

Emails Received regarding agenda items

CITY OF ALBANY, CALIFORNIA



ALBANY CITY HALL
1000 SAN PABLO AVENUE
ALBANY, CALIFORNIA 94706

CLOSED SESSION: 2-1
Confer with Legal Counsel

CITY COUNCIL MEETING
APRIL 1, 2019

From: [eshen8888](#)
To: [citycouncil](#)
Subject: CVRA session tonight
Date: Monday, April 1, 2019 12:51:33 PM

Hi,

I am an albany citizen who is very interested in Albany creating a voting system that represents all of the diversity in our city. I know that you will be going into a closed session tonight.

Because of my work schedule, I am not able to attend and voice my comments in person.

I am very supportive of the City Council adopting Ranked Choice voting at large which was unanimously recommended by the Charter Review Committee and the School Board. At the very least, we should create a process within our city to engage the community members in selecting the most democratic way of holding elections.

Thank you so much,

Eveline Shen

From: [Preston Jordan](#)
To: [citycouncil](#)
Cc: [Albany Election Reform](#)
Subject: 4/1 closed session item 2-1: method of electing the Council
Date: Friday, March 29, 2019 3:23:11 PM
Attachments: [Albany RP voting.pdf](#)

Hello Council-

I appreciate that you are now taking up Albany's compliance with the California Voting Rights Act (CVRA) as a result of a presentation to you during Good of the City on February 4th that relayed Albany's current plurality at large method of electing its City Council is likely in violation. It is unfortunate you are choosing to take up this matter in closed session rather than in front of the public given this is "the most important and momentous decision in city governance since incorporation." ([citation](#))

The attached report relays the basis for the analysis presented to you two months ago and discusses options for responding.

At this time, Albany has not received a CVRA lawsuit threat. Consequently, it still has wide latitude for how to respond to the information presented. While the safest legal course is to switch the elections for Albany City Council to single-member districts, this would entail dividing an already small city into five. Each district would have only 1,000 to 2,000 habitual voters. These are quite small pools from which to draw at least two candidates per district so that each election is contested.

During the Council's deliberations last year of the Charter Review Committee's and then the School Board's unanimous recommendation to switch to ranked choice at large, which is proven to increase the diversity of representation, some Councilmembers speculated single-member district elections might result in more people choosing to run for Council. I subsequently tested this speculation through analysis of statewide municipal election data for the previous twenty years available from [Sacramento State](#). These actual results show the opposite effect of that speculated. Single-member districts have substantially and significantly more uncontested elections than do plurality at large elections. The results indicate the share of Albany City Council elections that are uncontested would increase from the historic one out of six to one out of three. In other words, the five members of the Council would often include two who walked into the office without regard to their qualifications or temperament.

The intuitive understanding of this and other types of damage that would result from transitioning to single-member districts may be why in the last two years two cities and one school district have responded to immediately responded CVRA lawsuit threats by pursuing change to an at large election method that increases the diversity of representation in accord with the intent of the CVRA. Mission Viejo amicably negotiated a transition to cumulative voting, which was validated by the court ([citation](#) and [another](#)). Fort Bragg negotiated the establishment of an election method review committee to conduct the type of research and consideration performed by Albany's Charter Review Committee from 2013 to 2018 ([citation](#)). The Lucerne Valley Unified School District has chosen to transition to cumulative voting ([citation](#)). Unlike these cities, Santa Clara's City Council ignored the first CVRA lawsuit threats it received for six years and was then sued before finally taking action to try to avoid being forced into single-member districts ("The suit was finally brought in 2017, after the recommendation of a 2011 Charter Review Committee had been ignored"; [citation](#)).

As mentioned, currently Albany has more latitude of action than these other jurisdictions because it has not received a CVRA lawsuit threat. At this time, the Council could transition Albany's elections to ranked choice at large, again as unanimously recommended over the last two years by the Charter Review Committee and the School Board. Unlike when the Council considered these recommendations, making this transition now would cost the City almost nothing. This is because since the Council's prior consideration the County Registrar has acquired a new election system capable of running a ranked choice at large election.

In contrast, drawing districts requires contracting a demographic firm and running numerous public meetings. This costs at least tens of thousands of dollars in direct costs and staff time (articles regarding these costs for most cities relay the total cost, excluding payment to the firm sending the threat, is over \$100,000). In addition, the resulting district boundaries could only be used for the 2020 election after which they would have to be redrawn at additional cost to accord with the 2020 Census results.

The Council has two options for transitioning to ranked choice at large and so averting the cost and consequences of single-member districts. It can commit to providing voters the opportunity to decide this crucial matter for themselves by committing to put a charter amendment to transition to ranked choice at large on the November 2020 ballot. Or it can use its authority to adopt this transition by ordinance, as provided in Charter Section 5.01. This states, "Except to the extent otherwise provided by ordinance hereinafter enacted, all elections shall be in accordance with the provisions of the Elections Code of the State of California." Note this option is not available for changing to single-member districts because section 2.01 of the Charter specifies that elections for Council be held at large.

Regarding the ordinance option, the City Attorney previously conveyed an opinion to the Charter Review Committee via the City Clerk that this provision does not allow the Council to change the method of electing Albany's Council. The Committee inquired after, but never received, reasoning for this opinion. I suggest asking the City Attorney what aspects of Albany's elections he envisions the Council is allowed to change under the provision of Charter Section 5.01 if not the election method.

The two options for changing to ranked choice at large provided above are not mutually exclusive. The Council could switch the method by ordinance and commit to putting a Charter amendment on the ballot so the voters could have the final say. The first would provide a measure of protection against a CVRA suit threat because it would change Albany's election method. The CVRA (Elections Code Section 14028(a)) states, "Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action." Once a new election method is adopted, there are no historic election results upon which a law firm could base a CVRA lawsuit threat.

Whatever approach you choose to take, the status quo is likely legally untenable and certainly morally unsustainable if the Council is to abide by the Vision of "responding to the needs of a diverse community."

Preston Jordan
510 418-9660

"If you don't like the news ... go out and make some of your own." - Scoop Nisker

Racially Polarized Voting in Albany, California

Preston Jordan

2 February 2018

Abstract

The California Voting Rights Act (CVRA) prohibits local jurisdictions from using at large election methods that preclude protected groups from electing candidates of their choice (racially polarized voting). Protected groups are defined by race, ethnicity, and language. The results of each contested election for Albany City Council from 2012 through 2018 and one of the four Albany School Board elections during this period indicate racially polarized voting occurred. Two approaches are readily available to bring Albany's election method into compliance with the CVRA. Albany can switch to by-district elections or to ranked choice at large (RCAL). By district elections have the disadvantages of significantly and substantially increasing the proportion of elections that are uncontested, likely costing more initially, and imposing representation choices upon voters. Ranked choice has none of these disadvantages, but is less protective against a CVRA suit threat. Whichever method is chosen, the results of Albany's recent elections indicate change is needed for moral and legal reasons.

Introduction

Section 14027 of the California Elections Code states "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice." Section 14026(d) defines "protected class" as "a class of voters who are members of a race, color or language minority group, as this class is referenced and defined in the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.)."

Section 14028(a) states "A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body." Section 14028(e) defines "racially polarized voting" as "voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate."

The US Census estimates the population of Albany was 47.1% people with European/Middle Eastern ancestry, 26.8% people with Asian ancestry, and 13.0% people of Hispanic or Latino ancestry on 1 July 2017 (smaller portions of the population with other ancestries not listed here; people with Middle Eastern ancestry were categorized as "white non-Hispanic" by the US Census). All 50 Councilmember years from 2010 through 2020 were occupied by members with European/Middle Eastern ancestry.

Over the 50 School Trustee years from 2010 through 2020, 40 were occupied by members with European/Middle Eastern ancestry, six by a member with Asian ancestry, two by a member with Hispanic /Latino ancestry, and two by a member with African ancestry.

This study assesses if the mismatch between the racial/ethnic demographics of Albany's population and its governing bodies results from racially polarized voting.

Methodology and Data

Elections Code section 14026(e) states "The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting." The method used in this study is bivariate ecological regression (Handley, 2011).

"Bivariate" refers to comparing the values of two different variables. In this study, these variables are the percent of the population in each voting precinct that has European/Middle Eastern ancestry and the percent vote for each candidate by precinct. "Ecological" refers to using data for a group rather than individuals. "Regression" regards determining the linear equation that best represents the relationship between the values of the two variables in the data.

The analysis utilized the voting precincts as of March 2018 (<https://data.acgov.org/Voting/Alameda-County-Voter-Precincts/q6ek-ybkr>). These precincts are presumed relatively stable for the 2012 through 2018 elections as these are between decennial censuses. So results from these elections are analyzed. Precinct-level results are available in the statements of vote from the Alameda County Registrar (<https://www.acvote.org/election-information/past-elections>). Block-group level estimates of ancestry of voting age citizens were from the US Census using the 2012 to 2016 American Community Survey (<https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html>). The block groups for 2016 were also from the US Census (https://www.census.gov/geo/maps-data/data/cbf/cbf_blkgrp.html). Total population and ancestry data at the block level from the 2010 US Census were also utilized.

The estimated citizen voting age population (CVAP) of different races and ethnicities were assigned to precincts from block groups. Where a block group spanned more than one precinct, the assignment was generally based on the relative area of the block group in each precinct. Deviations from this approach occurred to account for block groups with large variations in population density. For instance a single block group covers the west side of Albany Hill along with the upper portion of its east and south slopes. There is a precinct for the residences along the 500 block of Pierce Street. The area of this precinct is approximately two fifths of the block group. Yet most of the residents in the block group live in this precinct. Consequently, seven tenths of the citizen voting age residents in this block group were assigned to the precinct for the 500 block of Pierce Street.

California Elections Code section 14028(b) states "The occurrence of racially polarized voting shall be determined from examining results of 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.” However, there have been no candidates with either Asian or Hispanic/Latino ancestry for the Albany City Council in the 2010 through 2018 elections. The lack of such candidates is itself cited as evidence of racially polarized voting in letters to jurisdictions threatening lawsuits under the CVRA. Consequently, the lack of such candidates is unlikely to be protective against the threat of a lawsuit.

In the absence of Council candidates with Asian or Latino/Hispanic ancestry within the study period, this study analyzes Council election results for racial polarization regardless of the ancestry of the candidates.

There have been two candidates with Asian ancestry and one with Hispanic/Latino ancestry for the Albany School Board in the study period. The latter candidate ran twice during the period. These contests are analyzed for racial polarization along with those with candidates only of other ancestries.

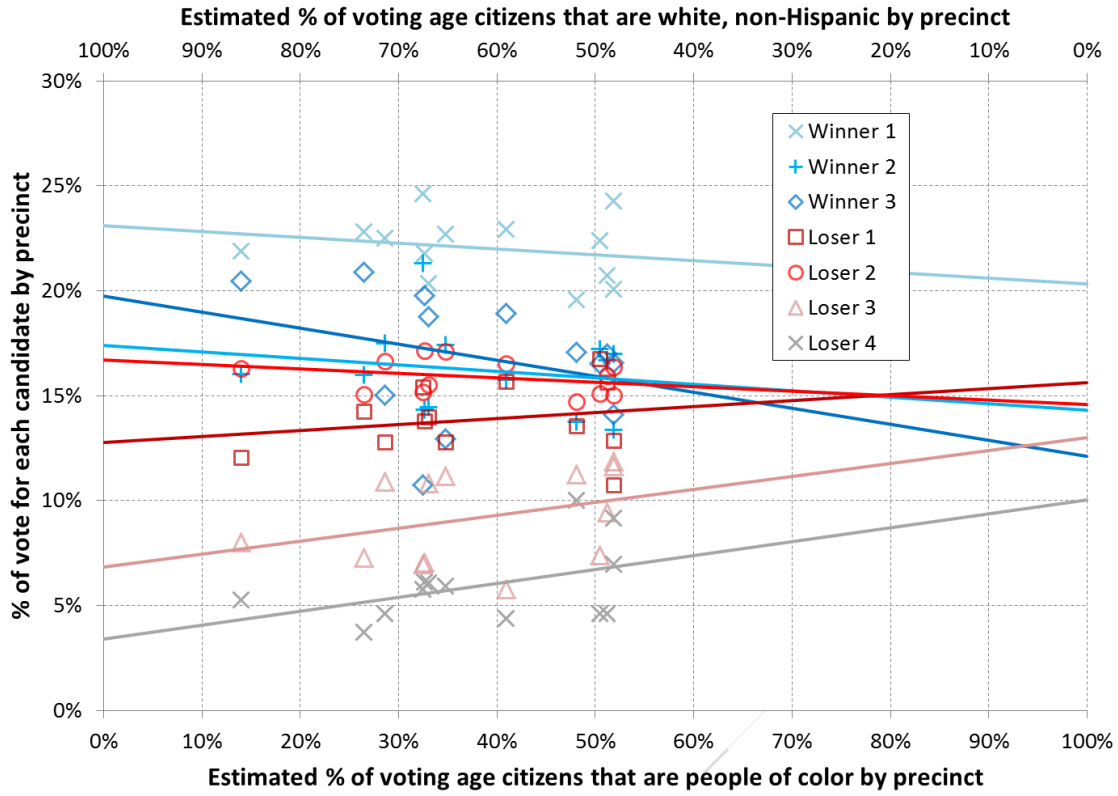
Results

Figure 1 shows the percent of residents that are white, non-Hispanic in each census block in 2010 along with the precinct and block group boundaries. Note Figure 1 shows percent of total population rather than CVAP. Voting rights laws are based on total population while voting results are more closely based on CVAP. CVAP provides a useful perspective on the effect of different potential district demarcations.

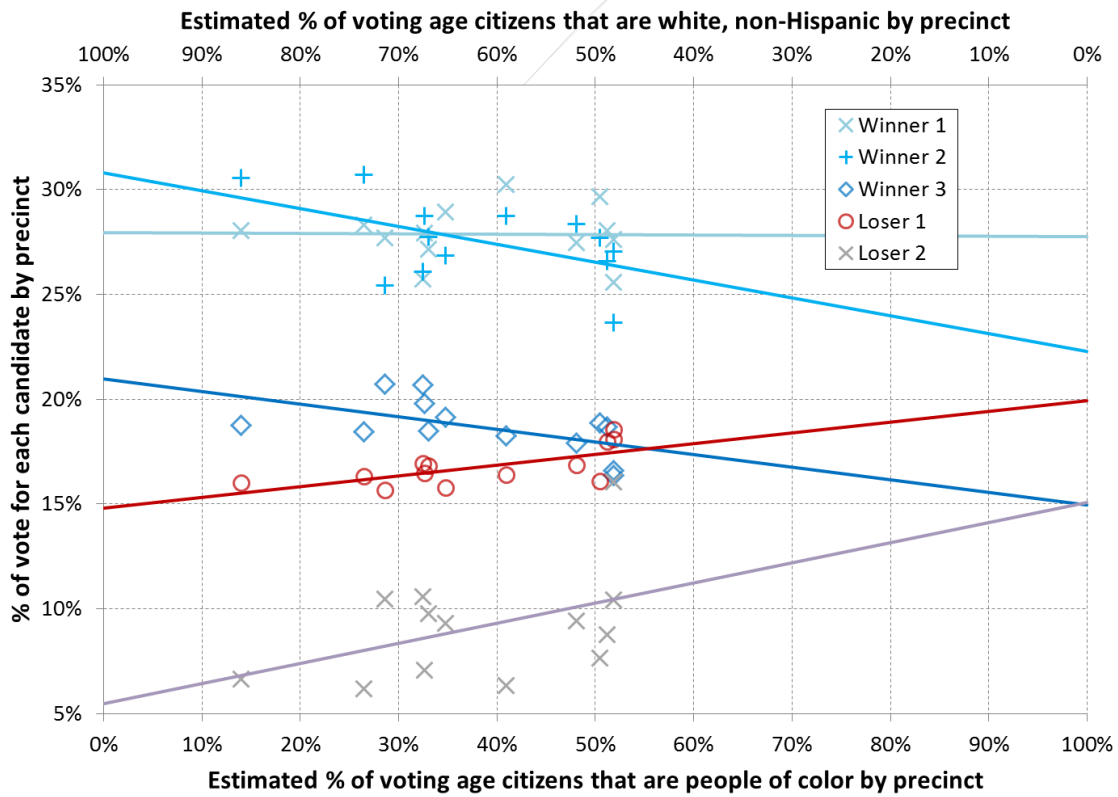


Figure 1. Map of the percent of residents in each census block in 2010 that are white, non-Hispanic along with block group and voting precinct boundaries as of March 2018 and possible Council/Trustee district boundaries.

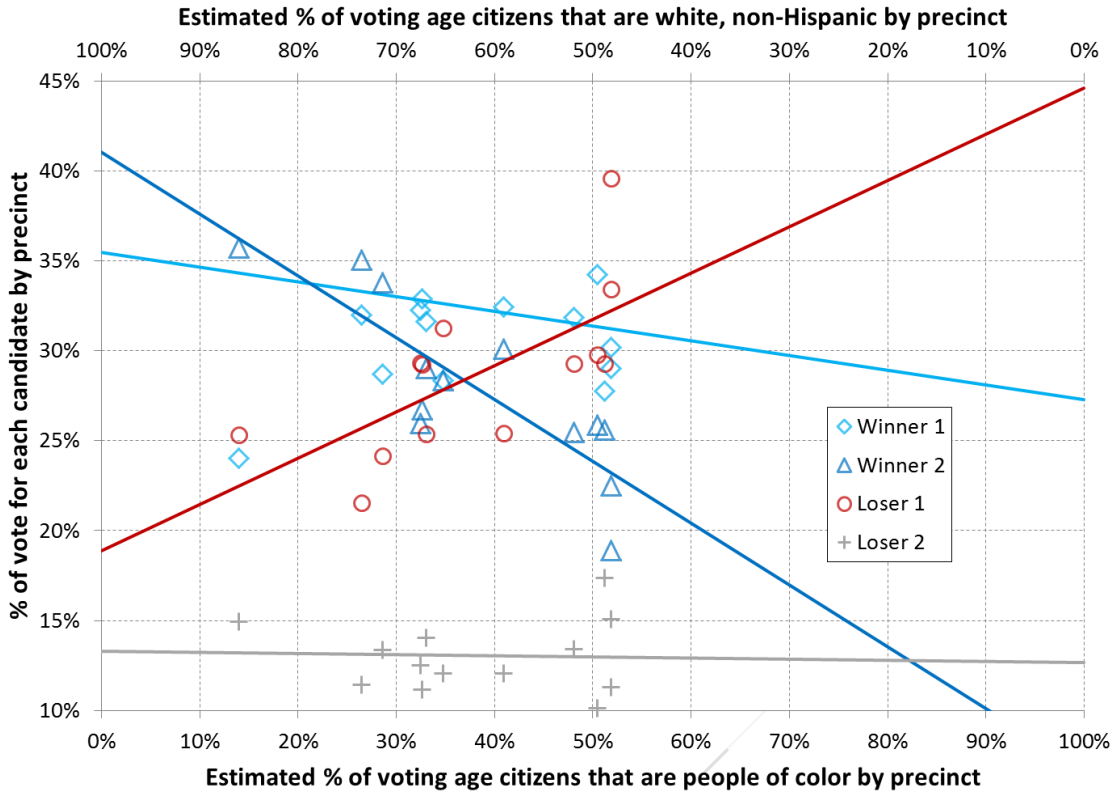
The percent of CVAP that are white, non-Hispanic and persons of color in each precinct were estimated. The percent of the vote received by each candidate was plotted against these percentages and a linear regression performed for each candidate. Losing candidates that were indicated to have more support among other voting age citizens than the winning candidates were identified (racially polarized voting). Figure 2 shows four elections where this occurred.



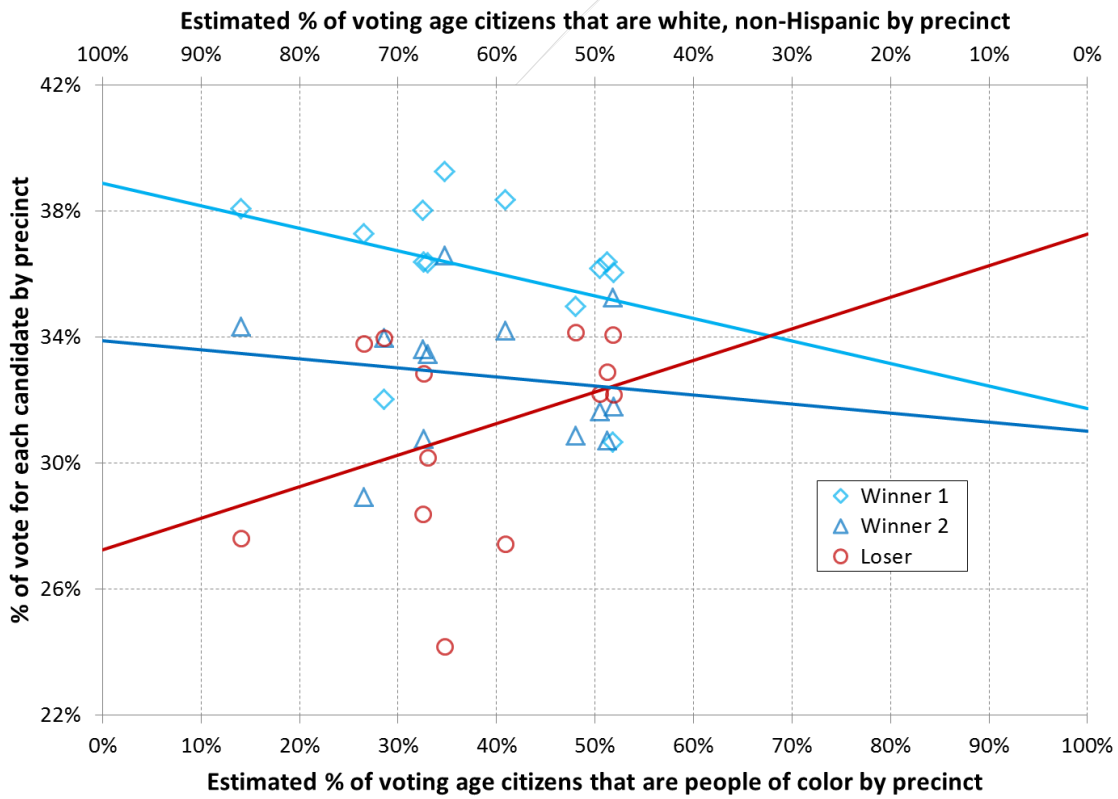
a)



b)



c)



d)

Figure 2. Percent vote for candidates versus percent citizen voting age residents that are people of color by precinct. Results for the four elections for Council and School Board from 2012 through 2018 that had racially polarized voting shown: a) 2012 Council election results, b) 2016 Council election results, c) 2016 School Board election results, and d) 2018 Council election results.

A candidate or candidates inferred as more preferred by voters of color lost in all three contested Council elections during the study period, indicating racially polarized voting is prevalent in these elections. In 2012 one candidate that won was less preferred than two candidates inferred as preferred by voters of color and another candidate that won was less preferred than three candidates preferred by voters of color. In 2016 one candidate beat a candidate preferred by voters of color. Notably the preferred candidate was themselves a person of color. In 2018 the candidate most preferred by voters of color overall was beat by the two winning candidates who were most preferred by white, non-Hispanic voters. This is the most significant result because it indicates that unlike the other elections the candidate most preferred by voters of color over all lost.

One of the candidates for School Board with Asian ancestry won and one lost during the period. The candidate that won was an incumbent. Their support was relatively uniform across precincts indicating voter race and ethnicity did not correlate with voter choice. The candidate with Asian ancestry that lost was not preferred by voters of color.

The one Hispanic School Board candidate during the study period ran twice. They lost the first time when they were preferred by voters of color over all other candidates. They won the second time when they were preferred by white, non-Hispanic voters as well. Of the four elections during the study period, only the election in which the Hispanic candidate lost had racially polarized voting.

Discussion

The analysis of election results from 2012 through 2018 indicates racially polarized voting commonly occurs in Council elections and sometimes occurs in School Board elections. Albany can respond proactively or reactively to this information. Proacting would entail switching its election method now to one that is not prone to racially polarized voting. Two such methods are by district and ranked choice at large.

Switching to by district elections would entail the Council establishing district boundaries. This typically requires contracting with a demographic consultancy with a practice in developing electoral districts. The firm provides a number of different potential maps for consideration. The public is also invited to provide maps. The Council holds public hearings to discuss the maps and reasons for preferring one over another. The Council subsequently chooses a set of district boundaries.

Switching to by district elections has the advantage of providing guaranteed protection against a law suit brought under the CVRA. It also has the advantage of ameliorating turnout differences among voters with different ancestries. These differences can contribute to a lack of representation for voters of some ancestries even if they vote cohesively. Turnout does not vary substantially across five potential Council/Board districts though. Considering the potential districts shown in Figure 1 the lowest turnout

of 70% in the 2012 election was in the southwestern district. The highest turnout of about 80% was in the eastern district. The difference in turnout between potential districts was about the same in 2016 and 2018. It was a bit greater in 2014 ranging from about 50% to 65% across potential districts.

A substantial disadvantage of switching from at large to by district elections is the high likelihood of a significant and substantial increase in the rate of uncontested elections. In another study analyzing two decades of data regarding all city council and school board elections, one out of three by district elections for council and two out of three by district elections for school board were uncontested as compared to one out of fifty at large council and one out of three at large school board elections. This holds both in comparing jurisdictions using plurality at large throughout the period to jurisdictions using by district throughout the period as well as comparing jurisdictions initially using plurality at large to themselves after they switched to by district. (These findings will be the subject of another report).

The historic uncontested election rate in Albany over the same time period has been one out of six Council elections and one out of three School Board elections. So, switching to by district elections would likely result in the uncontested election rate for each doubling. Further, the majority of the School Board would generally not have gained office in a contested election. This would be true of the Council periodically as well.

Another disadvantage of by district elections is that it imposes political association and non association on voters rather than providing them maximum freedom of choice in that regard. Voters need to associate, either consciously or unconsciously, with other voters defined by residential geography in order to maximize the effectiveness of their vote. Consequently, residential geography is prioritized over all other voter values, such as ideology, stance on particular issues, identity, and preference for experience candidates.

A final disadvantage of moving to by district elections is that districts would need to be drawn for the 2020 election and again after the 2020 Census, likely for the 2022 election. Each iteration would require hiring a demographic consulting firm specializing in such work to draw prospective maps, advise the City Council, and draw the final map based. Each iteration would likely cost ten to tens of thousands of dollars based on experience in other cities.

The second option is switching to ranked choice at large. This is likely possible now because the Alameda County Registrar has signed a contract for a new election system (hardware and software) that has this capability. However, while this system is certified by the State for single seat ranked choice, it is not clear if it is so certified for multi-seat ranked choice. If it is not certified, it is possible the vendor is undertaking or would undertake this effort so it is completed in time for the 2020 election.

A disadvantage of switching to ranked choice at large is that it is not definitively protective against a CVRA law suit. However, while State law provides protection from law suits under the CVRA to jurisdictions with by district elections, switching to ranked choice at large would be dissuasive to a firm contemplating filing a law suit. Section 14028(a) states "Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action." Upon switching to

ranked choice at large, there will at first be no elections conducted prior to any action. After that, ranked choice at large is specifically designed to preclude one bloc of voters from being able to preclude another bloc's preferred representation, so it is likely given Albany's percent of voters that are people of color they would elect representation of their choice if desired. In a ranked choice at large race for three seats, a candidate needs a quarter of the votes plus one vote to win, and for two seats a third of the votes plus one vote to win. So, voters of color would be able to elect a candidate of their choice in each election.

By maintaining at large elections, the share of elections that are uncontested is likely to remain unchanged from the historic rate. During its review of at large election methods, the Albany Charter Review Committee considered the inverse of this question at the request of the Albany School Board. The Board was concerned about the occurrence of uncontested elections and so asked if switching to ranked choice was likely result in more candidates. The Committee analyzed the number of candidates for single seat ranked choice elections in Berkeley and San Francisco compared to the number of candidates in the elections prior to the institution of single seat ranked choice in those cities. It found an insignificant difference in the number of candidates per seat under the two methods.

Ranked choice also does not impose upon voters a value prioritization in the manner of by district elections. Voters have full latitude to decide which of their values are most important for deciding for whom to cast their vote without diminishing the effectiveness of their vote if they prioritize a value other than the geography of their residence. And voters can prioritize different of their values from election to election in deciding for whom to vote rather than being locked into the location of their home being imposed as the primary value. For instance, if 40% of voters across the city hold and prioritize the same view on an issue, whether this is tied to the location of their home or not, they can elect two candidates under RCAL. And these voters can prioritize different issues from election to election and still gain representation. In contrast, if these voters are spread evenly across the city, they cannot elect any candidates under by district elections. Rather no matter what their actual priority, they must prioritize a stance they might share with the majority of voters around where they live in order to elect a candidate, and this is more likely to regard an issue specific to the district where they live.

Conclusions

It is not clear if the needed change in election method can be made by ordinance or only via a charter amendment. Charter section 5.01 states "Except to the extent otherwise provided by ordinance hereinafter enacted, all elections shall be in accordance with the provisions of the Elections Code of the State of California." Charter section 2.01 states that Council elections shall be at large. Consequently, it appears the Council has the authority to change Albany's method of election to RCAL by ordinance. If it has this authority, whether or not to exercise it rather than amending the charter is a policy decision. Changing to by district elections would require voter approval of an amendment or Council action in response to a CVRA lawsuit threat (which does not require voter approval under State law).

The advantage of switching to RCAL by ordinance is that it is a faster method and so would provide protection against or dissuasion for a CVRA threat letter that could cost the City up to \$30,000 aside

from the cost of then drawing districts. The disadvantage is that the electorate should generally be provided an opportunity to approve changes in election method.

Another approach is a hybrid option. Changing method by adoption of an ordinance followed by placing a charter amendment on the ballot. In this option the ordinance could either change the method for the next election, or it could change the method after 2020, which would result in the use of plurality at large again in 2020. The first would be more protective against a CVRA suit threat but has the disadvantage of changing the method without asking the voters and necessitating the expense of educating voters about the new system for its first use even if voters reject the charter amendment.

Whatever approach is taken, whether by district or ranked choice at large, whether by ordinance or charter amendment, the occurrence of racially polarized voting in Albany calls for changing election methods for moral, legal, and pragmatic reasons. The last may be the least obvious. Democracies that provide fair representation are more legitimate. Democracies that provide fair representation have more diverse representation. Business research finds that diverse teams outperform homogenous teams on intellectual endeavors such as making policy. The only hesitancy in this regard is that a high rate of uncontested elections under by district could result in unqualified individuals gaining office.

Reference

Handley, L. (2011). Vote dilution: measuring voting patterns by race/ethnicity. Presentation to the National Conference of State Legislatures. http://www.ncsl.org/documents/legismgt/vote_dilusion.pdf

From: [Jim Lindsay](#)
To: [citycouncil](#)
Cc: [Nicole Almaguer](#)
Subject: re. the CVRA discussion tonight
Date: Monday, April 1, 2019 4:43:18 PM

Dear Council:

As always, thank you for your service.

Re. the CVRA discussion tonight, I just want you to know that to my knowledge, no one has any current intent of having a CVRA threat letter sent to our city. And even if that did happen, the city could of course immediately agree to go to districts, at an estimated cost of \$100,000 -- \$30k for the attorney, and \$70k in other costs. That's the reasonable worst case. So there is no need for haste or making bad decisions under pressure.

The city ****is**** going to have to change from plurality at-large voting to some other system. That is quite clear. But the necessary decisions do ***not*** need to be done in a hasty manner. We have time to deliberate and do this right. Two things need to be done ASAP:

1. The council should actually order the CVRA violation study that has already been priced out. Either that, or formally accept Preston Jordan's study in its place.

2. Then, we need to start putting together an open, thorough, and inclusive community discussion about where do we go from here. I believe we have to pay special attention to the wishes of Asian-Americans and other people of color, as they are the injured party in this case, but that everyone should be part of the discussion decision making process.

Take care,

-- Jim Lindsay