

Transition to Trustee-Area Elections

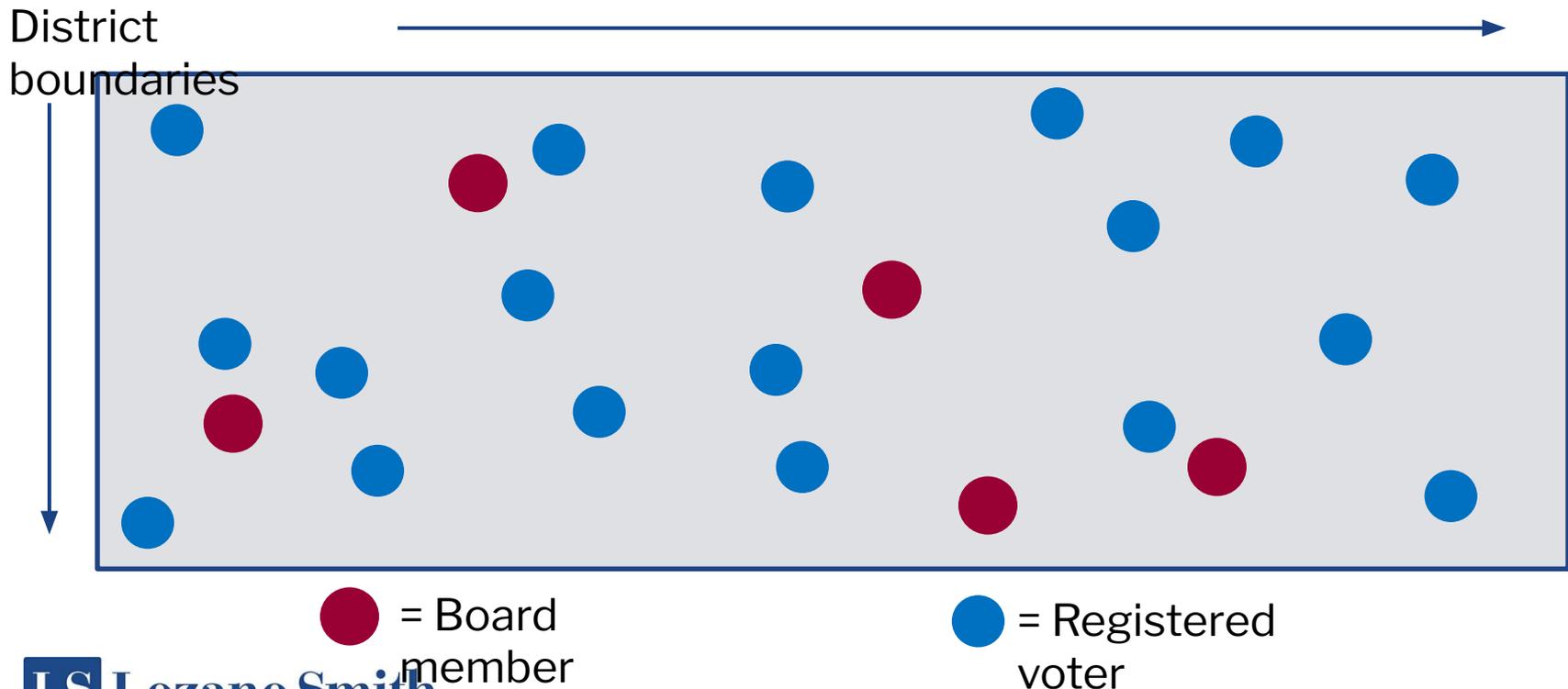
February 25, 2021

Presented by:
Harold Freiman

LS

At-Large Elections

- Board members may reside anywhere in the District
- Registered voters within the District may vote for all seats on the Board



California Voting Rights Act (“CVRA”)

- Prohibits the use of “at-large” elections that impair the ability of a protected class to:
 - elect candidates of its choice; or
 - to influence the outcome of an election.
(Elec. Code, § 14027)
 - “Racially Polarized Voting”
(Elec. Code, § 14028)
- Proof of intent to discriminate not

CVRA Litigation



- Public agencies have never* successfully defended a CVRA challenge
- CVRA challenges are on the rise
 - City of Campbell
 - City of Santa Clara
 - Morgan Hill Unified School District
 - Dublin Unified School District
 - San Ramon Valley Unified School District
 - West Contra Costa Unified School District

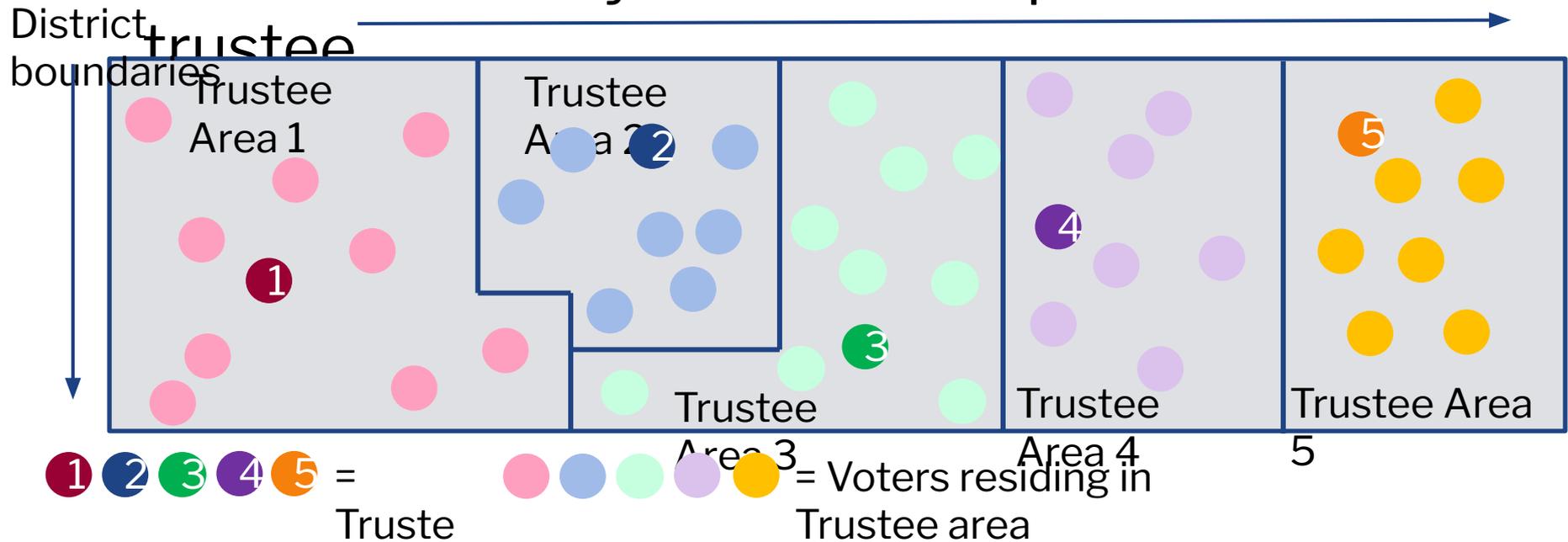
*Exception: pending Santa Monica case

CVRA Litigation

- High cost of litigation to public agencies: attorneys' fees for both sides
- Estimated fees and costs paid *to plaintiff's counsel*:
 - City of Santa Clara (Approximately \$3 million – court ordered)
 - West Contra Costa Unified School District (\$310,000 settlement)
 - City of Modesto (\$3 million settlement)
 - Tulare Regional Medical Center (\$500,000 settlement)
 - Madera Unified School District (\$162,500 - court ordered)
 - ABC Unified (\$140,000 settlement)

By-Trustee Area Elections: The Only Method of Election Guaranteed NOT to Violate the CVRA

- Trustees must reside within specific trustee areas
- Only voters residing within the specified trustee area may vote for that particular trustee



Demands Under the CVRA

If a demand is made:

- Governing body must adopt an intent resolution within 45 days of receipt of the demand letter to prevent plaintiffs from filing CVRA lawsuit.
- If the public entity takes all necessary steps, attorney's fee exposure is limited to approximately \$32,000. (Elec. Code, § 10010(f)(3))
- If the public entity does not do so and litigation ensues, no limit on fees.

January 19, 2020 Demand Letter

- Attorney from Shenkman & Hughes, P.C. sent District a demand letter, alleging racially polarized voting
- District has until March 11 to adopt an intent resolution within the CVRA's 45 day “safe harbor” provision

Process to Establish By-Trustee Area Elections



Step 1: Adopt Intent Resolution

- District board adopts intent resolution. (Elec. Code, § 10010(e)(3)(A))
- Once the intent resolution is adopted, the District has 90 days of “safe harbor” to complete the transition to by-trustee area elections before a lawsuit can be filed.
(Elec. Code, § 10010(e)(3)(B))

*Without entering into an extension agreement, the 90 day safe harbor period to finalize transition would expire as early as **May 26, 2021**, if the District board adopts the intent resolution on February 25, 2021.*

Step 2: District Development and Adoption of Map

- “Pre-Map” Hearings: 2 public hearings prior to preparing proposed by-trustee area maps. (Elec. Code, § 10010(a)(1))
- “Map Consideration” Hearings: 2 public hearings to consider proposed by-trustee area maps. (Elec. Code, § 10010(a)(2))
- Maps must be publicly available 7 days in advance of hearings.

Step 2: District Development and Adoption of Map (Cont.)

- Map Adoption Hearing: Public hearing before adopting final by-trustee area map.



Step 3: County Committee Review

- The County Committee on School District Organization has the authority to change the method of election in a school district under its jurisdiction. (Ed. Code, §§ 5019 and 5030)
- County Committee must hold at least one hearing in the District to consider the proposal. (Ed. Code § 5019)
- The County Committee shall vote to approve or deny the District's proposal to establish trustee-areas and adopt trustee-area elections. (Ed. Code § 5019)

Step 4: Election or Waiver from State Board of Education

- If County Committee approves the proposal, an election is called seeking voter approval. (Ed. Code, § 5020 subd. (a))
- This voter approval requirement can be waived by the State Board of Education, upon an application from the District. (Ed. Code §§ 33050-33053)
 - These waivers are typically sought and routinely granted.

Other Considerations

- Terms of current board members not changed by transition to by-trustee areas; all incumbents retain their seat for their elected term.
- Trustee area maps must be revisited and, as needed, adjusted after each federal census.

(District will not need to do this if maps are being created after the Census data is released)

- The exterior boundary of the District does not change.

Team Approach

- Establish your team and who is doing what:
 - **Legal counsel** –advise regarding compliance with all requirements
 - **Demographer** – responsible for maps
 - **Logistics person** – public notices, board agendas, resolutions, applications, etc.
 - **Scheduler** – all meetings (board meetings, closed session, community forums, COE etc.)
 - **Communication director** –messaging, social media, website content, etc.

Best Practices for Outreach



- Track your efforts (web traffic, social media reach, etc.). People who do not have strong concerns may not care to participate, but they still need to be well-informed.
- Consider all feedback.
- Create one place for information to which social media, etc. can refer.

**Thank you.
Questions?**





Lozano Smith

ATTORNEYS AT LAW

Disclaimer: These materials and all discussions of these materials are for instructional purposes only and do not constitute legal advice. If you need legal advice, you should contact your local counsel or an attorney at Lozano Smith. If you are interested in having other in-service programs presented, please contact clientservices@lozanosmith.com or call (559) 431-5600.

Copyright © 2019 Lozano Smith

All rights reserved. No portion of this work may be copied, distributed, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, nor shall any sub-license be granted, without the express prior written permission of Lozano Smith through its Managing Partner. The Managing Partner of Lozano Smith hereby grants permission to any client of Lozano Smith to whom Lozano Smith provides a copy to use such copy intact and solely for the internal purposes of such client. By accepting this product, recipient agrees it shall not use the work except consistent with the terms of this limited license.