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## CLIENT NEWS BRIEF

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### **UPDATE ON LOCAL ELECTION CHALLENGES – CAN CALIFORNIA PUBLIC AGENCIES STILL HOLD AT-LARGE ELECTIONS?**

In recent years, there have been a growing number of legal challenges to at-large school board and city council elections. At-large board or council members are elected by and represent the entire jurisdiction of their agency. By contrast, in “area” elections (also known as district or trustee area elections), a city council or board member is elected by vote of the residents of a particular defined area within the agency’s boundaries. The legal challenges to at-large elections have focused on claims that at-large elections in certain communities result in board or city council representation that does not reflect the racial composition of those communities. This disparity is alleged to constitute a violation of the California Voting Rights Act (“CVRA”). (Elections Code §§ 14025, *et seq.*) Because several of these legal challenges have been resolved or settled in favor of a change to area elections, and because of the associated risk of substantial fees and costs in connection with litigating these types of cases, we are increasingly being asked whether it is now legally required for all public entities to move to area elections. Generally, our answer is that the law has not changed, and that at-large elections remain permissible. However, depending on particular circumstances, at-large elections do risk the possibility of a successful challenge under the CVRA.

#### Background

The majority (over 90%) of California’s school districts use the “at-large” electoral system. These districts might not face a legal challenge to their election system unless there is a disparity resulting from a significant percentage of a minority group in the voting population and student body while that same minority group’s representation on the governing board is minimal. The same is true for cities where councils do not reflect the ethnicity of their populations.

The Lawyers’ Committee for Civil Rights (“Lawyers’ Committee”) a nonprofit organization that provides legal services to address racial discrimination, has focused much of its attention on this issue in the Central Valley, but agencies throughout the state that have a substantial disparity in representation could face challenges. Since 2008, the Lawyers’ Committee has threatened to sue over 20 jurisdictions throughout the state in which it claimed that Latinos appear to be at a disadvantage. A 2006 report by the Latino Issues Forum (located online at [http://www.lif.org/download/lif\\_education\\_report.pdf](http://www.lif.org/download/lif_education_report.pdf)), identified over 200 school districts in the

state that had Latino student majorities, used at-large voting elections and had a disparity between a large percentage of Latino voters and students and a small percentage of Latino board members. The Lawyers' Committee has been quoted in the press as conceding that the law does not require every government agency in California to change its election system - only those that have a "substantial" minority group that makes up at least 30% or 40% of a community and has struggled to gain representation.

### California Voting Rights Act

The California Voting Rights Act bans at-large voting **if** there is evidence that it "impairs the ability" of a minority group "to elect candidates of its choice or its ability to influence the outcome of an election." The CVRA prohibits at-large elections in areas where racial polarization "dilutes" the rights of members of a protected minority class. (Elections Code §§ 14027, 14028; see also federal Voting Rights Act upon which the CVRA is based, 42 U.S.C. § 1973.<sup>1</sup>) Objectable racial polarization occurs when members of the (usually white) majority vote as a bloc, which prevents minority groups from electing their preferred candidates or making choices on other matters such as ballot measures. Courts are authorized by the CVRA to impose appropriate remedies, including area elections, and to award a non-government plaintiff party reasonable attorney's fees and expenses to remedy violations of the act. (Elections Code §§ 14029, 14030.) Area elections - whether imposed by settlement, court order, or voluntarily - would presumably include defining some areas in which a minority group (e.g., Latinos) constitutes a majority.

### Recent CVRA Lawsuits

In 2008, three Latino citizens, represented by the Lawyers' Committee, sued Madera Unified School District ("MUSD") for alleged violations of the CVRA. (Rey v. Madera Unified School District, Madera County Superior Court Case No. MCV043467.) In their complaint, the plaintiffs contended that MUSD's at-large method of elections violated the CVRA because it routinely marginalized a significant population of Latino voters through racially polarized voting, which impaired the ability of Latinos to elect candidates of their choice. The plaintiffs noted the lack of equivalent representation in that 44% of MUSD's voting population and 81% of MUSD's student body was Latino, yet only one of the seven board members (14%) was Latino. Pursuant to the CVRA, plaintiffs requested that the court impose an alternative election system, such as an area-based election in which the board is divided into trustee areas.

On September 23, 2008, the Madera County Superior Court granted the plaintiffs a preliminary injunction, invalidating in advance the results of MUSD's then-upcoming November 2008 school board election. While not conceding that its at-large election system was illegal, MUSD did not oppose the preliminary ruling and settled the case before trial, taking steps to move from

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<sup>1</sup> The federal Voting Rights Act uses a different and less limiting standard, as affirmed by the U.S. Supreme Court in a recent decision. (Bartlett v. Strickland (2009) 556 U. S. \_\_\_\_ (2009).) California agencies are bound by the more restrictive CVRA, which eliminates the federal Voting Rights Act requirement that a new voting area be created as a remedy for voter dilution only if the disenfranchised minority group comprises more than 50 percent of the population in the new voting area.

at-large to trustee area elections. After the court hearing, MUSD's governing board approved a voting area map, and took action providing that the June 2009 election would be the first to take place utilizing the new trustee area map. It is important to note that the court's ruling in the MUSD case was a preliminary one, and that the final result in the case came from a settlement.

A public entity's expense of fighting a CVRA lawsuit (which includes legal costs, exposure to payment of the other side's attorney's fees, and the cost of demographic experts) and the uncertainty of the outcome, has elsewhere prompted settlements. In 2004, Latino voters and the Lawyers' Committee brought a lawsuit challenging the at-large election system for the Modesto City Council. Despite a Latino population of approximately 25.6% in the city, no Latino had occupied a seat on the City Council since 1991. Modesto fought the case, claiming the CVRA should be overturned because it was unconstitutional. Modesto won at the trial court level, but lost on appeal when the Court of Appeal held that the CVRA was constitutional, and both the California and United States Supreme Court declined to hear an appeal of this decision. (Sanchez v. City of Modesto (2006) 145 Cal.App.4th 660, review denied, certiorari denied (2007) 128 S.Ct. 438.) Modesto then settled the case with the Lawyers' Committee, agreeing to pay \$3 million in attorney's fees.

#### Conclusion.

These recent preliminary rulings and settlements have not changed the law as to whether public entities should have at-large elections or area elections, and at-large elections have not broadly been declared illegal. Only school districts and cities that have a significant minority population that is underrepresented on the governing board or city council may be subject to a potentially successful legal challenge. If you have questions or concerns whether your election system may be subject to a legal challenge, please feel free to contact one of our seven offices located statewide.

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*

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