

---

## Release of the 2020 Census Data, its Relevance under the California Voting Rights Act, and its Impact on Public Agency Elections

---

February 10, 2021

Number # 1

**Written by:**

Michael E. Smith

Partner

Fresno & San Luis Obispo

In October of 2020, the United States Census Bureau completed “the count” for the 2020 Decennial Census. While the Bureau has yet to finish tabulating and verifying the final results, the anticipated release of the 2020 Census data will have an important impact on school district and public agency elections. Those public agencies that have already transitioned to “by-district” (or for school districts, “by-trustee area”) elections are required by law to analyze the new Census data and determine whether changes must be made to their by-district maps to ensure appropriate population balance.

Ryan P. Tung

Senior Counsel

Walnut Creek

Public agencies that conduct at-large elections, meaning that all voters in the entire boundary of the agency vote for all elected officials, may also be impacted by the 2020 Census data. Demands to transition to by-district elections under the California Voting Rights Act (CVRA) continue to be made throughout the state, causing more and more local agencies to make that transition. The 2020 Census data could be an impetus for new demands.

Jonathan E. Berry-Smith

Associate

Walnut Creek

### **When is the 2020 Census Data Released?**

Federal law requires 2020 Census data to be processed and sent to the President for the apportionment of Congressional Representatives by December 31, 2020, and then sent to the individual states as “expeditiously as possible,” but no later than March 31, 2021. However, due to COVID-19-related delays, the Census Bureau missed its end-of-year deadline to deliver the apportionment count to the President, and the Bureau has released a statement (not yet published on its website) through Kathleen Styles, the Bureau’s Chief of Decennial Communications and Stakeholder Relations, that the redistricting count should not be expected before July 30, 2021.

### **Redistricting (Public Agencies Conducting By-District Elections)**

California law requires public agencies that conduct by-district elections to analyze the 2020 Census data and, if necessary, readjust their current by-district area boundaries to ensure appropriate population balance is maintained. To fulfill this requirement, public agencies should engage a demographer who can perform the necessary technical demographic work, and prepare a plan for public outreach and participation.

The Fair And Inclusive Redistricting for Municipalities and Political Subdivisions, (FAIR MAPS) Act requires cities and counties to follow specific public outreach and hearing procedures when going through the redistricting process. However, the California Education Code is silent as to how school districts review and implement trustee area adjustments, and the manner in which school districts decide to facilitate public participation in the creation of new trustee area maps. Therefore, local educational agencies should discuss best practices with their legal counsel to ensure appropriate public participation and board involvement.

## **CVRA and Census Considerations for Public Agencies Conducting Elections At-Large**

For public agencies that still conduct elections at-large, new census data can be the impetus to analyze whether to transition to a by-trustee area or district-based method of election.

The CVRA defines an “at-large method of election” as a method in which voters of the entire jurisdiction elect all members of the board. This method of election comes with the risk of diluting the ability of a protected class to elect candidates of its choice or influence the outcome of an election, also known as “racially polarized voting”. To avoid this risk, and the potential costly litigation under the CVRA, many public agencies have transitioned to a district-based, or by-trustee area method of election. This method of electing trustees is one in which the candidate must reside within a specific area, and is elected only by the voters residing within that area.

Across the state, we have noticed a significant number of lawsuits, demands, and other challenges directed toward local agencies that continue to hold at-large methods of election. We predict that these challenges will likely continue, which will nudge some local agencies to make the transition away from at-large elections without waiting for a demand letter or similar lawsuit. This will allow those agencies to better control the process and avoid potential attorney’s fees.

Public agencies that transition to a district-based or by-trustee area election system and hold elections under this system are immune from claims under the CVRA. The process for establishing this method of election is particularly technical, with multiple steps, public hearings, and timelines governed by California Elections Code. Lozano Smith is available to discuss how to approach this process in an efficient and legally compliant manner.

## **Takeaways**

As we anticipate the impending release of the 2020 Census data, public agencies should be aware of both the obligations and opportunities that come with updated population data. Redistricting and transitioning to a new method of election may impact your agency. We recommend that local agencies who are already district-based begin preparing for the release of new Census data, stay abreast of developments with the Census Bureau’s dissemination of the data, and begin planning for additional meetings and public input procedures that will be required later this year. For others who have not yet transitioned to district-based or by-trustee area elections, the release of the federal Census data may serve as a catalyst for new demands to make that transition, and may also serve as a starting point for governing bodies to undertake their own voluntary consideration of the transition.

# Client News Brief

If you have any questions regarding redistricting or transitioning to by-trustee area elections, please contact one of the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

*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.*

