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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COUNTY OF LOS ANGELES, Plaintiff and Appellant, v. STATE OF CALIFORNIA, Defendant and Respondent.	B290091 (Los Angeles County Super. Ct. No. BS168212)

APPEAL from an order of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Affirmed.

Kendall Brill & Kelley, Laura W. Brill, Nicholas F. Daum; Office of County Counsel, Mary C. Wickham, Judy Whitehurst, Nicole Davis Tinkham, Gina V. Eachus, for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Thomas S. Patterson, Senior Assistant Attorney General, Mark R. Beckington, Supervising Deputy Attorney General, Anthony P. O'Brien, Deputy Attorney General, for Defendant and Respondent.

The County of Los Angeles appeals an order denying its petition for writ of mandate, which sought to declare invalid and unconstitutional Senate Bill No. 958 (2015–2016 Reg. Sess.) (SB 958) requiring the county to form an independent redistricting commission responsible for drawing district boundaries for the Los Angeles County Board of Supervisors (the Board). The county contends SB 958 violates the state constitutional prohibition against special laws (Cal. Const., art. IV, § 16) and the requirement that county offices shall be nonpartisan (Cal. Const., art. II, § 6). The county argues this court should review SB 958 with heightened scrutiny, and alternatively that the legislation lacks even a rational basis. The state contends heightened scrutiny is not warranted, and there is a reasonable basis for the state to single out Los Angeles based on the county's unique redistricting history, demographics, and geography. The state also contends SB 958 does not violate the constitutional requirement that county offices be nonpartisan.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We begin with a brief overview of state and county governance and history as it relates to elections and redistricting statewide and in Los Angeles County.

State redistricting

The voters of California passed two separate ballot initiatives—Proposition 11 in 2008 and Proposition 20 in 2010—to form and set procedures for the Citizens Redistricting Commission (the State Commission). The State Commission consists of 14 members—five Democrats, five Republicans, and four individuals not registered with either party—who are responsible for drawing the boundaries for electoral districts for congressional, State Senate, State Assembly, and Board of Equalization members every 10 years starting in 2011. (Cal. Const., art. XXI; *Vandermost v. Bowen* (2012) 53 Cal.4th 421, 442–448.)

County redistricting

Until 2017, counties lacked statutory authority to form local independent redistricting commissions with the power to adjust county district boundaries;[1] instead, each county

[1] The one exception was San Diego County, as discussed *infra*.

board of supervisors had responsibility to adjust those boundaries following a decennial federal census. (Cal. Const., art. XI, § 4, subd. (a); Elec. Code, § 21500.)[2] During the redistricting process, a county board could consider factors like "(a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the supervisorial districts," and they were subject to the applicable provisions of the federal Voting Rights Act (52 U.S.C. § 10301) (VRA). (§ 21500.)

San Diego County

In 2012, the San Diego County Board of Supervisors requested that the California Legislature establish for that county an independent redistricting commission comprised of retired judges. (Sen. Com. on Elections and Constitutional Amendments, Rep. on Sen. Bill No. 958 (2015–2016 Reg. Sess.) as amended Feb. 8, 2016, p. 6.) The Legislature passed Senate Bill No. 1331, establishing an independent redistricting commission solely for San Diego County. The San Diego County independent redistricting commission was to consist of five members and two alternates, all of whom would be retired state or federal judges. The commission was vested with authority to adjust the boundaries of that county's supervisorial districts at each

[2] All further statutory references are to the Elections Code unless otherwise stated.

decennial federal census, subject to certain guidelines. (Sen. Bill No. 1331 (2011–2012 Reg. Sess.).)

Los Angeles County

The county charter for Los Angeles County requires a two-thirds vote of the Board to change district boundaries, and specifies that no "boundaries shall ever be so changed as to affect the incumbency in office of any supervisor." (See *Garza v. County of Los Angeles* (C.D.Cal. 1990) 756 F.Supp. 1298, 1306 (*Garza I*).)[3]

Los Angeles County has an acknowledged history of racial discrimination in the way its Board has drawn district boundaries in the past. Between 1959 and 1990, Los Angeles County's redistricting efforts were marred by actions intended to "dilute the effect of the Hispanic vote in future elections and preserve incumbencies of the Anglo members of the Board of Supervisors." (*Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 769 (*Garza II*).) Both the federal district court and the Ninth Circuit determined that Los Angeles County's district boundaries violated the VRA. (*Garza I*, *supra*, 756 F.Supp. at pp. 1303–1304; *Garza II*, *supra*, 918 F.2d at p. 771 [county violated the VRA and the equal protection clause of the U.S.

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[3] Los Angeles is a charter county, and under the California Constitution, all "[c]harter counties are subject to statutes that relate to apportioning population of governing body districts." (Cal. Const., art. XI, § 4, subd. (a).)

Constitution].)] In 1990, the federal district court rejected the county's proposed remedial plan, because "although it did create a district that had a Hispanic majority, it unnecessarily fragmented other Hispanic populations in the County" and "used unnatural configurations in order to place an Anglo incumbent in the new Hispanic district." (*Garza II*, *supra*, 918 F.2d at p. 776.) In its decision, the court noted that "[t]he Supervisors appear to have acted primarily on the political instinct of self-preservation." (*Garza I*, *supra*, 756 F.Supp. at p. 1318, affd. *Garza II*, 918 F.2d at p. 771; see also *Garza II*, *supra*, 918 F.2d at p. 778 (conc. & dis. opn. of Kozinski, J.) [noting that "this case will be remembered for its lucid demonstration that elected officials engaged in the single-minded pursuit of incumbency can run roughshod over the rights of protected minorities"].) The county then entered into a stipulation to submit future redistricting plans to the U.S. Department of Justice for preclearance under section 5 of the VRA, until December 31, 2002. In 2002, the voters of Los Angeles County passed Measure B, creating term limits for supervisors.

With the federal census in 2010, the county began its first redistricting effort after the preclearance requirement was lifted. On November 16, 2010, the Board approved the mission, policies, and procedures for establishing an advisory Supervisorial Boundary Review Committee (BRC) for the purpose of examining and proposing adjustments to existing supervisorial district boundaries. The BRC was made up of 10 voting members and 10 alternates, with two members

and two alternates nominated by each supervisor and appointed by the Board. Between March and July 2011, the BRC conducted extensive outreach, received public input and commentary on redistricting, and considered more than 15 different proposed plans.

Ultimately, the BRC recommended plan A2, which made minimal changes to the district boundaries adopted 10 years earlier. Six members of the BRC voted in favor of the recommendation, while the four who voted against it voted to recommend plan S1, which included two districts that were majority Hispanic[4] citizens voting age population (CVAP). The BRC's recommendation, including a summary of the dissenting position, was contained in an August 9, 2011 report to the Board. The BRC's report explained the basis for the differing recommendations: "In recommending Plan A2, Committee members stressed their concerns over the major changes in current districts that would be affected if Amended Plan S1 were adopted, and the resulting disruption in current relationships, communities of interest, and voting deferral (delaying the opportunity for citizens to

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[4] In accordance with the California Style Manual, we will use the term "Hispanic" in this opinion, rather than the preferred contemporary term "Latino." Further, we understand the few references in the record to Latino populations to be synonymous with Hispanic populations. This terminology reflects what is used in the underlying factual records before us, and we intend no disrespect by adhering to that record evidence.

vote). These members cited the overwhelming oral and written public comments to the Committee that recommended little, if any, change in the current Supervisorial districts. [¶] Committee members who voted in favor of Proposed Amended Plan S1 rather than Plan A2, cited what they believed was an overconcentration of Hispanics in the current First District, and the need to create a second Hispanic [CVAP] district in order to comply with Section 2 of the Voting Rights Act. [The dissenting committee members] have transmitted a 'minority report' recommending your Board's adoption of the Amended Plan S1." The BRC's report noted that based on a preliminary legal analysis done by outside counsel, neither plan A1 nor S1 was likely to violate applicable law, including the VRA, and that creation of two Hispanic CVAP districts was likely not required under the VRA, because it appeared that Hispanic candidates of choice were viable candidates.

Still operating under the county charter provision requiring a two-thirds vote to adopt new district boundaries (a provision that, in application, required four of the five supervisors to agree on any revision of district boundaries), the Board considered three proposed plans (A3, S2, and T1).[5]

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[5] We gather from the record that the number included in the plan label (e.g., A2, A3) refers to minor incremental changes to an underlying plan. In other words, A3 is slightly revised from the A2 plan initially recommended by the BRC. The details of the incremental changes are not relevant to our analysis.

As an initial matter, plan A3 was supported by three members of the Board, Supervisors Michael Antonovich, Don Knabe, and Zev Yaroslavsky, and opposed by Supervisors Gloria Molina and Mark Ridley-Thomas, who were both in support of plans S2 and T1. Supervisor Molina described the three competing district proposals in terms of the percentage of Hispanic voting age citizens in each district. Plan T1 would have over 50% Hispanic CVAP in Districts One and Three, while Plan S2 would have over 50% Hispanic CVAP in Districts One and Four. In contrast, Plan A3 "maintains the district lines of 20 years ago and packs almost 60% of Latino [CVAP] into District One, fragmenting the remaining Latino [CVAP] across four districts . . . ." Supervisor Molina described Plan A3 as "reminiscent of the strategy used by this Board from the 1950s to the 1990s to dilute Latino empowerment." None of the proposed plans obtained the requisite four votes during initial rounds of voting. Supervisor Mark Ridley-Thomas ultimately switched from rejecting plan A3 to approving an amended version, although he acknowledged that plans "S-2 and/or T-1 would be the . . . correct redistricting map reflecting appropriate communities of interest and . . . complying with the Voting Rights Act." He voted in favor of plan A3, noting that with respect to creating a second majority Hispanic CVAP district, the Board found itself "in a circumstance where a federal court will likely determine whether a second effective district is in fact legally required." The adopted redistricting plan was

not challenged in court by any citizen or by the federal government.

2016 state legislation on independent local redistricting commissions

In 2016, the California Legislature passed two separate bills relevant to this case, one permissive and the other mandatory. Senate Bill No. 1108 (2015–2016 Reg. Sess.) (SB 1108) was permissive, giving local jurisdictions (including, as relevant here, counties) the *option* to establish either advisory or independent redistricting commissions, where advisory commissions would recommend to a county board of supervisors changes to a county's supervisorial district boundaries, while independent commissions would be vested with the power to change supervisorial district boundaries without approval from the county board of supervisors. (§ 23000 et seq.) The Legislature also enacted SB 958, establishing for Los Angeles County alone an independent redistricting commission. The commission would be created by December 31, 2020, and every 10 years thereafter. (§§ 21531, 21532, subd. (a).) It would consist of 14 members chosen by a selection process "designed to produce a commission that is independent from the influence of the board [of supervisors] and reasonably representative of the county's diversity." (§ 21532, subd. (b).)

SB 958 included the following uncodified language: "The Legislature finds and declares that a special law is

necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances facing the County of Los Angeles." (Sen. Bill No. 958 (2015–2016 Reg. Sess.) § 2.) State reimbursement for the costs created by the bill would be made available "[i]f the Commission on State Mandates determines that this act contains costs mandated by the state." (*Id.* at § 3.)

The legislative history of SB 958 noted the county's population of nearly 10 million residents and its status as "one of the most geographically and ethnically diverse counties in the state" as requiring a bill to ensure that district lines are "drawn by bipartisan groups and diverse representatives of the county." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 958 (2015–2016 Reg. Sess.) as amended April 26, 2016, p. 8.) Citizen participation in redistricting would make elections more competitive, increasing the supervisors' accountability and responsiveness to the electorate. (*Ibid.*)

A report by the Assembly Committee on Local Government quoted the following statement by the bill's author: "Senate Bill 958 seeks to align the Los Angeles County Board of Supervisors' redistricting policy with the statewide movement toward independent redistricting. SB 958 builds upon the precedent set by SB 1331 (Kehoe), which created an independent redistricting commission to draw San Diego County's supervisorial district boundaries. The bill establishes a commission with a structure and selection

process that are nearly identical to those used by the successful statewide citizens redistricting commission that was established when California voters approved Proposition 11 in November, 2008. [¶] By empowering a 14-member body to redraw supervisors' districts, instead of allowing the five county supervisors to draw the lines themselves, SB 958 will allow a broader range of perspectives and voices to determine the boundaries' shape. This will help ensure that supervisorial boundaries will reflect Los Angeles County's broad demographic and regional diversity. Because boundaries drawn by an independent citizen's commission are not likely to be drawn in a manner that specifically favors incumbent supervisors, the resulting districts will likely generate more competitive elections for seats on the board. More competitive elections, in turn, benefit all Los Angeles County residents by increasing the incentives for county supervisors to be attentive and responsive to their constituents." (Assem. Com. on Local Government, Rep. on Sen. Bill No. 958 (2015–2016 Reg. Sess.) as amended Jun. 21, 2016, pp. 6–7.)

The same report noted that SB 958 took a different approach from other bills that simply authorized counties to create independent redistricting commissions, rather than requiring them to do so: "Unlike SB 1331, which San Diego County requested, this bill creates a commission for Los Angeles County that is not being requested by the county. In addition, SB 1108 allows – rather than requires – local jurisdictions to create their own independent commissions if

they so choose. A perennial theme discussed in this Committee is the principle of local control. SB 1108 maintains local control for all counties (as well as cities) statewide, while this bill confiscates it from Los Angeles County only. The Committee may wish to consider the implications of these conflicting policy approaches to redistricting practices in the state." (Assem. Com. on Local Government, Rep. on Sen. Bill No. 958 (2015–2016 Reg. Sess.) as amended Jun. 21, 2016, p. 8.)

At the hearing held by the Assembly Committee on Local Government, the bill's author expressly addressed concerns over how SB 958 would affect local control, explaining the reasoning behind SB 958's approach to redistricting in Los Angeles County. He argued the county is unique, given its massive population of ten million persons, its diversity, and its history of discrimination against underrepresented groups in the drawing of district lines. He referenced the past involvement of the federal courts and the U.S. Department of Justice as necessary to the creation of the first Latino majority district, problems presented by incumbent control over redistricting in the county, and continuing discontent with the failure to revise district lines during the 2010 redistricting process to reflect the county's growing Latino and Asian population.

Ultimately, both SB 1108 and SB 958 were passed and signed by the governor on September 28, 2016, and took effect on January 1, 2017.

Specific provisions of SB 958

SB 958 sets forth the process for forming a 14-member commission after each decennial census. Persons wishing to serve on the commission submit an application to the county elections official. Qualified applicants must: (1) reside in the county; (2) be continuously registered in Los Angeles County with the same political party (or unaffiliated) for the past five years; (3) have voted in at least one of the last three statewide elections; (4) possess experience demonstrating analytical skills relevant to redistricting and voting rights, impartiality, and an appreciation for the county's diverse demographics and geography; and (5) have not held local, state, or federal office, work for an elected representative or candidate for public office, or be registered as a state or local lobbyist within the previous 10 years. (§ 21532, subd. (d).) The county elections official selects 60 of the most qualified applicants, taking into account the applicants' political party preferences, in order to make the applicant pool as proportional as possible to the political party affiliation in Los Angeles County. (*Id.* at subds. (c), (f)(1).) The selected applicants are grouped into five subpools corresponding with the supervisorial districts in which they reside, and eight commission members are randomly selected as follows: one commissioner is selected from each of the five supervisorial district subpools, and three more commissioners from the remaining applicants, without regard to their subpool. (*Id.* at subds. (f)(1), (g).) Without using any formulas or specific

ratios, the eight selected commissioners then select the remaining six commissioners on the basis of their relevant experience, analytical skills, impartiality, and political party preferences, while ensuring that the commission "reflects the county's . . . racial, ethnic, geographic, and gender diversity." (§ 21532, subd. (h)(2).)

Los Angeles County challenges the validity of SB 958

On February 27, 2017, the county filed a petition for writ of mandate and/or prohibition and complaint for injunctive and declaratory relief.[6] The county alleged that the bill violated the state's constitutional prohibitions against special statutes (Cal. Const., art. IV, § 16) and partisan county offices (Cal. Const., art. II, § 6). After discovery, briefing, and oral argument, the trial court denied the county's writ petition. The trial court held that SB 958 does not violate the state Constitution's prohibition against special statutes, noting "[t]he County's history of [federal VRA] violations, along with its very large and ethnically diverse population, provide a rational basis for the State's decision to create an independent redistricting commission in the County to protect against the potential for future

[6] The writ petition also named Attorney General Xavier Becerra as a party, along with the State of California, but the parties stipulated to dismiss the Attorney General from the action.

violations." The court also ruled that SB 958 does not violate the constitutional prohibition against local partisan offices (Cal. Const., art. II, § 6), because the commissioner positions are not "partisan" offices, as defined in state law.

Judgment was entered on April 11, 2018, and the county filed a timely notice of appeal on May 16, 2018.

DISCUSSION

The county makes the same two legal arguments[7] on appeal as it made in its writ petition, and we consider each below. As the county's arguments present questions of law, our review is de novo. (*California Assn. of Professional Scientists v. Schwarzenegger* (2006) 137 Cal.App.4th 371, 382.) On issues related to constitutional construction, "'any doubt as to the Legislature's power to act . . . should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.)

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[7] The county does not, and cannot, challenge SB 958 on equal protection grounds. (*Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1, 6 [cities do not have standing to raise equal protection challenges to action by state government].)

I. Prohibition against special legislation

The county contends that SB 958 is invalid because it applies solely to Los Angeles County, violating article IV, section 16 of the California Constitution. For many decades, courts deciding the constitutionality of "special legislation" applicable to a specific local entity have applied a rational basis test, examining whether the singling out of a county affected by the challenged statute bears a rational relationship to the purpose of the statute. (*White v. State of California* (2001) 88 Cal.App.4th 298, 305 (*White*); see also *City of Malibu v. California Coastal Com.* (2004) 121 Cal.App.4th 989, 994–995 (*City of Malibu*).) The county acknowledges the existence of this case law, and the uniform application of a rational basis test in analyzing article IV, section 16 for decades, but argues that this court should apply a heightened level of scrutiny in deciding the constitutionality of SB 958. As explained in detail below, we disagree that a higher level of scrutiny is warranted.

The county alternatively argues that SB 958 lacks even a rational basis for singling out Los Angeles County, at least in part because the reasons articulated by the state for requiring an independent redistricting commission are equally applicable to other counties. We find that there is a rational relationship between the purposes of SB 958 and singling out Los Angeles County; requiring an independent redistricting commission in Los Angeles County, and not in other counties, does not run afoul of the constitutional

prohibition in article IV, section 16, given Los Angeles County's unique history and circumstances.

a. Article IV, section 16 and the court's role in reviewing special legislation

Article IV, section 16 of the state Constitution provides: "A local or special statute is invalid in any case if a general statute can be made applicable." (Cal. Const., art. IV, § 16, subd. (b).) Here, there is no dispute that SB 958, applicable only to Los Angeles County, is a special statute. (*City of Malibu*, *supra*, 121 Cal.App.4th at pp. 993–994 ["Legislation is 'special' when it applies only to particular members of a class, in contrast to 'general' legislation, which applies uniformly to all members of a class."].)

A special statute applying only to one identified county, however, may be valid. In *White*, *supra*, 88 Cal.App.4th at page 305, the Fourth District rejected a challenge under Article IV, section 16 to four bills that applied only to Orange County and reallocated county funding to address the county's financial crisis and bankruptcy. The court explained, "[i]t is well settled that article IV, section 16 does not prohibit the Legislature from enacting statutes that are applicable solely to a particular county or local entity. [Citations.] By its express terms, article IV, section 16 prohibits this type of legislation only if 'a general statute can be made applicable.' [Citation.] In determining whether 'a general statute can be made applicable,' the issue is not

whether the Legislature could conceivably enact a similar statute affecting every locality. [Citation.] Rather, it is whether 'there is a rational relationship between the purpose of the enactment . . . and the singling out of [a single] . . . county affected by the statute.' [Citations.] The Legislature's determination that this rational relationship exists is entitled to great weight and will not be reversed unless the determination is arbitrary and without any conceivable factual or legal basis." (*Ibid.*) The court found the Legislature to have made "legitimate and reasonable determinations" that the reallocation of funds was necessary to assist Orange County to resolve its financial crisis and bankruptcy, and that Orange County's financial situation was "unique," as "no other county had declared bankruptcy," such that "the Legislature could have reasonably determined that the [four bills] suitable for Orange County would not be suitable for the other counties." (*Id.* at pp. 305–306.) The court also commented on its own role in reviewing the acts of the Legislature: "[t]he Legislature has the authority to determine the best method for resolving state fiscal issues, and it is not for the court to second-guess its determination." (*Id.* at p. 307.)

As in *White*, courts have rejected challenges based on article IV, section 16 to numerous statutes the Legislature made applicable to a single county or other local entity because the Legislature had a reasonable justification for singling out the affected county or local entity. In *City of Malibu*, *supra*, 121 Cal.App.4th at pages 992–994, the court

upheld state legislation transferring from the City of Malibu—alone among all coastal cities—to the California Coastal Commission (CCC) authority to draft a Local Coastal Program for processing coastal development permits. The impetus behind the legislation was that Malibu, like a number of other cities, had failed to adopt its own Local Coastal Program, leaving the CCC with the burden of processing development permit applications. Malibu argued the state bill was invalid special legislation that singled out Malibu alone, when "the Legislature should have instead enacted a statute that directed the [CCC] to write [Local Coastal Programs] for all coastal jurisdictions without such programs." (*Id.* at p. 994.) Noting that "the distinction between those who are subject to the legislation and those who are exempt need only be rational," the court found the Legislature to have acted properly because Malibu generated significantly more applications than other localities, placing the largest burden on the CCC. (*Ibid.*) The court also noted that the Legislature is "entitled to solve a problem incrementally, starting with the worst offenders first." (*Id.* at p. 995 [""[W]hen the legislative body proposes to address an area of concern in less than a comprehensive fashion by "striking the evil where it is felt most" . . . , its decision as to where to 'strike' [will be upheld if it has] a rational basis in light of the legislative objectives""].)

In *City of Los Angeles v. State of California* (1982) 138 Cal.App.3d 526, 532–533, the city challenged Government Code section 65860, subdivision (d), which required Los

Angeles alone, among all charter cities, to ensure its zoning ordinances were consistent with the city's general plan. The court rejected the city's claim that the provision was an invalid special statute under article IV, section 16, reasoning that "[s]o long as a classification '"bear[s] some rational relationship to a conceivable legitimate state purpose"' or rests upon '"some ground of difference having a fair and substantial relation to the object of the legislation,"' the enactment will be upheld. [Citations.]" (*Id.* at p. 534.) The court found a rational reason for the Legislature's singling out of Los Angeles: given the population and size of the city, a failure to enact zoning laws consistent with its general plan could undermine the state's interest in promoting cooperative planning among adjoining municipalities. (*Id.* at pp. 534–535 [legislation upheld under a rational basis test].)

In *Board of Education v. Watson* (1966) 63 Cal.2d 829 (*Watson*), the court upheld the constitutionality of legislation requiring only the Los Angeles County Assessor to provide revenue estimates to school districts within the county. The court pointed to the rate of growth in Los Angeles and the number of large school districts to reason that "the Legislature could have reasonably believed that the assistance of the assessor is more necessary in Los Angeles because the planning of budgets for numerous large school districts is a more complex matter and the effects of a miscalculation more serious than would be the case in the other counties of the state, which contain fewer large and more small school districts." (*Id.* at p. 836.) In addition,

while other counties might have a faster growth rate than Los Angeles, the number of new students each year would still be greater in Los Angeles than other counties with higher rates of growth, creating a situation where it was more important for school districts in Los Angeles to be able to maximize their budgets. (*Id.* at pp. 836–837.) Pointing last to the fact that property in Los Angeles County had a far higher assessed valuation and much larger yearly growth, the court concluded, "We do not intend to hold that every classification based on population alone is proper, nor do we pass upon the wisdom of the legislative action, but when [the law under scrutiny] is viewed in the light of the additional factors set forth above we cannot say, as we would be required to do in order to hold it unconstitutional, that no state of facts can reasonably be conceived to justify the classification made." (*Id.* at p. 837.) As Division Two of this court explained in a subsequent case, "Legislation applicable solely to Los Angeles County is valid if there is any conceivable state of facts which can reasonably support difference in legislative treatment based on population." (*City of Los Angeles v. City of Artesia* (1977) 73 Cal.App.3d 450, 456 [upholding state legislation applicable only to counties with a population greater than six million, a category that included only Los Angeles County, requiring specific limits on cost-sharing when cities in Los Angeles County contract with county sheriff's department].)

Before considering the constitutionality of SB 958 under article IV, section 16, we address the county's

arguments that our review in this matter requires a higher level of scrutiny than applied in the cases discussed above.

b. No heightened scrutiny is warranted

While conceding that there is a wealth of authority upholding the validity of special legislation where the Legislature had a rational basis to single out a particular county or other local entity, the county contends that several factors weigh in favor of applying a heightened level of scrutiny to SB 958. Those factors include (1) the application of Article IV, section 16 to legislation that directly concerns political matters of local governance, (2) the role of racial classifications in the legislation at issue, (3) the provisions imposing a five-year residency requirement for membership on the redistricting commission, and (4) the concurrent enactment of general legislation giving other counties the option of creating independent or advisory redistricting commissions. We disagree with each of the county's arguments.

1. Constitutional prohibition does not require heightened scrutiny for legislation regarding local governance matters

The county asks this court to apply a higher level of scrutiny than the rational basis test, drawing a contrast between the cases from the past several decades, involving

what the county describes as social and economic legislation (e.g., *Watson, supra*, 63 Cal.3d 829 and its progeny) and older cases that concern what the county calls the "core" of the origins of Article IV, section 16 as a "home rule" measure designed to protect the independence and integrity of local government from piecemeal interference by the state Legislature. The county relies principally on three cases decided in the years shortly after the prohibition against special legislation was adopted into a revised California Constitution in 1879: *Darcy v. Mayor etc. of San Jose* (1894) 104 Cal. 642 (*Darcy*); *Denman v. Broderick* (1896) 111 Cal. 96 (*Denman*); and *Marsh v. Supervisors* (1896) 111 Cal. 368 (*Marsh*).[8] Although in each case, the Supreme Court invalidated a special law targeted at a single county or city, these authorities do not support the county's argument that selective application of heightened scrutiny is warranted or

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[8] As enacted in 1879, the provision relating to special laws was set forth in article IV, section 25 of the Constitution. At that time, the Constitution specified a number of areas in which special legislation was prohibited. (*Whittaker v. Superior Court* (1968) 68 Cal.2d 357, 367, fn. 15.) "Former article IV, section 25, of the California Constitution, which forbade the passage of 'local or special laws' in certain enumerated cases, was repealed on November 8, 1966. Its subject matter is now treated in article IV, section 16, which provides: 'A local or special statute is invalid in any case if a general statute can be made applicable.'" (*Ibid.*)

required where the legislation concerns matters of local governance.

In none of the cases relied upon by the county is there any express discussion or analysis of the proper level of scrutiny to by applied by a court reviewing an act of the Legislature. Moreover, to the extent we could attempt to infer a rule about the level of scrutiny despite the lack of analysis (which we are not inclined to do), the Supreme Court appears to have been looking for a rational basis to justify the Legislature's act. For example, in *Darcy*, the Court struck down as invalid the Legislature's decision to fix the salaries of city policemen in cities with populations between 10,000 and 25,000, which included only the city of San Jose. (*Darcy*, *supra*, 104 Cal. at pp. 648–649.) As the *Darcy* court observed, statutory classifications "must be founded upon differences which are either defined by the constitution or natural, and which will suggest a reason which might rationally be held to justify the diversity in the legislation." (*Id.* at p. 645.)

In *Marsh*, the reviewing court found unconstitutional a statute that was originally drafted to create a statewide process for primary elections, which was then amended to limit the application of the act to two counties, Los Angeles and San Francisco. Because the Constitution at the time only permitted classification of counties "for the purpose of regulating the compensation of county officers in proportion to their duties" and the law did not concern compensation of county officers, it was a special law subject to the

constitutional requirement that it could not concern a matter where a general law could be made applicable. (*Marsh*, *supra*, 111 Cal. at pp. 370–371.) The court noted that there was no need for argument or speculation about whether a general law could be made applicable because the text of the act showed that this was the case. (*Id.* at p. 372.) The state did not offer any defense to the infirmities of the law, but there is also no discussion in the opinion about matters of local governance being entitled to additional scrutiny.

Similarly, in *Denman*, although the court found unconstitutional the Legislature's act adding a provision to the Political Code requiring cities and counties with a population of 150,000 or more (a category that included only San Francisco) to have a board of election commissioners of four persons appointed by the mayor, there is no indication that the court was applying heightened scrutiny. To the contrary, the Court appeared to find the only purported justification for the act to be the population, but the category of 150,000 or more was different from, and contrary to, population classifications for cities and counties already codified. (*Denman*, *supra*, 111 Cal. at p. 105.) In light of the preexisting population classifications, the court found that the Legislature's purported use of a new population class for this special purpose insufficient to justify the act. (*Ibid.*)

The county's argument for heightened scrutiny based on authorities closer in time to the adoption of the constitutional prohibition against special laws is also undermined by *People v. Mullender* (1901) 132 Cal. 217,

where the Supreme Court more directly addressed the role of the courts in scrutinizing legislative acts. In that case, defendant Mullender challenged the constitutionality of a state law creating a board of state harbor commissioners for the Bay of San Diego, but not creating such a board in any other harbors. Mullender argued the legislation violated the constitutional prohibition against local or special laws where a general law can be made applicable. (*Id.* at p. 221.) The court determined that the law in question was both local and special, but noted that was not the end of the inquiry. In the formulation articulated by the court, the determination of whether a general law could be made applicable is best left to the Legislature: "The constitution submits the question, whether a general law can be made applicable in any given case, to the judgment of the legislature, to be determined in the light of the evils intended to be avoided, and with its determination upon that question we may not interfere, unless the disregard of the constitutional requirement is clear and palpable." (*Ibid.*) Because the state had many harbors of different size and importance, it was reasonable for the state to determine that a special law was needed, and therefore the court concluded the act was not "within the evils sought to be remedied" by the prohibition against special laws. (*Id.* at p. 222.)

The county's effort to distinguish local governance cases from social and economic cases as a basis for differing levels of scrutiny is not borne out, as demonstrated by a later case reviewing legislation that authorized a different method

for San Francisco alone for setting the size of the county political party committees. (*Stout v. Democratic County Central Com.* (1952) 40 Cal.2d 91 (*Stout*).) In *Stout*, the court reviewed whether section 2833 of the Elections Code, made applicable by the Legislature solely to the County of San Francisco (by virtue of the fact that it was the only county in the state that is also a single city), was an improper local and special law. Section 2833 empowered county central committees in San Francisco alone to increase their own membership by majority vote, in contrast to apportioning the number of committeemen according to various formulas that reflected population, as provided for in the Elections Code for all other counties. (*Id.* at pp. 94–95.) The Supreme Court scrutinized the legislation, which involved a question of local political governance, using a rational basis test. Citing then recent cases dealing with the prohibition against special laws, the court found the law invalid, stating there was "no conceivable reason" to treat San Francisco County differently, and "no reasonable relation" between the method in the challenged law and its population. (*Id.* at p. 95.)

2. SB 958 is not premised on race-based classifications

The county next argues that this court should apply heightened scrutiny in analyzing SB 958 because the state has tried to justify SB 958 as necessary to create a seat for a second Hispanic supervisor, even though there has been no

determination that the 2011 redistricting plan adopted by the Board violated the VRA.

The county's argument is misguided because SB 958 changes the process—not the outcome—of drawing district boundaries. SB 958 does not implement a race-based remedy, nor does it ensure any particular outcome in how boundaries are drawn. Indeed, the county concedes that the law itself is not problematic, stating in its reply brief, "[t]he County has never suggested that SB 958 is itself a racial classification." This concession defeats any attempt to rely on equal protection cases that employ heightened scrutiny of legislation based on racial classifications.

Having conceded that SB 958 contains no improper racial classifications, the county contends that the state's reliance on the past history of racial discrimination in redistricting is an "unusual justification" that itself requires this court to use heightened scrutiny. Specifically, the county argues that absent a violation of the VRA from the redistricting plan adopted by the Board in 2011, any attempt to justify SB 958 based on past discrimination is improper, and should invite heightened scrutiny. This argument has no merit. Even short of a violation of the VRA, the efforts surrounding the 2011 redistricting revealed significant disagreement over whether the county's shifting demographics warranted creating two majority Hispanic CVAP districts, in contrast to the adopted plan that made little change from the district lines already in place. This disagreement was reflected both among the Board-appointed

members of the BRC and the supervisors themselves. There is no basis for concluding that relying on this history should invite heightened scrutiny.

3. SB 958's residency requirements do not warrant higher scrutiny

The county also argues that because SB 958 contains a residency requirement, it is subject to strict scrutiny. The county correctly points out that residency requirements for elected and appointed offices are subject to strict scrutiny because they impact a fundamental right. However, the cases applying that level of scrutiny involve equal protection challenges on behalf of persons seeking such offices, not an assertion that the law in question violates the prohibition against special laws. (See, e.g., *Zeilenga v. Nelson* (1971) 4 Cal.3d 716, 720–724 [residency requirement for board of supervisor candidates violates equal protection of the laws]; *Bay Area Women's Coalition v. City and County of San Francisco* (1978) 78 Cal.App.3d 961, 965–968 [examining whether a residency requirement for appointed office denies new residents equal protection].) The county has not challenged SB 958 on equal protection grounds, and it would lack standing to do so. (*Star-Kist Foods, Inc. v. County of Los Angeles*, *supra*, 42 Cal.3d at p. 5 [cities and counties lack standing to raise due process or equal protection challenges to state action]; *City of Malibu*, *supra*, 121 Cal.App.4th at p. 994, fn. 3.) Nothing in these cases persuades us to apply a

higher level of scrutiny to the question of whether SB 958 violates article IV, section 16 of the California Constitution.[9]

4. Existence of a general law does not warrant higher scrutiny

The county argues that because the Legislature concurrently enacted SB 1108, a general law applicable to all other counties (with the exception of San Diego County), SB 958 does not enjoy a presumption that the Legislature acted reasonably in singling out Los Angeles County. Because the Legislature enacted a general law authorizing all counties to create either advisory or independent redistricting commissions, we do not presume that SB 958 had sufficient facts to support the decision to make a separate law applicable solely to Los Angeles. (See *Harbor Dist. v. Board of Supervisors* (1930) 211 Cal. 271, 276–279 [finding invalid

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[9] We do not address, in this case, whether an applicant seeking appointment on the independent redistricting commission created by SB 958 could successfully challenge the residency requirement, and we express no opinion on that issue. We also do not address what remedy would result if such a challenge were successful. We note, however, that the county provides no argument or reason in support of its implicit assumption that such a challenge should result in the entirety of SB 958 being declared unconstitutional, as opposed to the residency requirement only. (See, e.g., *Bay Area Women's Coalition v. City and County of San Francisco*, *supra*, 78 Cal.App.3d at p. 965, fn. 2.)

the Ventura County Harbor District Act, because it was inconsistent with two existing laws governing creation of harbor districts]; see also *Consolidated Printing & Pub. Co. v. Allen* (1941) 18 Cal.2d 63, 68–71 [tax code sections only applicable to Los Angeles County were invalid special laws, where there was no rational basis for treating Los Angeles taxpayers differently].) But even without such a presumption, the question remains whether the Legislature had a reasonable basis to *require* Los Angeles County to create an independent redistricting commission, while concurrently enacting separate legislation that authorized—but did not require—other counties to create such commissions.

We agree with the state's argument that, unlike the laws at issue in *Harbor Dist.* and *Consolidated Printing*, where the specific law was incompatible with the general law, here the general law, SB 1108, leaves room for the Legislature to decide that it is reasonable to require one county to do something that is optionally available to the other counties in the state. As explained below, the Legislature had a rational basis for choosing Los Angeles over other counties as one of the first to create an independent redistricting commission to redraw district boundaries.

c. The Legislature had a rational basis for singling out Los Angeles County

The county argues that even under the more lenient rational basis test, SB 958 is unconstitutional special legislation. We disagree.

As the legislative history and the provisions of the act amply demonstrate, SB 958 is a good government proposal, with a purpose to promote independence, transparency, and public participation in the process of drawing supervisorial districts, so that the county's elected representatives are more responsive and accountable to their constituents. While we recognize that other counties might benefit from such legislation, that is not the test: where "there is a rational relationship between the purpose of the enactment . . . and the singling out of [a single] . . . county affected by the statute," the Legislative act does not violate the prohibition in article IV, section 16. (*White*, *supra*, 88 Cal.App.4th at p. 305, quoting *City of Los Angeles v. City of Artesia*, *supra*, 73 Cal.App.3d at p. 455.) To apply this test, we need not determine the state's actual reasons for enacting SB 958; instead, we simply need to determine whether there is "any conceivable factual or legal basis" behind singling out Los Angeles County. (*White*, *supra*, 88 Cal.App.4th at p. 305; see also *Watson*, *supra*, 63 Cal.2d at p. 837 [to hold a statute unconstitutional, there must be "no state of facts [that] can reasonably be conceived to justify the classification made"].)

Here, we conclude that the Legislature acted reasonably, because the county's size and diversity, when considered in the context of both its lengthy and acknowledged history of discrimination against Hispanic voters and the level of dissent and discord surrounding the 2011 redistricting effort, establish the county was uniquely in need of a mandated independent redistricting commission.

In arguing that SB 958 lacks any rational basis, the county takes an extremely narrow view of various considerations, explaining why each reason—taken in isolation—could not provide a rational basis for singling out Los Angeles County. In this manner, the county argues that: population size alone is not an adequate justification for the law; the county's diversity is not a meaningful metric because it is not more diverse than many other counties in California; Los Angeles County's VRA violations addressed in the *Garza* litigation have been remedied by intervening events, while other counties have more recent VRA violations; and concerns over continued incumbent supervisor control are specious, given that the 2011 redistricting effort in Los Angeles County did not result in a VRA violation, until 2016 county boards were required to do their own redistricting, and an entirely new Board will undertake the 2020 redistricting effort. The county's suggestion that each rationale for the enactment must be treated on its own is artificial: neither the Legislature nor this court is limited to considering each reason for an act in isolation, and a decision to enact legislation can reasonably

be based on a constellation of factors. The population, diversity, and history of discrimination in Los Angeles County together provide a rational basis for the Legislature to have singled out the county to impose an independent redistricting commission.

Los Angeles is the most populous county in California, and with only five districts, the ideal size for each district (based on the 2010 census) is nearly two million people. Given the population, each Los Angeles County supervisor must represent the interests of a district constituency well over three times the size of a district in the state's second most populous county (San Diego), and over 26 times of the size of the much smaller supervisorial districts in San Francisco County. It is reasonable to conclude that the sheer size of these districts presents significant challenges in ensuring supervisors are responsive and accountable to their many constituents.

No one disputes that the constituents within Los Angeles County are ethnically and racially diverse, and there are many communities of interest seeking to participate in local governance and to ensure responsive political representation. A study submitted by the county's own expert in this litigation, which calculated a "diversity index" based on 2010 federal census data for eight race/ethnic categories, shows that Los Angeles ranks first in diversity among the five most populous counties in the state. Those five most populous counties include all of the counties

with populations over 2 million,[10] the size of a single Los Angeles County supervisorial district.[11] Given the population and ethnic and racial diversity, it is reasonable to conclude that communities of interest face obstacles to successful participation in local governance.

The county and its expert contend Los Angeles is not particularly diverse relative to other counties by inviting us to use a different point of comparison: Los Angeles County ranks eighth on the diversity index among the fifteen most populous counties in the state. But that point of comparison seems unconnected to the issue facing the Legislature: whether the demographics of Los Angeles County (alone or in combination with other considerations) justify singling it out to impose an independent redistricting commission. None of the counties that rank as more diverse than Los Angeles County have supervisorial districts anywhere close

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[10] By population, measured in the 2010 census, those counties are: (1) Los Angeles, population 9,818,605; (2) San Diego, population 3,095,313; (3) Orange, population 3,010,232; (4) Riverside, population 2,189,641; and (5) San Bernardino, population 2,035,210.

[11] The same study shows Los Angeles ranks second among all 58 counties for its share of population over five years-old (57 percent) that live in a home where a language other than English is spoken. This is second in percentage only to Imperial County, a county with a total population less than 175,000 persons, making it well less than 2 percent of the size of Los Angeles County.

in size to Los Angeles; indeed, each of those counties have a population smaller than a single Los Angeles County district, and each of those smaller populations are represented by five or more supervisors. Accordingly, it is reasonable to conclude that communities of interest in these smaller counties do not face nearly the same challenges to achieving responsive political representation as such groups in Los Angeles County.

In addition, the county's documented history of racial discrimination in redistricting as shown through *Garza* cannot be ignored. (*Garza I*, *supra*, 756 F.Supp. 2198; *Garza II*, *supra*, 918 F.2d 763) In particular, the Ninth Circuit noted that the supervisors "acted primarily on the political instinct of self-preservation" when drawing districts in 1981 and "chose fragmentation of the Hispanic voting population as the avenue by which to achieve this self-preservation." (*Garza v. County of Los Angeles*, *supra*, 918 F.2d at p. 771.) As a result of this litigation, redistricting in Los Angeles County became subject to oversight from the U.S. Department of Justice until 2002.[12]

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[12] The county argues that this history in Los Angeles is not unique, and that other counties have equally poor records of discrimination. Trying to compare the histories of different counties to determine which violations are the worst is fraught with problems, but regardless Los Angeles County's history is unique. At the time SB 958 was passed, it was the only county to have been determined in court to have violated the VRA in drawing its supervisorial districts. The county points out that Kern County has been found to

The county contends it would be irrational for the Legislature to rely on such history in singling out Los Angeles County. In support of this contention, the county rightfully recounts significant intervening history since the *Garza* decision: in the almost three decades since the Ninth Circuit's ruling invalidating the county's 1981 redistricting effort, the county has formed a majority Hispanic supervisorial district; redistricting went through a period of Department of Justice preclearance until 2002; voters adopted term limits for county supervisors; and in 2011 the Board adopted new districts that have not been challenged or shown to violate the VRA. But the county's contention that the history of redistricting in Los Angeles cannot provide a rational basis for SB 958 rests on a mistaken premise: that it is irrational and arbitrary for the Legislature to have singled out Los Angeles County in the absence of a judicial finding that its current districts violate the VRA. The legislative process is distinct from the judicial process, and the Legislature need not find a violation of law to remedy a problem.

Here, regardless of a VRA violation, there is substantial evidence that Los Angeles County's first and

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have diluted the Hispanic vote in its redistricting of supervisorial districts, but that ruling was made in September 2018, two years after the Legislature passed SB 958. (See *Luna v. County of Kern* (E.D. Cal. 2018) 291 F.Supp.3d 1088.) At the time SB 958 was adopted, the action had only recently been filed.

only recent redistricting not subject to federal preclearance under section 5 of the VRA (in 2011) was highly politicized and marked by conflict and discord. In approaching redistricting, while it is true that state law in 2011 required that the supervisors approve the district boundaries, nothing prevented the Board from adopting plans for how it would be advised. Notably, the county created a BRC committee to advise it, but it did not take steps to create an advisory body with independence from the Board: the BRC consisted of two persons selected by each supervisor. The result was a serious conflict in the BRC report over whether district boundaries should adhere closely to their prior lines, or be shifted substantially to create a second majority Hispanic CVAP district. Notably, the members of the BRC split 6-4, voting consistently with the positions then taken by the particular supervisors who nominated them.[13] The conflict over the proper redistricting plan continued at the meeting of the Board and they were unable to obtain the necessary votes to approve either of the favored plans. Ultimately, approval of a plan required the vote of a supervisor who expressly stated that the adopted plan, making little change from prior districts, was not the best plan reflecting the county's communities of interest and possibly even in violation of the VRA; he stated he capitulated with the

[13] Committee members who voted against the BRC's recommendation to adopt plan A2 were nominated by the two supervisors who initially voted against adopting plan A3 at the Board meeting.

expectation that the matter would be resolved by the courts. Given this history, the Legislature could reasonably believe that the process would be less politicized if it was carried out by 14 members of an independent redistricting commission, each of whom would be carrying out his or her duties without concerns about retaining their position in office.

Given the unique size, demographics, and redistricting history in Los Angeles County, we cannot find that the Legislature's decision to apply SB 958 only to Los Angeles was without a rational basis. This is particularly so in light of the broader context of redistricting laws. As noted in the legislative history, SB 958 is far less of an outlier than the county contends. Rather, it was modeled after the State Commission created by voter initiative (Cal. Const., art. XXI), and after San Diego County had successfully created an independent redistricting commission, authorized by legislation in 2012. (Sen. Bill No. 1331 (2011–2012 Reg. Sess.).) The Legislature can address problems incrementally, and we cannot say there was no rational basis to require an independent redistricting commission singling out Los Angeles, as SB 958 continued the statewide movement toward independent redistricting that had started with the State Commission and continued with San Diego County and other local jurisdictions.[14] It was reasonable for

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[14] Continuing the trend of incremental implementation of redistricting laws, in October 2017, the Governor signed Assembly Bill No. 801, which changed San Diego's independent redistricting commission from a commission of

the Legislature to reach the conclusion that it would benefit the state as a whole if the largest county in the state was required to create an independent redistricting commission, thereby benefitting the largest number of citizens, given that county's unique circumstances and history.

II. Prohibition against partisan offices

The county contends that SB 958 is invalid under article II, section 6 of the California Constitution, which states that "[a]ll judicial, school, county, and city offices, . . . shall be nonpartisan." Under the county's reasoning, members of the commission are not non-partisan because the statute requires the "political party preferences of the commission members" to be "as proportional as possible to the total number of voters who are registered with each political party in the County of Los Angeles." (§ 21532, subd. (c).) The state has emphasized in responses to interrogatories that "Under SB 958, political party preference is only one of several factors considered in the selection of commissioners, and is used only to make party representation as proportional as possible to the number of voters registered with each political party in LA County. (Elec. Code, § 21532, subd. (c).)" We also note that the same

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five retired judges to a fourteen-member commission formed with a process substantially the same as set forth in SB 958 for Los Angeles County. (Assem. Bill No. 801 (2017–2018 Reg. Sess.).)

subdivision clarifies that "the political party preferences of the commission members are not required to be exactly the same as the proportion of political party preferences among the registered voters of the county." (§ 21532, subd. (c).) Nonetheless, we examine whether this proportionality requirement, read together with the requirement that commission members have continuous registration with a political party for five years (§ 21532, subds. (c), (d)(2)), runs afoul of the constitutional requirement that county offices be nonpartisan.

Legal analysis

The Elections Code defines "[n]onpartisan office" as "an office, except for a voter-nominated office, for which no party may nominate a candidate." (§ 334.) Because prospective commission members submit an application, they are not nominated by any party. The definition of a *partisan* office does not include an office where party membership is a requirement; rather, it is defined more narrowly, as including "any of the following offices: [¶] (a) President of the United States, Vice President of the United States, and the delegates therefor. [¶] (b) Elected member of a party committee." (§ 337.)

The California Supreme Court considered the statutory predecessors to these definitions of partisan and nonpartisan office in a case which concluded that article II, section 6 does not prevent political parties or their governing bodies from

providing support or endorsements in nonpartisan elections. (*Unger v. Superior Court* (1984) 37 Cal.3d 612, 617 [article II, section 6 "was not designed to place any greater restrictions on the conduct of political parties than those which were in existence prior to its enactment, i.e., a prohibition against nomination of candidates for nonpartisan office"].) The opinion noted that article II, section 6 does not refer to any specific conduct, but "merely declares the general principle that judicial, school, county and city offices shall be nonpartisan." (*Id.* at p. 615.) Reviewing legislation on the topic of nonpartisanship, the court pointed out, "[o]f the various alternatives open to the Legislature in promoting the principles of nonpartisanship, it chose only to control the form of elections for nonpartisan office in various respects, and to impose a single restriction on the conduct of political parties." (*Id.* at pp. 615–616.) The single restriction was that a nonpartisan office was defined as "an office for which no party may nominate a candidate." (*Id.* at p. 616, quoting former Elec. Code § 37.)

The *Unger* opinion also reviewed the history of article II, section 6: "The first mention of nonpartisan office in the Constitution appeared in 1926, when article II, section 2¾, was adopted. It provided that a candidate for judicial, school, county, township 'or other nonpartisan office' was deemed elected if he received a majority of all the ballots cast for that office at the primary election. Then, as now, the Constitution did not define the term 'nonpartisan office.'" (*Unger v. Superior Court*, *supra*, 37 Cal.3d at p. 617.) After

considering historical statutory provisions that prevented parties from nominating candidates to nonpartisan offices, the court concluded, "It must have been intended, therefore, that the undefined term 'nonpartisan office' as used in article II, section 2¾, of the Constitution signified an office filled by an election nonpartisan in form, and for which a party could not nominate a candidate. Petitioners point to no evidence to the contrary." (*Ibid.*)

Here too, while the county argues that the constitutional requirement that county offices be nonpartisan should apply to both elected and appointed offices, they offer no legal authority or evidence to support their contention. The county's reply brief argues that if we reject the argument that appointed offices must be nonpartisan, then there would be nothing to stop the Legislature from requiring, for example, that the appointed director of a county Department of Public Health must belong to the Democratic Party. The argument is absurd, not only because such a law would likely be struck down as unwarranted and unreasonable, but also because SB 958 does not on its face create any imbalance between parties that does not already exist in the population of Los Angeles County. In fact, the purpose of the proportionality requirement is to create a commission consisting of members that are balanced and reflective of the county's diversity of political affiliations. (§ 21532, subd. (c).) Independent redistricting commissions are well-recognized as a key part of reducing ever-present issue of partisan gerrymandering.

(See *Rucho v. Common Cause* (2019) 139 S.Ct. 2484, 2507 [recognizing that some states are addressing the issue of partisan gerrymandering "by placing power to draw electoral districts in the hands of independent commissions"].) Accordingly, we conclude that SB 958 does not violate the requirement that county offices be nonpartisan. (Cal. Const., art. II, § 6.)

DISPOSITION

The judgment is affirmed.

MOOR, J.

I concur:

RUBIN, P. J.

County of Los Angeles v. State of California
B290091

BAKER, J., Concurring

Senate Bill No. 958 (2015-2016 Reg. Sess.) (SB 958) is a remarkable intrusion by the Legislature on local electoral process (even accepting our Constitution's general tolerance of state laws that relate to apportioning population of governing body districts). (See Sen. Com. on Government and Finance, Rep. on Sen. Bill No. 958 (2015-2016 Reg. Sess.) Apr. 20, 2016, p. 5; Assem. Com. on Local Government, Rep. on Sen. Bill No. 958 (2015-2016 Reg. Sess.) Jun. 29, 2016, p. 8; see also Cal. Const., art. XI, § 4; Senate Bill No. 1108 (2015-2016 Reg. Sess.).) It is remarkable not only because it directs Los Angeles County (the County)—and only the County—to draw district electoral boundaries for its own Board of Supervisors via an independent redistricting commission, but also because the law has no prescribed endpoint. Under SB 958, the County must use an independent redistricting commission indefinitely, regardless of changed conditions, unless and until the Legislature opts to relieve the County of the obligation imposed.

Where, unlike here, the Legislature proceeds by way of a general law, the equal effects of the legislation on all

throughout the state provides a ready-made moderating incentive to the adoption of burdensome or intrusive laws. (See generally Ely, Democracy and Distrust (1980) pp. 82-84.) But county citizens, who elect only a minority of representatives serving in our Legislature, have little ability to protest the obligations imposed by SB 958 are not needed. Thus, under circumstances of the type we confront in this case—special state legislation that displaces local rules for electing political representatives—Article IV, Section 16 of the state Constitution should be construed to require express legislative findings, predicated on an adequate record, explaining the Legislature's judgment that a special law is warranted and enabling courts to determine whether that explanation amounts to a rational basis for proceeding by way of a special law.[1] (*Stout v. Democratic County Central*

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[1] Insofar as prior cases have said the Legislature's judgment that a general law cannot be made applicable under the circumstances in question permits consideration of hypothesized justifications or reasons not reflected in the legislative record, I am of the view that those decisions are not controlling here. Most of the prior cases so holding are non-binding Court of Appeal decisions (see, e.g., *White v. State of California* (2001) 88 Cal.App.4th 298, 305; *City of Los Angeles v. City of Artesia* (1977) 73 Cal.App.3d 450, 456), and the one that is not, *Board of Education v. Watson* (1966) 63 Cal.2d 829, 833, is distinguished from our facts because the special law at issue there did not intrude on the sensitive area of displacing locally chosen rules for electing local political representatives (*id.* at p. 831).

Com. (1952) 40 Cal.2d 91, 95 [law that regulated county central committee membership only in San Francisco invalid because the court "can see no rational basis for such a classification"]; *Denman v. Broderick* (1896) 111 Cal. 96, 102 [explaining, when holding unconstitutional a law regulating county board of election commissioners elections, that the predecessor provision to Article IV, Section 16 stated the Legislature shall not pass "local or special laws" in various enumerated cases, including laws regulating "the election of county and township officers"]; see also *County of Los Angeles v. Glendora Redevelopment Project* (2010) 185 Cal.App.4th 817, 831 ["'Although courts must give legislative findings great weight and should uphold them unless unreasonable or arbitrary,' courts also have an obligation to ensure that the legislative body "'has drawn reasonable inferences based on substantial evidence.'" (*Professional Engineers v. Department of Transportation* (1997) 15 Cal.4th 543, 569[ ]; accord, *People v. McKee* (2010) 47 Cal.4th 1172, 1206-1207[ ])"].)

The legislative record for SB 958 leaves much to be desired. We have, for instance, nothing approaching the record compiled by the United States Congress when it enacted amply justified Civil Rights Era laws combatting state and local voting discrimination. (See, e.g., *South Carolina v. Katzenbach* (1966) 383 U.S. 301, 308-309 ["The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects. Before enacting the measure, Congress

explored with great care the problem of racial discrimination in voting. The House and Senate Committees on the Judiciary each held hearings for nine days and received testimony from a total of 67 witnesses. More than three full days were consumed discussing the bill on the floor of the House, while the debate in the Senate covered 26 days in all"].) But that is not to say a legislative record and findings are entirely absent here.

The Legislature did make an express finding in the text of SB 958 itself that proceeding by way of a special law was necessary and a general law could not be made applicable "because of the unique circumstances facing" the County. (SB 958 § 2.) And the record evidencing the purposes animating SB 958, albeit thin, does disclose SB 958 arose from a desire to ensure responsive government in the state's most populous county while countering the effects of prior, judicially found discrimination against Latino voters.[2]

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[2] Specifically as to the County's history of discrimination, SB 958's author testified at a June 29, 2016, hearing before the Assembly Committee on Local Government to explain the reasoning behind his bill's approach—specifically mentioning, among other things, that "[i]n 1990, a U.S. district judge ordered . . . the redrawing of the [County] district lines, declaring that the Board of Supervisors at the time had blatantly attempted to hold onto power at the expense of underrepresented groups in the County." This refers to the litigation in *Garza v. County of Los Angeles* (C.D.Cal. 1990) 756 F.Supp. 1298 (*Garza*) discussed in greater detail by the majority.

This record suffices at present, though only just, to conclude the Legislature had rational justification here for resorting to the special law targeting the County. But it must also be said that the record and findings that now back SB 958 are weak justification for withdrawing *in perpetuity* the prerogative of County citizens to freely determine how their local representative should be elected, particularly in light of the intervening progress ameliorating the effects of discrimination that the County identifies in its briefs. If the constraints of SB 958 remain in force after this upcoming redistricting cycle, and if the County were to again seek relief in court for the next round of redistricting (some 40-50 years after the discrimination highlighted by the courts in the *Garza* litigation), and if the legislative record backing the special obligations imposed only on the County looks the same then as it does today, I would expect the State to have a very difficult time defending SB 958 as a rational exercise of the Legislature's special legislation power.

With these caveats I have outlined, I agree the County's arguments for reversal lack merit and the judgment should be affirmed.

BAKER, J.