



# TRANSITION TO BY-TRUSTEE AREA ELECTIONS

San Mateo-Foster City School District  
June 10, 2021

## District Map and school attendance areas



# Three Election Systems Compared

- “At Large”
  - *Candidates can reside anywhere in the jurisdiction*
  - *All voters vote for all members of the Board*
  - *Board members vote for each other, and are each other’s constituents*
- “By District” (Trustee Areas)
  - *A candidate must reside in the district he/she wishes to represent*
  - *Only voters in the given district vote on the person who represents them*
  - *Voters vote only for a single elected official*
  - *May have either 5 or 7 trustee areas*
- Exotics:
  - *Not available to LEA: cumulative, limited, ranked choice alternatives (SB 1288 veto)*
  - *Available “From districts” (Trustee Area At Large)- Does not insulate from challenge*

# THE CALIFORNIA VOTING RIGHTS ACT



# California Voting Rights Act (CVRA)

- Modeled after the Federal Voting Rights Act (passed in 1965)
  - *Intended to ensure that local jurisdictions do not utilize voting systems that deprive minority voters of their political power*
- California enacted its version (the CVRA) much later – 2001 (signed into law July 9, 2002)
- CVRA makes it significantly easier for plaintiffs to force jurisdictions into using “by-district” or “trustee-area” election systems by eliminating two of the elements of the four-part test under the Federal VRA

# Federal

- Can the protected class constitute the majority of a district?
- Does the protected class vote as a bloc?
- Do the voters who are not in the protected class vote in a bloc to defeat the preferred candidates of the protected class?
- Do the “totality of the circumstances” indicate race is a factor in elections?

# California

- ~~■ Can the protected class constitute the majority of a district?~~
- Does the protected class vote as a bloc?
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- ~~■ Do the “totality of the circumstances” indicate race is a factor in elections?~~

# Impact of the CVRA Since 2001

- Switched (or in the process of switching)\*:
  - *At least 165 school districts*
  - *28 community college districts*
  - *100+ cities*
  - *1 County Board of Supervisors*
  - *10 water or other special districts*
- **Key issue: Award of attorneys' fees to prevailing plaintiff**
- Key settlements:
  - *Palmdale: \$4.7 million*
  - *Modesto: \$3 million*
  - *Highland: \$1.3 million*
  - *Anaheim: \$1.1 million*
  - *Whittier: \$1 million*
  - *Santa Barbara: \$600,000*
  - *Tulare Hospital: \$500,000*
  - *Madera Unified: ~ \$170,000*
  - *Hanford Joint Union: \$118,000*
  - *Merced City: \$42,000*

# Notable Cases So Far

- Palmdale, Santa Clara and Santa Monica went to trial on the merits
  - *Palmdale and Santa Clara lost*
  - *Santa Monica (currently before CA Supreme Court)*
- Modesto and Palmdale each spent about \$1.8 million on defense costs
  - *Attorneys' fees to prevailing plaintiff were even higher*
- Santa Monica has spent an estimated \$5.2 million so far

# CVRA Litigation

Fact: Public agencies have never successfully defended a CVRA challenge.

# Net Effect

- The California legislature, rather than mandating directly that all political jurisdictions (of a particular size or characteristic) should convert to trustee-area elections by a particular date, has simply put all jurisdictions at risk of a lawsuit, with a very short fuse
- The only absolute safe harbor from an allegation that your District's elections do not violate the CVRA is the adoption of trustee area elections

# COMPARING ELECTION SYSTEMS



# “At Large” Election Systems

## Pros

- Simplicity
- Universality
- Each Trustee is answerable to every constituent
- Trustees are each others' constituents
- Top two or three vote getters out of a field of five or six candidate will win office

## Cons

- Racial majority can overwhelm the voting preferences of a racial minority community as to each seat on a five member board

# “Trustee Area” Election Systems

## Pros

- Candidates are elected by much smaller groups of voters
- Candidates can run much cheaper campaigns (easing access)
- Constituents can lobby their own Trustee much more effectively

## Cons

- Each voter gets a chance to vote for only one Trustee
- Each voter only gets chance to vote once every four years (instead of every two)
- Trustees are no longer answerable to District residents who live in other Trustee Areas
- Constituents now lobby other Trustees much less effectively
- Elections potentially less competitive (no longer best two or three out of five or six)

# Effects of Trustee Areas on the Board

## BENEFITS

- Potential for candidates from historically underrepresented communities
- Newer, quieter voices get heard

## RISKS

- Provincial decision-making; “my District wants X”
- Schools start to “belong” to one Trustee or another
- New need for processes and Board dynamics to continue to ensure the best interests of the entire District are served
- Board members are no longer each other’s constituents!

# Local Status

## 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
- South San Francisco USD
- Cabrillo USD
- City of Redwood City
- City of Half Moon Bay
- SMCOE (just finalized process)

## In Process

- San Mateo Union High School District

# At-Large Jurisdictions

- Atherton
- Belmont
- Brisbane
- Burlingame
- Town of Colma
- Daly City
- East Palo Alto
- Foster City
- Hillsborough
- Millbrae
- Pacifica
- Portola Valley
- San Carlos
- San Mateo

- Bayshore
- Belmont-Redwood Shores
- Brisbane
- Burlingame
- Hillsborough
- Jefferson ESD
- Jefferson UHSD
- La Honda-Pescadero
- Las Lomas
- Menlo Park
- Millbrae
- Pacifica
- Portola Valley
- Ravenswood
- San Bruno Park
- San Carlos
- Woodside

# HOW DISTRICTS ARE DRAWN



# Who Draws Them?

- You do. (Actually, a demographer proposes them, and you choose.)
- The community provides input on the maps before they are adopted by the Board.
- Then, a plan (approved by board after public/community input) goes to the County Committee on School District Organization for approval.

# How Districts Are Drawn

## ■ Federal laws:

- *Equal population*
- *Federal Voting Rights Act*
- *No racial gerrymandering*

## ■ Traditional principles:

- *Communities of interest*
- *Compact*
- *Contiguous*
- *Visible boundaries (natural and man-made)*
- *Respecting voters' past choices (continuity in office)*

# “Community of interest”?

## Two questions:

- What is your neighborhood or “community of interest”?
  - *School attendance areas*
  - *Natural neighborhood dividing lines*
  - *Areas around parks or other landmarks*
  - *Common issues, activities, or concerns*
  - *Shared demographic characteristics (socio-economic status, education level, linguistic isolation)*
- Does the community of interest want to be united into a single district, or does it want to be divided so it has a voice in multiple elections and/or election cycles?

# MOVING TOWARDS BY- TRUSTEE AREA ELECTIONS



# Resolution of Intent

- Effective January 1, 2017, Elections Code Section 10010 requires a prospective plaintiff to send a written notice to agency asserting that the agency's method of conducting elections may violate the CVRA.
- Section 10010 puts a 45-day stay on a prospective plaintiff's ability to bring an action, allowing the District to adopt a resolution outlining its intention to transition from at-large to district-based (by-trustee area) elections.
- If the District begins the process of switching to trustee area elections before receiving a notice letter or within 45 days of receipt of a notice and adopts a resolution to that effect, under Section 10010, a potential plaintiff cannot commence an action within 90 days of the resolution's passage.

# Adopting Resolution of Intent

- Basically, adopting a Resolution of Intent provides a “safe harbor” for the District to proceed along the process of drawing maps
- Maximum of \$30,000 cost reimbursement to Plaintiffs if timelines and procedures followed. (if the District follows the timelines discussed, it is guaranteed not to pay more than \$30,000 in attorney fees)

# Process Continued:

Pre-Map Hearings: 2 public hearings for community input are required before drawing of maps - Elec. Code § 10010(a)(1)

Map Consideration Hearings: 2 public hearings are required to consider proposed by-trustee area maps - Elec. Code § 10010(a)(2)

\*\*Maps must be publicly available 7 days in advance of hearings.

Hearing in re Map Adoption: Must hold public hearing before adopting final by-trustee area map.

County Committee on School District Organization: must hold at least one hearing in the District to consider the proposal - Ed. Code § 5019. Committee will vote to approve or deny proposed change.

Voter Approval or SBE Waiver

# AB 2123 (September 6, 2018)

- A political subdivision and the prospective plaintiff who first sends a notice pursuant to paragraph (1) may enter into a written agreement to extend the time period described in subparagraph (B) for up to an additional 90 days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input. The written agreement shall include a requirement that the district boundaries be established no later than six months before the political subdivision's next regular election to select governing board members. . . .
- No later than 10 days after a political subdivision enters into a written agreement pursuant to clause (i), the political subdivision shall prepare and make available on its Internet Web site **a tentative schedule of the public outreach events and the public hearings held pursuant to this section.** If a political subdivision does not maintain an Internet Web site, the political subdivision shall make the tentative schedule available to the public upon request.

# Note: Your District Has Received a Demand Letter Under the CVRA

- CVRA timelines DO apply to SMFCSD now that a letter has been received.
- SMFCSD has until June 25, 2021 to adopt a resolution of intent to transition to by-trustee area elections.
- *Without entering into an extension agreement, the 90 day safe harbor period to finalize transition would expire as early as **September 23, 2021.***

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May 11, 2021

Shara Watkins, Clerk

San Mateo-Foster City Elementary School District

1170 Chess Drive

Foster City, CA 94404

Re: Conducting Elections by Trustee Area

VIA CERTIFIED MAIL - 7020 0640 0001 7156 5792 2:32pm

# Two Safe Harbors

- 90 day stay of litigation if a Resolution of Intent is adopted
- Permanent safe harbor from CVRA lawsuits if your elections are conducted by trustee areas



# 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's communities. Note: Not necessarily Board meetings.
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	Final 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. If the County Committee approves the proposal, an election is called seeking voter approval.
SBE Waiver	Voter approval waivable if District submit waiver application to the Sate Board of Education in re election requirement.
2022	First by-trustee area elections held.