

SBUSD Elections Systems and the California Voting Rights Act (CVRA)

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QUESTION PRESENTED

Should SBUSD should follow suit with many other agencies and implement a transition from at-large to by-trustee area elections?

Election Systems

Public agencies, including school districts, conduct elections for their governing board either through at-large or by-trustee area voting. In the at-large system used by SBUSD, governing board members are elected by all of the voters in the District and each voter may cast one vote for each open seat. In the by-trustee area system, the agency is divided into separate trustee areas and each voter may only vote for a candidate from the trustee area the voter resides within.

Arguments in Favor of By-Trustee Area Elections

Advocates of by-trustee area elections argue that officials elected from trustee areas are more responsive to their constituents. Also, advocates argue that by-trustee area voting makes it easier for members of protected classes to elect candidates of their choice.

Arguments in Favor of At-large Elections

Advocates of at-large elections argue that governance is improved when elected officials answer to the entire community and not the interests of their trustee area alone. Some argue that trustee areas are unnecessary in small jurisdictions, where it is relatively easy and inexpensive to reach out to the entire electorate, such as by door-to-door campaigning.

Until passage of the CVRA, by-trustee area elections were traditionally utilized in large jurisdictions with distinct neighborhoods that have distinct needs and concerns. In smaller jurisdictions, it can be challenging to identify qualified candidates.

The California Voting Rights Act (CVRA)

The CVRA became effective January 1, 2003. It made significant changes to minority voting rights in California, including making it easier for challenges to be mounted to the at-large voting system in place in many local jurisdictions and school districts.

The CVRA provides that "[a]n at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class...." (Elec. Code §14027.) A protected class generally includes racial and ethnic minority groups.

The CVRA in a Nutshell

- A violation occurs where there is “racially polarized voting.” Racially polarized voting exists where there is evidence that minority voters differ in their choice of candidates or ballot measures from the rest of the electorate. (Elections Code §14026) Proof of racially polarized voting is established where there are disparities in the voting patterns between minority and non-minority voters that can be shown by any of the following: voting results of elections where at least one candidate is a member of a protected class; elections involving ballot measures; or other "electoral choices that affect the rights and privileges" of protected class members. (Elec. Code §14028(b)) No proof of intent is required.

The Law Favors By-Trustee Area Elections

- When a claim is asserted under CVRA, there is no test for how much disparity need be shown as between minority and non-minority voters for there to be racially polarized voting.
- Voter studies, in addition to examining local elections, often compare how local minority vs. non-minority voters responded to statewide measures, such as Proposition 187, or statewide races, such as secretary of state, where a Hispanic surnamed candidate ran against a white candidate.
- Given the broad language of the statute, voter studies by claimants can usually show polarized voting.
- If polarized voting is demonstrated, there is no requirement established at law to prove that such has actually influenced the outcomes of local elections.

Right to Attorneys' and Expert Fees

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

Santa Barbara County Cities have Switched to By-Trustee Area Elections after having Received a CVRA Claim

- Last year, Carpinteria, Lompoc, Goleta and Santa Maria all began the process of switching to by-trustee area elections following receipt of claims.
- Santa Barbara switched three years ago after paying \$600,000 in attorney's fees.

To Avoid Expensive Suits, Local Agencies are Rapidly Moving to Trustee Area Elections Across the State

- The tally of California jurisdictions changing to by-trustee area elections as a result of the CVRA includes 157 school districts, 70 cities, and 28 community colleges.
- Most or all have done so after receiving a claim.
- Allan Hancock College, Santa Barbara City College and the SB County Board of Education previously converted to trustee area elections without any claim having been filed.

Without Waiting for a Claim to be Asserted, SBUSD Should Consider Transitioning to By-Trustee Area Elections in 2022

Recently, Lompoc Unified School District, Carpinteria Unified School District, and Santa Maria Joint Union High School District voluntarily agreed to make the change commencing with the 2022 elections before any claim was filed. The California Voting Rights Project--the same group that filed the claim against the City of Carpinteria--has endorsed that action and has agreed not to assert claims against local school districts who do the same thing in a timely way.

Steps for Establishing By-Trustee Area Elections after next Census

Per Election Code § 10010:

1. Pass a resolution of the governing board declaring intent to establish a by-trustee area election system.
2. After data from 2020 census, receive community input and public testimony concerning composition of potential trustee voting areas associated with the District's transition to a by-trustee area election system.
3. After data from 2020 census, preparation of draft trustee-voting-area plans by a demographics firm.

Drawing of Draft Trustee-Area Plans

- Taking into account the received public input, demographers would use the 2020 decennial census data, as required by law.
- “One person, one vote” standard established by U.S. Supreme Court.
- Population must be as equal “as is practicable” – people, not citizens.
- Ed. Code section 1002: “...trustee areas shall be as nearly equal in population...”
- A certain amount of deviation may be permitted, up to 10%.

Share Draft Voting Area Plans with District Constituents

Draft plans must be presented to public for comments before final board consideration.

- **Hold public information sessions.**
- **Place draft plans on District website.**

Final Steps for Establishing By-Trustee Area Elections after 2020 Census

- **Governing Board Approval of Final Trustee Area Plan – Requires 2 public hearings before 3rd public hearing to adopt final plan.**
- **Approval by County Committee on School District Organization at hearing within District.**
- **After approval by County Committee, place by-trustee area election proposal and final map on ballot for approval by electorate or obtain State Board of Education waiver, which is routinely granted.**

Impact of Transitioning to Trustee Area Voting upon Incumbent Board Members

- **Incumbent board members are permitted to serve out their remaining terms.**

WHAT HAPPENS IF NO CANDIDATE EMERGES FROM A SINGLE TRUSTEE AREA?

In such a case the balance of the Board would make an appointment of a resident from within the trustee area following the same process that is used now for any vacant Board position.