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The Census is Coming: Preparing Your Agency for 2020.

April 1, 2020, is national Census Day and will kick off a year-long process of counting every resident in the United States. In California, the California Citizens Redistricting Commission (the “Commission”), a non-partisan commission comprised of democratic, republican and independent (decline-to-state or no party preference) voters, is responsible for re-drawing California State Assembly and Senate, U.S. Congressional, and State Board of Equalization districts to reflect new population and shifting population data.

In addition to working with state and federal agencies to assist in the Census count, local government agencies will have their own responsibilities to address representation issues within the geographic boundaries of their local agency. As agencies begin to think about their role in the Census process, this post reviews some important issues that may arise concerning local representation.

At-large Voting Systems

Voters generally elect members of an agency’s local governing body using one of two voting systems:

- **By-area Voting System.** Under a by-area, or electoral district, voting system, an agency’s boundaries are divided into a subset of voting districts. For example, if a city has seven council seats, the city’s boundaries are divided into seven areas, or “districts,” and a particular council seat is assigned to that district. Only voters residing in the particular district may vote for individuals running for that council seat. Under California law, an individual running for a particular seat on a governing body must reside within that district in order to be eligible to run for that seat.
- **At-large Voting System.** Under an at-large system, also referred to as “block voting,” voters within an agency’s entire geographic boundaries elect the members of an agency’s governing body to represent all residents within the agency’s boundaries, as opposed to a subset of residents residing in a particular district.

At-large voting systems are vulnerable to challenge under the California Voting Rights Act of 2001 (“CVRA”) and Section 2 of the Federal Voting Rights Act of 1965 (“FVRA”). The CVRA provides that an at-large election of the members of the governing body must not impair the ability of a protected class to elect candidates or dilute the rights of voters of a protected class (also known as “racially polarized voting”). Additionally, Section 2 of the FVRA prohibits any

election method or procedure that has a discriminatory result. Potential liability under these laws broadly depends on the agency's demographics; the presence of polarized voting within the agency's boundaries; and past voting records for or against "protected class" candidates in the agency's elections, or in other elections in which voters within the agency's boundaries may participate. Demographic studies suggest that at-large voting systems are much more likely to dilute the rights of voters. By-area voting systems, on the other hand, are generally not subject to challenge under the CVRA or FVRA, unless in creating the voting districts, the agency manipulated demographic data or applied such data in a discriminatory manner, e.g. gerrymandering.

The California Elections Code provides a mechanism for a citizen to challenge an agency's at-large election method if it impairs the ability of a protected class to elect candidates or dilutes the rights of voters of a protected class. If a voter challenges an at-large election system in court and a court finds it in violation of CVRA, the court must implement remedies, including the imposition of by-area elections that are tailored to remedy the violation.

In recent years, several agencies in California have been the subject of CVRA and/or FVRA litigation. This sort of litigation is very expensive and difficult for an agency to win. In fact, we are unaware of any agency that has successfully defended an at-large voting system. Other agencies have voluntarily moved from at-large to by-area elections both to avoid potential litigation and out of concern for ensuring equitable voter representation.

If your agency currently maintains at at-large system, we recommend that you consult with legal counsel to determine whether it would be in your agency's best interest to voluntarily move to a by-area voting system. As a proactive means of addressing potential violations of the CVRA or FVRA under an at-large system, agencies may also want to consider conducting a demographic analysis to determine if polarized voting is present within the agency's geographic boundaries.

Re-drawing Local Agency Lines in 2021

If your agency currently elects the members of its governing body using the by-area system or plans to move to a by-area system, beginning in 2021, your agency will need to redraw its district/area lines using 2020 census data.

The redrawing of by-area voting lines must seek to ensure compliance with the CVRA, FVRA and the U.S. Constitution. In redrawing an agency's district lines, an agency must consider factors including, but not limited to:

- Whether the boundaries of each voting district are nearly equal in population in order to ensure compliance with the Equal Protection Clause of the Constitution;
- Whether the boundaries of each voting area may likely result in a denial or abridgment of the right of any citizen to vote because of race or color as provided in section 2 of the FVRA;

- Whether the boundaries of each voting area respect communities of interest, rural or urban populations, social interests, agricultural, industrial or service industry interests, and the like, insofar as practicable;
- Whether the boundaries of each voting area are compact, insofar as practicable; and
- Whether the boundaries of each voting area contain contiguous territory, insofar as practicable.

Public input is required under California law before an agency may adopt new district maps.

As agencies begin to ramp up for the 2020 Census, they should consider consulting legal counsel and demographic consultants in preparation for the redistricting process.

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