sheriff, Mayor and Lieutenant Governor). The Sheriff and Mayor races were considered more probative because they were both local and non-partisan.
- < In the Attorney General contest, the Hispanic-preferred candidate (Calderon) lost in the proposed city area and in Mr. Clayton’s majority-minority district, District 5. In the Insurance Commissioner race, the Hispanic-preferred candidate (Martinez) received only 41 percent of the Hispanic vote, but finished second city-wide. These results would indicate that in both contests, the Hispanic vote was not cohesive.
- < Although no candidate received a majority of the Hispanic vote in either the Attorney General or Insurance Commissioner contests, Hispanic-preferred candidates came in second in the citywide area. This would indicate that Hispanic-preferred candidates received a significant number of non-Hispanic votes because less than one-fifth of the area population have Latino or Spanish surnames. These results suggest that Hispanic-preferred candidates are likely to win seats in a multi-seat, at-large contest in a new Hollywood city.
- < Only in the City Attorney contest did a Hispanic-preferred candidate fail to win area-wide but came in first in District 5. However, one contest would not establish a pattern of majority bloc voting defeating a minority-preferred candidate.

Dr. Klein determined that based upon these results, Hispanic-preferred candidates would win as many, if not more, council seats under the system adopted by LAFCO as they would under a district system. Therefore, he concluded that there would not be a dilution of Hispanic votes in an at-large system of voting for the City Council of a new Hollywood city.



### **III**

#### **CONCLUSION**

Based upon our review of the applicable law in light of Dr. Klein's electoral analysis, an at-large election system for the proposed city would not violate the Voting Rights Act or the Equal Protection Clause of the Fourteenth Amendment.

Accordingly, any objections to the use of an at-large election system in the proposed city may be rejected. Appropriate determinations are attached for your review and consideration.