



California Voting Rights Act Revisited

More than a year has passed since a Superior Court judge issued a preliminary injunction under the California Voting Rights Act (“CVRA”), Elections Code sections 14025-14032, invalidating the results of the Madera Unified School District’s school board elections and requiring the district to move from an at-large voting system to a district-based election system. Following Rey v. Madera Unified School District, Madera County Superior Court Case No. MCV043467, several school districts have switched from using an at-large voting system to a district-based system. Though we previously discussed this case and the CVRA in NewsFlash No. 09-05, we are revisiting this issue because numerous school districts are contemplating making similar changes to their election systems which require significant lead time and effort.

Overview of the California Voting Rights Act.

The CVRA provides a cause of action to members of any racial or ethnic group that can establish that its members’ votes are diluted through the combination of racially polarized voting and an at-large election system. At-large elections are elections in which voters of the entire jurisdiction elect members of the governing board. District-based elections are elections where the jurisdiction is divided into smaller voting districts and members of the governing board are elected by voters residing within the voting district where the board member resides. The law essentially bans at-large elections if they “impair the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.” A “protected class” is a class of voters who are members of a race, color, or language minority group.

To prove a violation, plaintiffs must show “racially polarized voting.” Racially polarized voting is voting in which there is a difference between the choice of candidates preferred by voters in a protected class and the choice of candidates preferred by voters in the rest of the electorate. Unlike the Federal Voting Rights Act, plaintiffs need not show that members of a protected class live in a geographically compact area or demonstrate an intent to discriminate on the part of voters or officials. The CVRA empowers courts to “implement appropriate remedies,” including creating small election districts.

Who’s Vulnerable?

The Lawyers’ Committee for Civil Rights of the San Francisco Bay Area have initiated most, if not all, of the cases thus far. Districts that use “at-large” elections, which about 90% of the state’s school boards use, are vulnerable to a CVRA lawsuit. Districts that have a district-based election system are essentially immune from CVRA liability. Most of the lawsuits have been filed against poor school districts that have a significant minority population that are underrepresented on governing boards, particularly school districts in the Central Valley.

What Should Districts Do?

Given today's financial realities, school districts are hesitant to devote any resources to changing their current electoral systems. However, the CVRA mandates attorney's fees to prevailing plaintiffs. It has been reported that governmental agencies have been billed about \$4.3 million in the cases that have been filed. We, therefore, recommend that a school district evaluate its current electoral system to assess its potential liability by:

- Evaluating the district's current voting system;
- Assessing the current demographics of the community the district serves;
- Ascertaining the minority voting-age population within the district and the minority student population within the district;
- Analyzing whether the district's leadership represents the community it serves;
- Reviewing the history of minorities on the board and the electoral history regarding minority candidates;
- Considering past voting trends within the district; and
- Determining whether converting to a district-based election system will improve minority representation on the board.

A school district may also want to consider the costs of litigation and the costs associated with converting to district-based elections. Once a district has considered the foregoing, it should develop a plan of action (i.e., changing method of election or maintaining current method of election).

If your district has received any complaints or inquiries regarding its at-large election procedure or if you need assistance in evaluating your potential liability under the CVRA and/or developing a plan of action, please contact one of our four offices.

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