
By-Trustee Area Election Staggering Considerations Under the California Voting Rights Act

Upon transitioning from at-large elections to by-trustee area elections pursuant to the California Voting Rights Act (“CVRA”), school districts must set a “sequence of elections” so that the terms of Board members are staggered, half being elected in each year a district has an election.

Board Member Entitlement to Serve Complete Terms

The change to by-trustee area elections cannot impact any Board members’ current terms; all Board members may serve their complete four-year terms.¹ The Attorney General has determined that the Education Code does not allow a school district or county committee to reduce this four-year term to two years.²

Required Staggering of Terms and Sequencing of Elections

The Education Code requires that the terms of board members be staggered so that, as nearly as practicable, one half of the members shall be elected in each year in which the Board's elections are regularly held.³ Here, given the District’s seven-member Board, there are three (3) trustees whose terms will be completed in 2022 and four (4) that will complete their terms in 2024. As such, after the Board transitions to by-trustee areas, there will be an election to fill three (3) of the newly-created trustee areas in 2022 and an election to fill four (4) areas in 2024.

Under the Elections Code, when transitioning from at-large to by-trustee area elections, a school board must propose not only a trustee-area map but also the “sequence of elections⁴.” That means, when adopting the trustee area map, the Board will also have to identify which trustee areas will be up for election in 2022 and which areas will be up for election in 2024. Where the incumbents are each in their own trustee area, this task is fairly simple and the trustee areas with one incumbent residing in that area will be up for election at the same time as the incumbent’s term ends.

Here, because of where incumbent trustees currently reside, there is no feasible way to draw trustee areas so that all current trustees are in separate trustee areas. This is because multiple trustees live within a single

¹ Education Code §§ 5017, 5021.

² 55 Ops.Atty.Gen. 101 (1972).

³ Education Code § 35012.

⁴ Elections Code § 10010(a)(2).

“census block⁵” which cannot practically be separated. This issue becomes especially complicated where the trustee area with multiple trustees combines a 2022 election cycle incumbent with a 2024 election cycle incumbent. Based on the residences of the incumbents, all the proposed maps include at least one pairing of two trustees in the same trustee area, with both a 2022 election cycle incumbent and a 2024 election cycle incumbent. This creates two possible options for election sequencing of those trustee areas:

Trustee Area Up for Election in 2022

If a trustee area with a 2022 election cycle incumbent and a 2024 election cycle incumbent is sequenced to be up for election in 2022, both the 2022 and 2024 incumbents, along with any other candidates, may run. If the 2022 incumbent wins, or if the 2024 incumbent decides not to run, the 2024 incumbent will serve out his/her term but will not have an open seat to run for election in 2024. If the 2024 incumbent wins, he/she will vacate his/her current seat on the Board and will serve a new four (4) year term in that trustee area. The 2022 incumbent would no longer be on the Board.

Trustee Area Up for Election in 2024

If a trustee area with a 2022 election cycle incumbent and a 2024 election cycle incumbent is sequenced to be up for election in 2024, the 2022 incumbent will exit the Board in 2022 (when his/her term is up), but could run for the Board again in that trustee area in 2024, along with any other legally viable candidate.

Considerations in Determining Sequencing

The Elections Code provides that in determining the sequence of the district elections “the governing body shall give special consideration to the purposes of the California Voting Rights Act, and it shall take into account the preferences expressed by members of the districts.”⁶ There have been no cases or attorney general opinions interpreting this section, so it is unclear as to how it would be applied. However, courts look first to the plain language of the statute.

Here, there are two thoughts expressed by the legislature: fulfill the purposes of the CVRA and, in making that determination, solicit input from the citizenry and make a sequencing decision in light of that input.

The purpose of the CVRA is to increase the influence of protected classes to elect candidates of their choice and to influence the outcome of elections.⁷ The legislative history of this Elections Code provision offers insight into this analysis. The legislative history identifies a situation where the City of Anaheim began its transition and the approved district maps, including two (2) Latino plurality districts and one majority Latino district.⁸ The City scheduled the elections for the two Latino plurality districts for 2016 (a general election) but

⁵ Census blocks are the smallest geographic area for which the Bureau of the Census collects and tabulates decennial census data. Census blocks serve as the building bricks for creating trustee areas and generally cannot be divided. While census blocks have been split in very particularized circumstances, splitting of these blocks is very difficult and may be a reason for the County Committee to deny the proposed map or justification for a legal challenge to the map.

⁶ See Elections Code § 10010(b).

⁷ See Elections Code § 14027.

⁸ Bill Analysis AB 350 (2016), Senate Elections and Constitutional Amendments, *available at* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160AB350#.

scheduled the elections for the only Latino majority district for 2018 (a midterm election). The scheduling of the only Latino majority district in a midterm election year could have the effect of scheduling the election for a district whose population consists of a majority of a protected class during a cycle in which turnout is traditionally decreased, and this decision created an outrage in the Latino community. Instead of facing an additional lawsuit, the City decided to change the election sequencing to move the majority Latino district to the general election in 2016.

Applying this analysis to the District's sequencing, two ideas emerge. First, if a majority Latino district is created, the citizenry could ask that the majority-minority district be elected at a general election (2024), or the citizenry could ask that the majority-minority district be elected in 2022 so that the Latino community could influence the outcome of an election earlier.

Conclusion

The District's demographer, Cooperative Strategies, has drawn four (4) maps for the Board's consideration, labeled as Scenarios 1-4. In each of these Scenarios, there will be incumbents paired against one another. The consideration of whether any of the maps create majority-minority trustee areas along with consideration of input from the community should occur prior to deciding how best to sequence the election cycles so that the sequencing decision is made in furtherance of the purposes of the CVRA and with community input.

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