



Fagen Friedman & Fulfroost LLP

Introduction to the California Voting Rights Act (CVRA)



Saddleback Valley
Unified School District



Jonathan Salt, F3
September 12, 2019

F3law.com

What is the California Voting Rights Act (“CVRA”)?

- Took effect January 1, 2003
- Prohibits the use of “at-large” elections when such an election system:

“impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election....”

(Elections Code § 14027.)



Does not require intent

- The CVRA is far broader than its federal counterpart
- Much easier for a plaintiff to bring a claim against a government entity
- Proof of intent on the part of voters or elected officials to discriminate against a protected class is not required
(Elections Code § 14028(d).)



Right to Attorneys' and Expert Fees

CVRA grants a prevailing plaintiff the right to recover reasonable attorneys' fees **AND** expert witness fees.

If district wins, it is **not** granted the same right.



(Elections Code § 14030.).



Major CVRA Litigation to Date

Recent Years:

- **\$110,000** (*Gomez v. Hanford Joint Union School District*)
- **\$3 million** (*Sanchez v. City of Modesto*)
 - Court of Appeal held that CVRA was constitutional
- **\$1.2 million → reduced to just under \$200,000** (*Rey v. Madera Unified School District*)
 - Trial court granted preliminary injunction; invalidated the results of upcoming board elections **before** the elections occurred
- **\$500,000** (*Avitia, et al. v. Tulare Local Healthcare District*)
- It is important to note that these amounts **do not** account for the fees paid to the entity's own attorneys



Major CVRA Litigation to Date

Jauregui v. City of Palmdale (2013)

- Plaintiffs argued that the City's at-large method of election had resulted in vote dilution for Latino and African American residents
- December 2013 trial court determined that at-large method of election violated CVRA.
- City appealed
- **Settled in 2015 for over \$4.5 million plus interest.**
- Reportedly spent in excess of \$1.5 million in the entity's own attorneys' fees



Major CVRA Litigation to Date

Pico Neighborhood Assn. v. City of Santa Monica (2018)

- Plaintiffs argued that the City's at-large method of election had resulted in vote dilution for Latino and African American residents, even though Latinos only make up 13% of CVAP.
- Fall 2018 trial court determined that at-large method of election violated CVRA and ordered a special election placing all seats up for election using plaintiff-drawn map.
- City is contemplating appeal.
- **Estimated City has spent approximately \$5 million in its own defense.**
- **Estimated Plaintiffs' attorneys' fees could cost City an additional \$10 million.**



What is a “By-Trustee Area” Election System?

- *Only safe harbor from a CVRA claim*
- School district is divided into trustee areas
- A governing board member is elected from each trustee area
- Board members are elected **by only the registered voters in the particular trustee area** where the governing board member resides



Recent Legislative Changes

■ AB 350

- Additional “pre-map” public hearing requirements
 - Two within 30 days
- Transition Timelines with litigation safe havens
 - 90 days from initiation
- Plaintiff fee reimbursement



Potential Next Steps



First Steps for Establishing By-Trustee Area Elections

- **(1) Pass a resolution** of governing board declaring:
 - Intent to establish “by-trustee area” election system
 - Starts 90-day safe harbor window
- **(2) Hold 2 “Pre-Map” Public Hearings** within 30 days
 - Prior to the preparation of draft trustee voting area plans by demographer:
 - Receive community comments and public testimony concerning the composition of potential trustee voting areas



Next Steps for Establishing By-Trustee Area Elections

- **(3) Draw Draft Trustee Area Plans**
 - Comply with the U.S. Constitution
 - Achieve population equality as nearly as is practicable
 - Comply with the Federal Voting Rights Act
 - Voting districts shall be geographically contiguous
 - Local *communities of interests*
 - Geographical compactness
 - Cannot favor or discriminate against an incumbent, political candidate or political party



Sharing Draft Voting Area Plans with District Constituents

- (4) Hold 3 Public Hearings on map options
- (5) Approval by County Committee on School District Organization
- Ordinarily, once approved by County Committee, transition placed on ballot for approval by electorate; **HOWEVER...**



Potential Waiver from SBE

- State Board of Education has power to waive requirement that by-trustee area proposal be placed on ballot (Ed Code § 33050.)
- CDE “dialed in” on this issue and approving such waivers
- Waiver will:
 - Expedite implementation of new election system,
 - Avoid uncertainty, and
 - Reduce cost and risk to school district since only “safe harbor” under CVRA is implementation of by-trustee area election system.



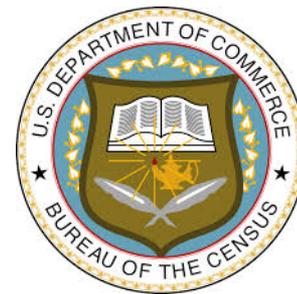
Final Steps in Completing Transition

- File new Voting Area Plan with County Registrar of Voters
- Hold Governing Board elections under new by-trustee area election system



Additional Items to Keep in Mind

- Once transition made to by-trustee area election system, then following each federal census:
 - Governing board must approve adjustment of trustee area boundaries to make sure each the population in each trustee area is as nearly as equal as practical, among other things.



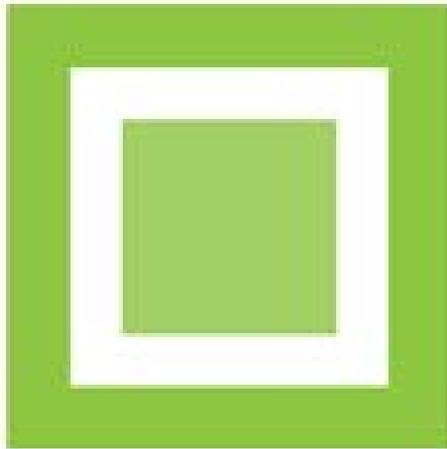
(Education Code section 5019.5(a).)



Final Thoughts

- Does not change overall District boundaries
- Does not change school attendance boundaries
- **Does not** change how the District is governed
 - Still one district with common goals and challenges!!!





Business, Facilities & Real Estate
Charter School
eMatters
Governance & Leadership
Labor & Employment
Litigation
Student Services & Special Education
Higher Education

FRESNO | INLAND EMPIRE | LOS ANGELES
OAKLAND | SACRAMENTO | SAN DIEGO

www.f3law.com

Information in this presentation, including but not limited to PowerPoint handouts and the presenter's comments, is summary only and not legal advice. We advise you to consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

