

California Voting Rights Act

BELMONT-REDWOOD SHORES SCHOOL DISTRICT, APR 20, 2023

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OVERVIEW

- ❑ District Elections – Background
- ❑ The California Voting Rights Act – Overview, Safe Harbor Provision and Deadlines

BOARD MEMBER ELECTION SYSTEMS

☐ **At large (current system)**

- ☐ The entire electorate within district boundaries votes to elect each of the five Trustees.
- ☐ The Trustees may live anywhere within the district.

☐ **By trustee area**

- ☐ The population within district boundaries is apportioned into trustee areas.
- ☐ Each trustee area's electorate votes for and elects a single trustee.
- ☐ Trustee must reside within the trustee area.

CALIFORNIA VOTING RIGHTS ACT (CVRA)

- ❑ Prohibits the use of at large elections when they result in a **protected class** being impaired from **electing candidates of its choice** or **influencing the outcome of an election** (“racially polarized voting”)
 - Protected class: “class of voters who are members of a race, color, or language minority group”
- ❑ Proof of intent to discriminate **not** required to show a violation of the CVRA.
- ❑ Much broader than federal counterpart.

(Codified in Elections Code Section 14025 *et seq.*)

HOW A VIOLATION IS ESTABLISHED

- ☐ Challenger must demonstrate “racially polarized voting” by showing a difference “in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and the electoral choices that are preferred by voters in the rest of the electorate.” (Elec. Code section 14026(e).)
- ☐ This is shown by:
 - ☐ (1) a voting bloc of protected class members;
 - ☐ (2) a bloc of voters outside of the protected class; and
 - ☐ (3) candidates favored by the protected class voters that have historically not been elected.
- ☐ Statute and case law are not specific on what satisfies these factors; lower burden than federal counterpart.

CVRA LITIGATION

- ☐ Private right of action—anyone can enforce.
- ☐ Prevailing plaintiff has the right to recover reasonable attorneys' fees AND expert witness fees; prevailing defendant does not have that right (unless court finds action frivolous/unreasonable/without foundation).
- ☐ Local agencies have not seen success in CVRA litigation.
- ☐ Fees and costs are generally in the six figures.

KEY DECISIONS & SETTLEMENTS

- ☐ Palmdale: \$4.7 million (only one to go to trial on the merits—city lost)
- ☐ Modesto: \$3 million
- ☐ Anaheim: \$1.1 million
- ☐ Whittier: \$1 million
- ☐ Santa Barbara: \$600,000
- ☐ Tulare Hospital: \$500,000
- ☐ Madera Unified: about \$170,000
- ☐ Hanford Joint Union Schools: \$118,000
- ☐ Merced City: \$42,000
- ☐ Placentia: \$20,000

Pico Neighborhood Assoc. v. Santa Monica

- ❑ First time a public agency has successfully defended its at-large method of election when sued under the CVRA.
- ❑ Court of Appeals ruled that City of Santa Monica's at-large elections did not violate the CVRA; minority populations not sufficiently large to constitute a statistical majority in any potential trustee area, even in a district system.
- ❑ Currently on appeal in California Supreme Court.

LOCAL CONVERSIONS

☐ Converted to Trustee Area Elections

☐ Sequoia Union HSD

☐ Redwood City SD

☐ SMC Community College District

☐ City of Menlo Park

☐ City of South San Francisco

☐ Town of Woodside

☐ County of San Mateo

☐ City of San Mateo

☐ South San Francisco USD

☐ Cabrillo USD

☐ City of Redwood City

☐ City of Half Moon Bay

☐ City of San Bruno

☐ SMCOE

☐ San Mateo Union High School District

☐ San Mateo-Foster City School District

☐ City of Burlingame

☐ Burlingame School District

BY-TRUSTEE AREA ELECTION SYSTEM

- ❑ Presumptively compliant with the CVRA. Since the passage of this law in 2002, many school districts throughout California have transitioned to a by trustee-area system.
- ❑ Extensive statutorily prescribed transition process.
- ❑ District map divided into trustee areas based on population numbers, “communities of interest,” and many other factors determined with public input.
- ❑ Election Code 10010—litigation safe haven if local agency follows transition timelines.
- ❑ \$30,000 cap on attorneys’ fees (adjusted annually for inflation) where agency received a demand letter, began transition within 45 days of receiving demand letter (with resolution of intent), and completed transition within 90 days of passing resolution of intent.
- ❑ Permanent safe harbor from CVRA lawsuits if elections are conducted by trustee areas

TRANSITION PROCESS

☐ **Step 1: Adopt Resolution of Intent to Transition**

- If District has received a demand letter from prospective plaintiff's attorney, must adopt intent resolution within 45 days of letter to avail itself of safe harbors (Elec. Code 10010(e)(3))

☐ **Step 2: Develop and Adopt Map**

- Two "pre-map" public hearings over a period of no more than 30 days (Elec. Code § 10010(a)(1))
- Two "Map consideration" public hearings over a period of no more than 45 days (Elec. Code § 10010(a)(2))
- Map adoption public hearing

☐ **Step 3: County Committee Review**

- At least one hearing before County Committee (Ed. Code § 5019)
- County Committee votes to approve or deny proposal

* Requirement of Election or Waiver from State Board of Education was eliminated by SB 442 as of January 1, 2022.

TRUSTEE AREA MAP FACTORS

- ☐ Maintaining “communities of interest” – distinctive neighborhood or community that would benefit from being maintained in a single district because of shared interests, views or characteristics.
- ☐ Compactness
- ☐ Contiguous
- ☐ Equal population up to certain standard deviation
- ☐ Planned future growth based on census data
- ☐ Respect for voters’ wishes and continuity in office
- ☐ Visible boundaries (natural & man-made geographic features)
- ☐ Other local considerations (e.g., school boundaries, locations of school sites)

OTHER CONSIDERATIONS

- ☐ District boundaries do not change.
- ☐ Terms of current board members do not change.
- ☐ All incumbent trustees complete their terms.
- ☐ By-Trustee Area maps must be adjusted after each federal census, every 10 years to ensure equal population.
- ☐ District boundaries must be established no later than six months before the next regular primary election. (Elec Code 10010.)
- ☐ Can solicit public input before deciding whether to transition.

SUMMARY OF TRANSITION PROCESS

Step	Description
Resolution of Intent	Starts a 90-day window of time from Resolution's passage in which a plaintiff is barred from bringing an action for violation of CVRA.
Initial Public Hearings	Initial two public hearings, prior to drafting maps, within 30 days of each other. Education and input solicitation from District communities.
Draft maps	Release draft maps.
Hearings on draft maps	At least two meetings within 45 days of each other to discuss and revise maps and discuss the election sequence.
Map adoption	Maps must be posted for 7 days prior to any hearing adopting one.
County Committee on School District Organization	County Committee on School District Organization considers and approves Board-selected map.
2024	First by-trustee area elections held for BRSSD.

QUESTIONS?