

AB 764 Changed the Rules (Again): Prepare Now for Districting and Redistricting



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CVRA/(Re)Districting Background

Historically

1. Only a few, large cities (approximately 25) elected councilmembers in districts; the rest elected at large.
2. For those cities that did have districts, redistricting every ten years—and districting for those cities that made a transition—the process typically involved a lot of discretion on the part of the city council.
 - ▣ So long as equal population requirements and the federal Voting Rights Act was complied with, virtually any “reasonable” criterion could be considered as well, in the discretion of the council.

Now



The screenshot shows the top portion of a web article. The header is dark blue with the word "Now" in white. Below is a black navigation bar with "CAL MATTERS" in white, a search icon, and links for "About Us", "Newsletters", and "Donate". The article title is "A 'low-profile' revolution' changes local governments" in bold black text, with the author "BY DAN WALTERS" and date "AUGUST 26, 2018" below it. Social media icons for Facebook, Twitter, and LinkedIn are visible.

The “revolution” consists of two components:

1. The California Voting Rights Act (2002)
 - ▣ Has pushed *lots* of jurisdictions to move to districts, especially since 2010
2. The Fair Maps Act (2019, 2020, 2023)
 - ▣ The process and substantive criteria are substantially more restrictive

The California Voting Rights Act

- Enacted in 2002 (S.B. 976), took effect January 1, 2003 (Elec. Code §§ 14025 to 14032)
- Prohibits at-large electoral systems that impair the right to vote of a protected class. It applies to any system that is not “by-district,” including combined systems
 - ▣ Single-member districts a safe harbor (though still subject to FVRA)
- Based on the federal Voting Rights Act, but in California plaintiffs were having a difficult time prevailing and were getting assessed litigation costs, so:
 - ▣ Modified the plaintiffs’ burden of proof, specifically to abolish the first “*Gingles*” precondition
 - ▣ Generally, protects plaintiffs from exposure to litigation if they lose

Costs of CVRA Litigation

- Reasonable attorneys' fee awards to prevailing plaintiffs are *mandatory, with some conditions*.
- Prevailing defendants are not entitled to fees or costs.
- The City of Modesto is reported to have paid \$1.7 million to its attorneys and \$3.0 million to plaintiffs' attorneys. The case never even went to trial, though legal issues did get litigated through the appeals courts up to the U.S. Supreme Court.
- City of Tulare reportedly paid \$250,000.
- Tulare Local Healthcare District paid \$500,000
- City of Escondido: reportedly \$585,000
- City of Palmdale: reportedly \$4.5 million through briefing on appeal, no argument
- City of Anaheim: \$1.2 million in settlement long before trial
- City of Whittier: ~ \$1 million, although City defeated motion for preliminary injunction, and case eventually dismissed as moot
- San Mateo County: \$650,000; City of Santa Barbara: \$600,000; Madera Unified SD: \$170,000; Hanford JUHSD: \$118,000; Merced City: \$42,000; Fullerton \$260,000; Highland \$1.3 million; City of Santa Clara: \$3.3 million; City of Santa Monica: demand \$22 million, and so on.
- *Result? Hundreds of cities, school districts, special districts, and one county have adopted districts*

Santa Monica v. Pico Neighborhood Association

Date	Action
April 12, 2016	Initial Complaint filed
November 8, 2018	Superior Court rules for the plaintiff
March 18, 2019	Appeals Court stays ruling
July 9, 2020	Appeals Court rules for the City
December 21, 2020	City's initial brief filed with State Supreme Court
August 24, 2023	State Supreme Court issues ruling and returns case to Appeals Court
???	Appeals Court could (1) issue a new ruling; (2) hold a hearing; or (3) remand it back to Superior Court



This case could take anywhere from a few months to multiple years to finish.

Key Ruling Elements

- Supported the City on:
 - ▣ Plaintiffs must show that the at-large election system dilutes the protected class voters' ability to elect—a showing of racially polarized voting is necessary, but not sufficient standing alone

- Supported the Plaintiffs on:
 - ▣ The protected class voters do not need to be numerous enough to constitute 50%+1 of the voters in a proposed remedy district

- Opened new realm of debate:
 - ▣ Plaintiffs must show that some alternative and legal voting system would provide protected class voters the ability to elect
 - ▣ Also left unresolved: what about “influence” claims?

- *CVRA cases just became even more complicated and expensive*

FAIR MAPS Act Mapping Criteria

Prior Requirements

1. Equal Population
2. Comply with the Federal Voting Rights Act
3. No Racial Gerrymandering
4. Contiguous
5. Minimize division of neighborhoods and communities of interest
6. Follow easily recognizable geographic features
7. Compactness
8. Do not “favor or discriminate against political parties”

AB764 Requirements

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6. Follow easily recognizable geographic features
7. Compactness
8. Do not “favor or discriminate against **incumbents, political candidates or** political parties”



Districting Process

Old Requirements

1. Two initial hearings
2. Release draft maps
3. Two additional hearings
4. Final hearing to adopt map



AB764 Requirements

1. Two initial hearings
2. Publish report on majority-minority district options
3. Publicly release any report on polarized voting that is prepared
4. Release draft maps
5. Two additional hearings
6. Adopt map
7. Release report on map's compliance with mapping criteria

- If under threat of CVRA litigation, typically has to be completed within 135 days of receiving demand letter

2031 Redistricting Process

Old Requirements

1. Website with specified information be online for 10 years
2. Outreach to community organizations
3. Two pre-draft map hearings
4. Release draft maps
5. Two draft map hearings
6. Hearing and adoption of resolution or ordinance
7. Mid-decade changes banned except for large populated annexations



AB764 Requirements

1. Website with specified information be online for 10 years
2. “Good faith” outreach including to “underrepresented communities and non-English-speaking communities,” with outreach plan released for 4 weeks of public comment prior to Council vote to approve outreach plan
3. Must allow public submission of comments and maps and provide online mapping tool
4. Report on majority-minority district options
5. Release any report on polarized voting
6. Release draft maps
7. At least one public workshop
8. At least five Council hearings
9. Hearings must be at a fixed time
10. Adopt map by resolution or ordinance
11. Deadline: 204 days before 2032 election
12. Release report on map’s compliance with mapping criteria
13. Mid-decade changes banned except under very limited circumstances

Outreach

- Use the Secretary of State's outreach template to guide your plan
 - Build your community organization list and seek feedback/input early
 - Determine additional language translation/interpretation needs
- Use many outreach tactics
 - Dedicated website
 - Press releases
 - Social media content
 - Digital ads
 - Radio and streaming ads
 - Educational videos
 - Flyers and mailers
 - Community workshops
 - Pop-up events
 - Direct outreach to community-based organizations
- Stay flexible on strategies and be responsive to feedback



2031 Redistricting Timeline

Date	Event
April 1, 2030	Census Count Day
April 1, 2031	Deadline for Census Bureau to release data
??? (likely early May)	California releases prisoner-adjusted population counts
August 11, 2031	Deadline to redistrict for jurisdictions with March 2032 elections
April 12, 2032	Deadline to redistrict for jurisdictions with November 2032 elections

Logistical Challenge:

- In 2011, about 160 California local jurisdictions had to redistrict (everyone else was at-large).
- In 2021, about 500 had to redistrict.
- In 2031, NDC predicts between 800 and 1,100 will have to redistrict.

Conclusions

- Districting: only the criteria & reporting requirements change
 - ▣ New significant legal exposure to a map challenge from ban on adopting a map for “purpose” of favoring or disfavoring an incumbent, candidate or political party

- 2031 Redistricting
 - ▣ Also has the new significant legal exposure to a map challenge
 - ▣ New incentives for redistricting by separate commission
 - ▣ Process requirements will be time-consuming and expensive
 - ▣ Major logistical and legal challenges on a very tight timeline
 - ▣ Additional, more specific outreach requirements

Recommendations

□ Start the work now

1. Identify neighborhoods (especially developments and specific districts) and communities of interest prior to actual redistricting.
2. Starting in 2025, participate in Census Bureau’s “Block Boundary Suggestion Program” (BBSP) and ensure your county participates in “Voting District Project” starting in 2027.
3. Collect master list of community organizations and individuals.
4. Sign up legal, outreach and demographic consultants ASAP.
5. Consider splitting your districting ordinance into separate ordinance and resolution (provides timing flexibility in 2031/2)

□ Prepare the Council

- A. They face difficult choices, outcomes and legal risks.
- B. Consider using an independent or advisory commission.

□ Improve the Law

- Multiple redistricting websites in 2031 will confuse the public.
- Retaining population-balanced Council maps should not require a full process.