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LEGAL UPDATE

February 26, 2009

To: Superintendents, Member School Districts (K-12)

From: Marko H. Fong, Assistant General Counsel *MF*

Subject: California Voting Rights Act
Memo No. 07-2009

You may have seen recent media stories about “at-large” voting in school districts and alleged violations of the California Voting Rights Act of 2001 (CVRA) Elections Code 14025-14032. In October 2008, a Madera County Superior Court Judge granted a preliminary injunction to invalidate the results of the Madera Unified School District Governing Board election in advance of the election because the use of “at-large” voting in Madera violated the California Voting Rights Act. The District has since switched from “at-large” voting, where all voters in the District may vote for all members of the Board, to an area-based system. Several elective bodies across the central valley have followed suit.

Under California Voting Rights Act section 14027, “an 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.” In the Madera County case, the plaintiffs emphasized the fact that in a District in which 45% of the registered voters were Hispanic (Hispanics are 82% of the population), only one of seven Board members was Hispanic. The plaintiffs also pointed to a history of “polarization” in the way that the District’s two different racial groups had voted on candidates and statewide issues. CVRA section 1430 provides attorney’s fees for plaintiffs who prevail in any action to enforce the statute. In two recent actions under the CVRA, these claims were in the millions. In one of the cases, the District did not oppose the initial complaint.

Currently more than 90% of K-12 districts and many community college districts have “at-large” Board elections. There is nothing inherently illegal about having at-large elections. It should only be a concern if there is a significant racial or ethnic minority within an “at-large” district that has been historically underrepresented on the district’s Governing Board.

If you have received a letter of concern about your district's use of "at-large" election procedures or if there have been inquiries about "racial balance" in your elections or in the makeup of candidates for office in your district, we strongly recommend that you contact legal counsel immediately to plan an orderly response that helps to minimize possible plaintiff's legal fees and, more importantly, helps to ensure that the district's election practices are in compliance with the California Voting Rights Act. The certification process for developing trustee-areas within a district requires significant lead time and effort and must be based on the results of the most recent Federal Census which next occurs in 2010.

Please contact any of our attorneys if you have questions regarding this or other issues.