City Clerk's Workshop Legislative and Legal Update

Cal Cities Annual Conference 2023

Presented by

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Agenda

Legislation passed since last Cal Cities Annual Conference

Pending legislation

Recent legal developments

Trends

Political
Reform Act

Elections

Legislation—AB 1416 Ballot Label

- Mandates the Ballot Label for statewide measures to list supporters and opponents

- Permits, **but does not require**, that Ballot Label for local measures to list supporters and opponents

- The County Board of Supervisors makes the choice at least 30 days before ballot arguments are due for county measures
  - County's choice applies to all measures in that particular election

Legislation—AB 1416 Ballot Label

Example Supporters and Opponents Added to the Title and Summary on the Ballot:

26 REQUIRES THAT CERTAIN STATE AND LOCAL FEES BE APPROVED BY TWO-THIRDS VOTE. FEES INCLUDE THOSE THAT ADDRESS ADVERSE IMPACTS ON SOCIETY OR THE ENVIRONMENT CAUSED BY THE FEE-PAYER'S BUSINESS. INITIATIVE CONSTITUTIONAL AMENDMENT. Fiscal Impact: Depending on decisions by governing bodies and voters, decreased state and local government revenues and spending (up to billions of dollars annually). Increased transportation spending and state General Fund costs ($1 billion annually).

| 132 | YES ➡ ○ |
| 133 | NO ➡ ○ |

Supporters: California Taxpayers' Association, California Chamber of Commerce, Small Business Action Committee, Nisei Farmers League. **Opponents**: League of Women Voters California, American Lung Association, Sierra Club California, California League Conservation Voters.

Part added by SB 90

Legislation—AB 2582/2584

Recalls

- Recall elections for local officers include only one question now: whether to recall the local officer (Elec. Code, § 11382)

- If recall is successful, office remains vacant until city council fills the vacancy—either by appointment or special election
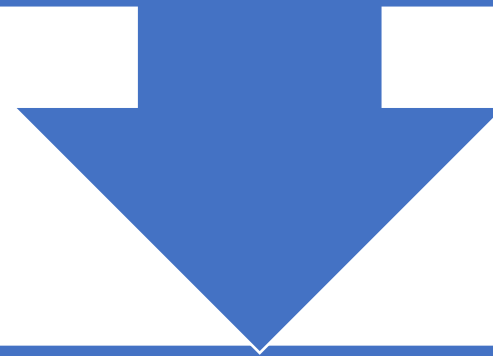
Legislation— AB 2582/2584

Recalls

City council has 60 days to appoint or call election

| Appointed in second half of term, serves remainder of term. | Appointed in first half of term, serves until next mid-term election, then a special election is held for second half of the term |

Recall election can be consolidated with regularly scheduled election if within 180 days after order to consolidate (Elec. Code § 11242.)

Legislation— AB 2582/2584

Recalls

- Number of signatures for Notice of Intention increased from 10 proponents, depending on size of jurisdiction
  - 100,000 or more registered voters: 50 signatures, or equal to 5x the number needed on nomination papers, whichever is greater
  - Fewer than 100,000 but more than 1,000 registered voters: 30 signatures or 3x the nomination paper signature requirement, whichever is greater
  - Fewer than 1,000 registered voters: 30 signatures
- Clerk must post blank recall petition for 10-day public examination period before signatures can be gathered (section 11042.5)

Legislation—AB 2967—Omnibus Election Bill

Local elections official must retain recall petitions—even those for state office—for 8 months after the election or, if no election, after the final examination of the petition

Legislation—AB 2967—Omnibus Election Bill

Request to withdraw name from initiative petition, must include the name/title of the petition

Request to withdraw your signature from a petition

A voter who has signed an initiative or referendum petition, and who subsequently wishes their name withdrawn, may do so by filing a written request for the withdrawal with the appropriate elections official. The written request must include the voter's name, residence address, and signature, and must be filed in the elections official's office prior to the date the petition is filed. (*California Elections Code section 9602*)

Instructions:
A voter may submit the following information to Sacramento County Voter Registration and Elections office to withdraw their name from an initiative or referendum petition.

The request must have an original "wet" signature. Faxed, emailed and/or scanned copies cannot be accepted.

I have signed the initiative or referendum petition indicated below and hereby request my name be withdrawn from the petition.

_____

Name of petition

_____

Voter's name (as registered)

_____

Voter's residence address

_____

Voter's signature

Pending Election Legislation Rundown

Pending Legislation—AB 63

Elections official must start posting election information on their website the Thursday following the election and at least once a week thereafter until they submit the certified statement of election results to the city council

Pending Legislation—AB 292

Requires nonpartisan ballots provided to voters who have no declared political party preference how they may obtain partisan ballot

NO PARTY PREFERENCE VOTERS

ON ELECTION DAY YOU CAN VOTE ONE OF THE FOLLOWING BALLOTS:

- **Nonpartisan**
  with NO Presidential Candidates
- **Democratic Party**
  with Democratic Presidential Candidates
- **American Independent Party**
  with American Independent Party Presidential Candidates
- **Libertarian Party**
  with Libertarian Presidential Candidates

VOTE CALIFORNIA

TO VOTE A PARTISAN BALLOT --> SIMPLY REQUEST ONE FROM A POLL WORKER WHEN YOU CHECK IN.

If you do not request a partisan ballot, you will receive a nonpartisan ballot with no presidential candidates

Pending Legislation—AB 626

Allows voter to return vote by mail ballot without identification envelope if:

Precinct board has real time access to county election official's election management system, and:

- Verifies voter has not returned vote-by-mail ballot for that election
- Changes status of voter for that election from vote by mail to in person
- County elections official has procedure to ensure no voter can submit two ballots and precinct board follows that procedure

Pending Legislation—AB 398

Eliminates requirement that voter requesting replacement vote by mail ballot swear under penalty of perjury that they failed to receive, lost or destroyed original ballot.

Requestor must provide personal identifying information that matches their affidavit of registration—name, residence address and DOB

Elections official must advise: "Only the registered voter themself may request a replacement ballot. A request for a replacement ballot that is made by any person other than the registered voter is a criminal offense."

Pending Legislation—AB 1037

- Allows local elections official to permit electronic means other than email or fax for a voter to transmit Signature Verification Statement and Unsigned Identification Envelope Statement

- Elections official must establish privacy and security protocols to ensure submittals are received directly by the elections official and only used to verify signature on ballot

SIGNATURE (REQUIRED) / FIRMA (REQUERIDA)

X   *John Smith*

Signature must be in voter's own handwriting. (Do not print)
El votante debe firmar con su puño y letra. (No use letra de molde)

Residence address as registered in Santa Clara County.   Date / Fecha
Dirección residencial tal como está registrado en el Condado de Santa Clara

Pending Legislation—SB 77

When signature on identification envelope does not match voter's registration records, elections official must notify the voter by telephone, text message or email if the elections official has the information on file

SIGNATURE (REQUIRED) / FIRMA (REQUERIDA)

X John Smith

Signature must be in voter's own handwriting. (Do not print)
El votante debe firmar con su puño y letra. (No use letra de molde)

Residence address as registered in Santa Clara County.
Dirección residencial tal como está registrado en el Condado de Santa Clara

Date / Fecha

Pending Legislation—AB 1219

- Revises provisions regarding ballot layout and font sizes

- Makes changes to ballot language for state recall elections

- Specifies layout and content of instructions on ballots

Pending Legislation— AB 399

- For detachments from County Water Authorities, two separate elections must be held
  - One election within the detaching territory
  - One election within the Authority's entire jurisdiction
- These elections may be conducted concurrently

RIVERSIDE COUNTY

SAN DIEGO COUNTY

1. Carlsbad MWD
2. City of Del Mar
3. City of Escondi
4. Fallbrook Public
5. Helix Water Dis
6. Lakeside Water
7. City of National
8. City of Oceansi
9. Olivenhain MW
10. Otay Water Dist
11. Padre Dam MW
12. Camp Pendleto
13. City of Poway
14. Rainbow MWD
15. Ramona MWD
16. Rincon del Diab
17. City of San Dieg
18. San Dieguito W
19. Santa Fe Irrigat
20. South Bay Irriga
21. Vallecitos Wate
22. Valley Center M
23. Vista Irrigation
24. Yuima MWD

* The Sweetwater Authori
City of National City and t

Pending Legislation—AB 545

Mandates additional obligations to accommodate voters with disabilities at inaccessible sites

If voter with disability cannot access the regular polling place, a precinct worker can deliver regular ballot outside to voter but *only if* the ballot marking device cannot be brought outside

Pending Legislation—AB 969

- Prohibits manual vote counts for semifinal official canvass where:

  - More than 1,000 registered voters 154 days before election on established election date

  - More than 5,000 registered voters 154 days before election on a date other than an established election date

- Manual counts must be conducted pursuant to a plan approved by the Secretary of State

- Urgency measure

Pending Legislation—AB 773

- Designates a "lead county" for elections where special districts and school districts that are in two counties

- "Lead county" must work with other counties that contain parts of districts to set deadline for arguments for and against measures

- Arguments must be filed with "lead county," who selects the ones to use

- Mandates election official to post and accept electronic submission of Candidate Statement for voter information guide

Pending Legislation—AB 1227

Permits Santa Clara County Board of Supervisors to adopt, or a voter to propose by initiative, ranked choice voting

Pending Legislation—AB 1539

Makes it a misdemeanor to vote in an election in California and in an election held in another state on the same date

EXCEPTION: May vote in a landowner voting district election or any other election that does not require the voter to be a resident of the district

Pending Legislation—AB 1762

Elections Omnibus Bill 2023

- Fine-tunes dictionary to consult for counting hyphenated words

- Candidate cannot use "incumbent" on ballot if originally elected at large and they are candidate for district-based election

- Other technical tweaks and conforming changes

Pending Legislation—SB 485

Expands existing felony offenses of interfering with:

- Officers holding an election or conducting a canvas
- Voters lawfully exercising right to vote

Defines covered officers to include SOS, SOS staff, local elections officials or their staff, including temporary workers and volunteers

Pending Legislation—SB 297

- Authorizes majority of initiative proponents to file written notice with SOS to withdraw statement initiative or referendum after petition filed with elections official

- Authorize proponents to file notice of withdrawal that is contingent on particular legislative measure being enacted

Pending Legislation—SB 52

Requires charter city with population over 2.5 million to establish an independent citizens redistricting commission if the city's charter does not establish one that meets specified criteria

Pending Legislation—AB 1248

Requires general law and charter cities and charter city and county with population over 300,000 and a school district or community college district with over 500,000 residents to establish a 14-member independent redistricting commission by 1/1/2030

Pending Legislation—AB 1248

Cities over 300,000 (as of today)	
Los Angeles	San Diego
San Jose	San Francisco
Fresno	Sacramento
Long Beach	Oakland
Bakersfield	Anaheim
Stockton	Riverside
Irvine	Santa Ana

Pending Legislation—SB 386

Extends by 30 working days the period an elections official has to verify signatures if official is required to do "full check" on every signature

Pending Legislation—SB 386 (con't)

- City elections official must post online or publish no later than 3 days before deadline for submitting nomination papers, the following:

  - A list of offices to be filled

  - Whether the elections official has furnished nomination papers to the incumbents

  - Whether, due to redistricting, there is no eligible incumbent

  - Where nomination papers can be obtained

  - Location, dates and hour of office where papers may be filed

Pending Legislation—SB 798

- For elections on local bond measures, local government must provide voters a statement that includes the estimate of the tax rate expressed as a rate per $100,000 of assessed valuation

  - Existing law expresses the tax rate per $100 of assesses property

MEASURE C FISCAL IMPACT

Assessed Property Value (Refer to Property Tax Bill)	Estimated Average Annual Tax Rate Increase ($49.12 per $100,000 of assessed value)	Estimated Total Tax Rate Increase* (over 27-year bond repayment term)
$300,000	$147	$3,979
$400,000	$196	$5,305
$500,000	$246	$6,631
$600,000	$295	$7,957
$700,000	$344	$9,284
$800,000	$393	$10,610
$900,000	$442	$11,936
$1,000,000	$491	$13,262

* Totals will be impacted by Prop 13 and as new units come online and debt is redispersed.

Litigation Update—Elections

- ***Rab v. Weber:*** Scanning mail-in ballots before election day does not violate Election Code

Litigation Update—Elections

Pico Neighborhood Association v. City of Santa Monica

Question: "What must a plaintiff prove in order to establish vote dilution under the California Voting Rights Act?"

Answer: A plaintiff must show there is an alternative voting system that would give the protected class, either on its own or with cross-over voters from other groups, the potential to elect their preferred candidates.

- Plaintiff need not prove the protected class can form a majority or near-majority of a hypothetical single district.

Redistricting Lawsuits

Challenges to District Lines

- *Tate v. Bushey et al*

City of Morgan Hill
Redistricting 2021

Public Map 103
(Corrected 12/15/2021)
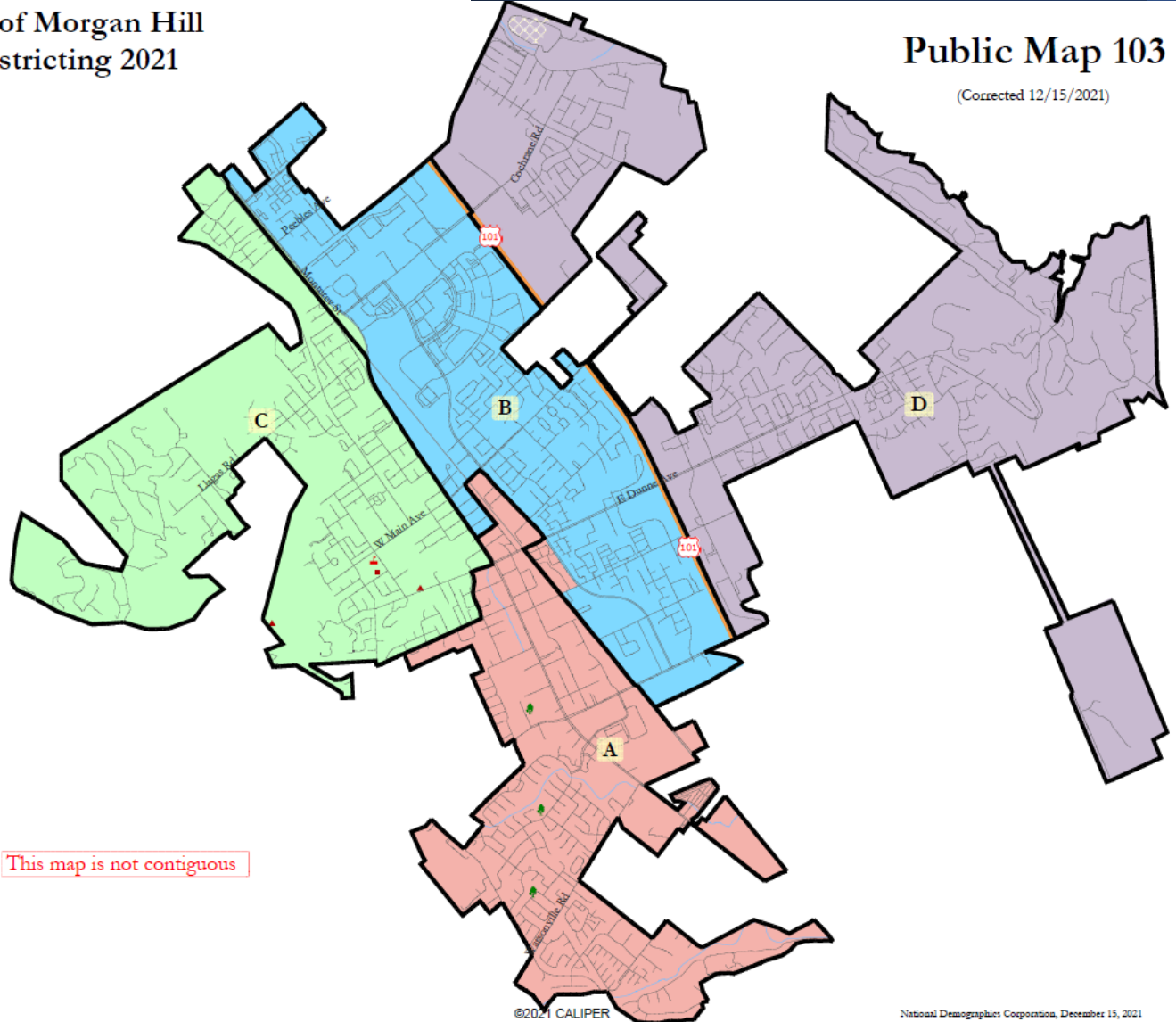
This map is not contiguous

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National Demographics Corporation, December 15, 2021
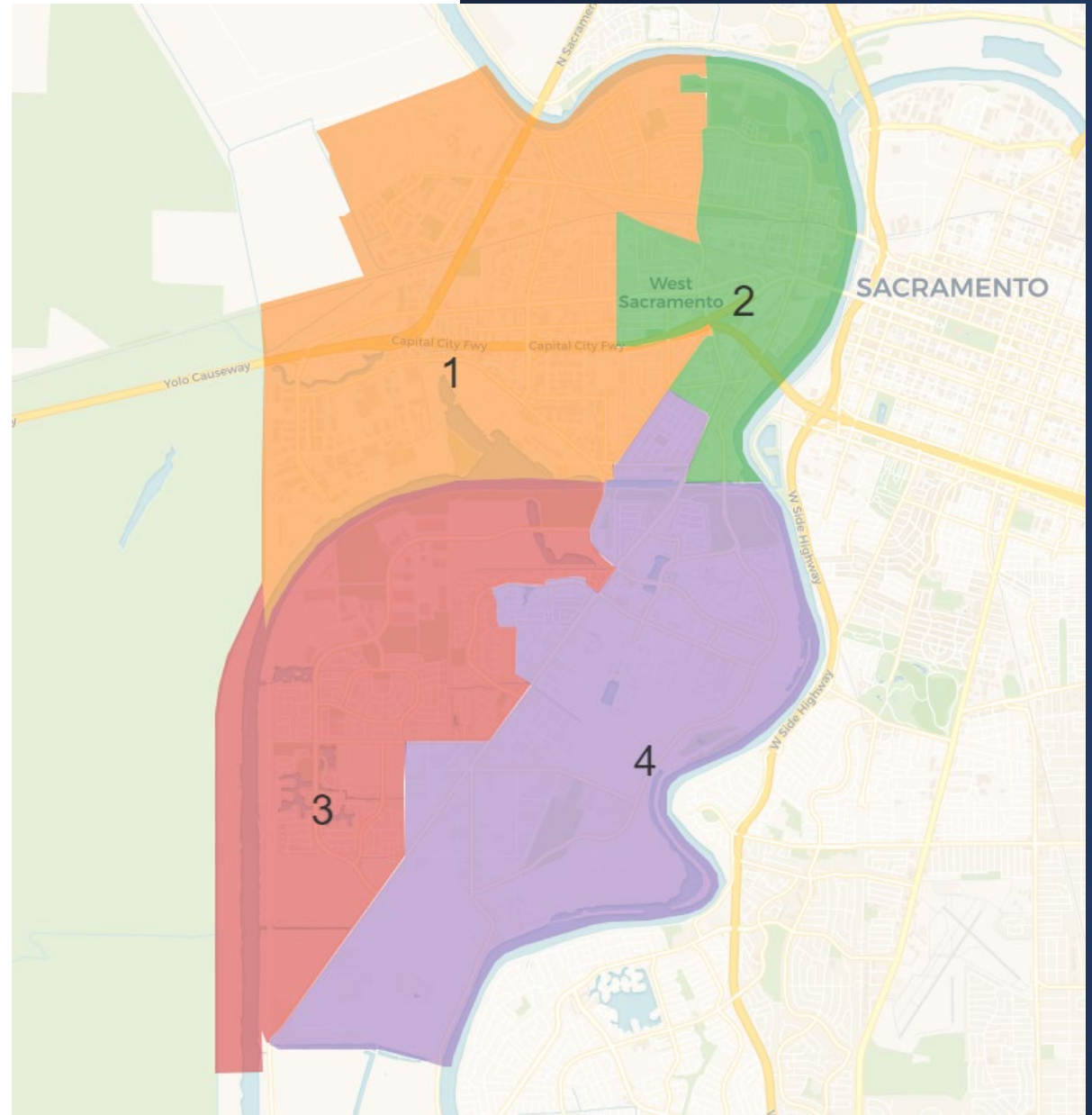
Challenges to District Lines

- *Latino Information & Resources Network et al v. City of West Sacramento*

Challenges to District Lines

• *Latino Information & Resources Network et al v. City of West Sacramento*

District Election boundaries for the November 2022 elections.
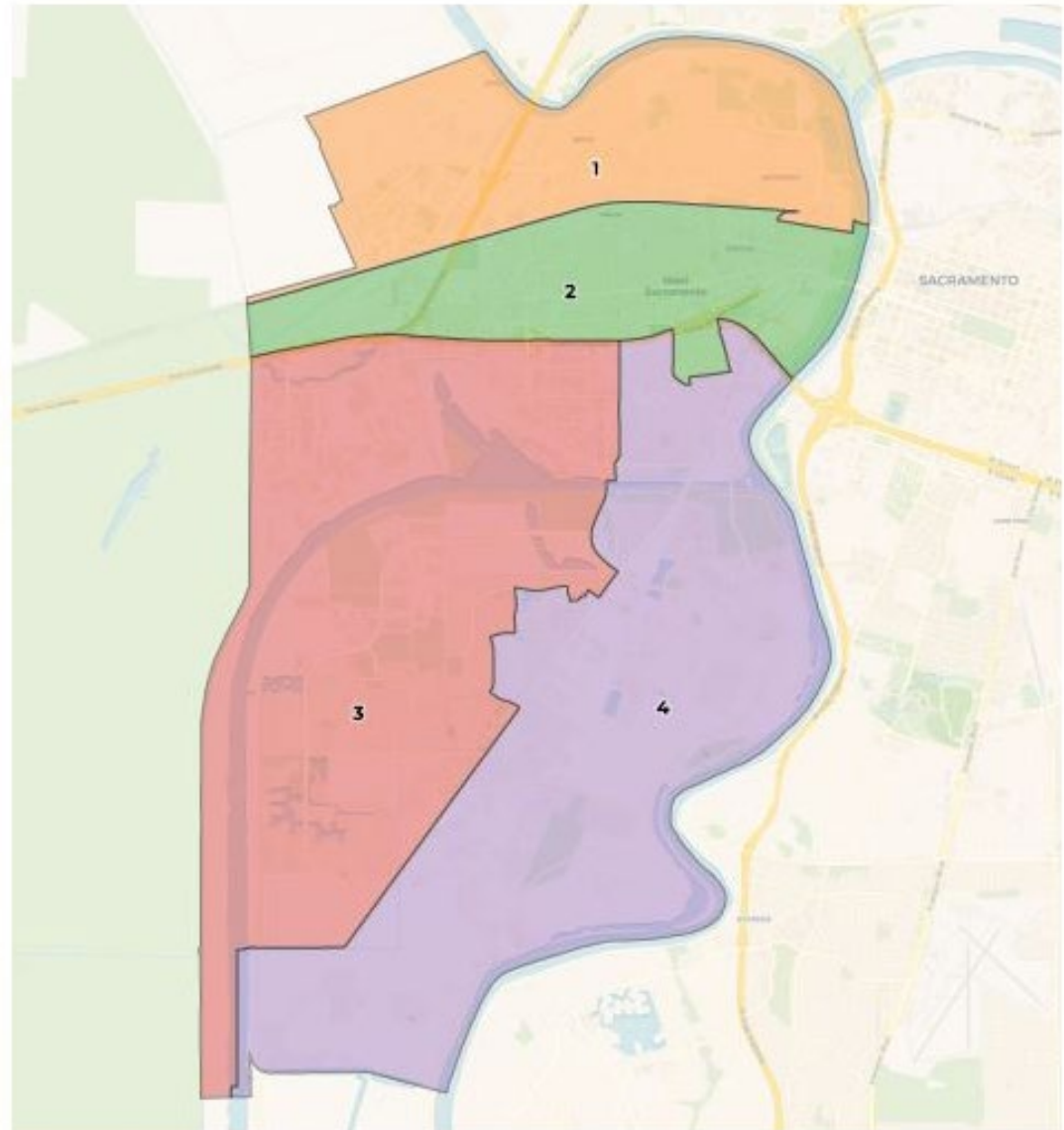
Challenges to District Lines

- *Chaldean Coalition v. San Diego Independent Redistricting Commission*
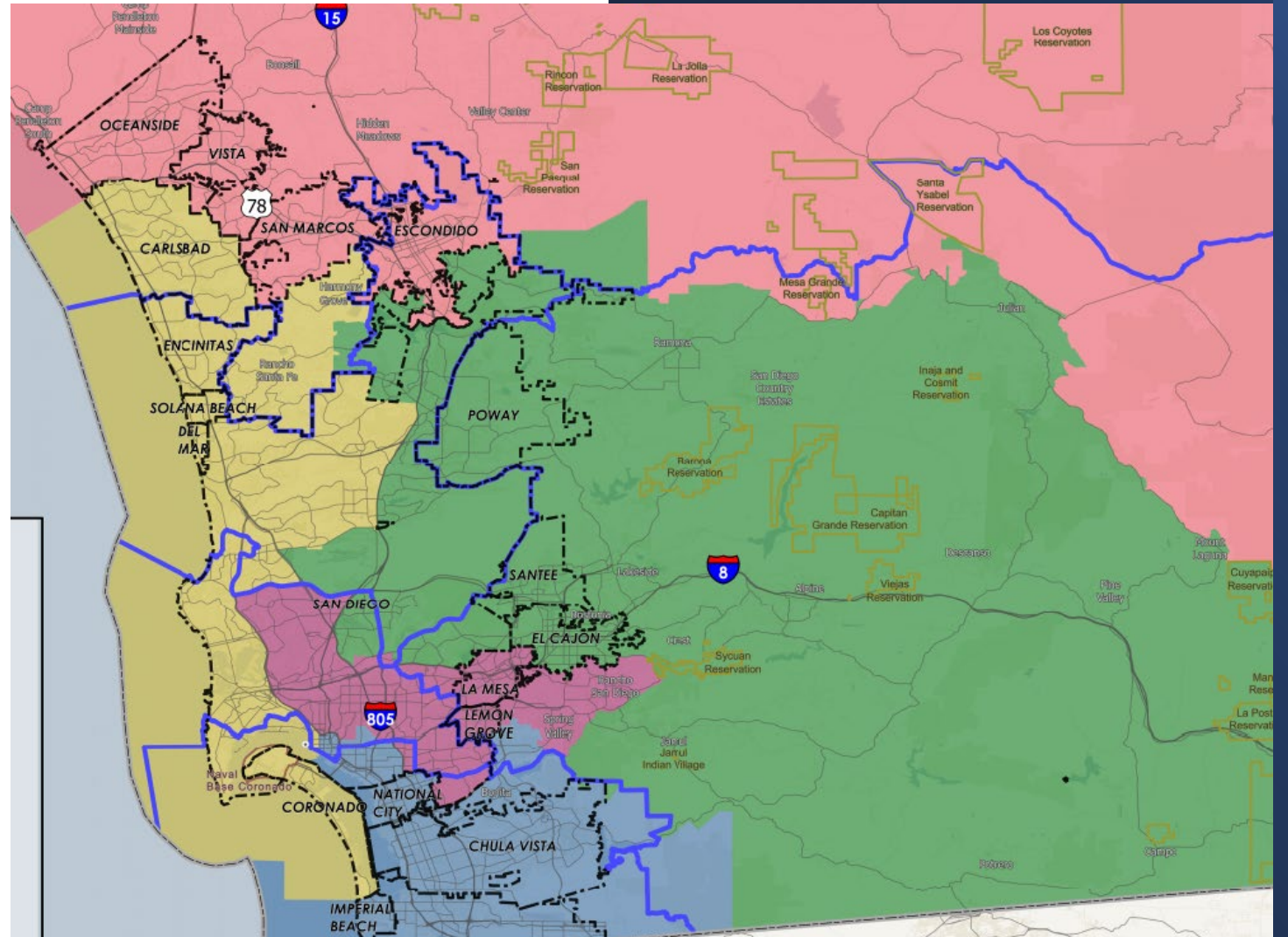
Public Records Act

Pending Legislation—AB 469

- Creates California Public Records Act Ombudsperson

- Can review whether state agency wrongfully withheld documents

- Can provide guidance to public agencies and public

- In report due by March 2026, advise whether local agency should have same review process

Consumer Watchdog's PRA Initiative-- aka "Government Transparency Act"

As to the PRA, among other things, it:

- Requires all covered agencies to establish written guidelines for accessibility, including description of where records are maintained and the agency's "record locator system"

- Mandates specific factual showing to support withholding or redacting document

- Must use lowest cost method available to the agency to produce duplicates

Consumer Watchdog's PRA Initiative-- aka "Government Transparency Act"

(PRA portions, con't)

- Must conduct "preliminary investigation" to determine most knowledgeable personnel

- Must develop search terms and identify custodians, and disclose such terms to requester in the 10-day letter

- Must use lowest cost method available to the agency to produce duplicates

- Removes ability to recover costs for data extraction, compilation or programming

Consumer Watchdog's PRA Initiative-- aka "Government Transparency Act"

(PRA portions, con't)

- Can only extend 10-day deadline in "extraordinary" circumstances supported by a declaration under penalty of perjury from staff with most knowledge
  - Cannot use extension for electronically stored records
- Must provide responsive records within 30 calendar days
  - Can take up to 90 total days but only based on declaration under penalty of perjury specifying the extraordinary circumstances

Consumer Watchdog's PRA Initiative-- aka "Government Transparency Act"

(PRA portions, con't)

- Specifies records that must be posted on website
- Records of vendors and contractors that do work for agency are covered
- Places limits on use of "reverse-CPRA" lawsuits

Consumer Watchdog's PRA Initiative-- aka "Government Transparency Act"

In legal challenge filed against agency:

- Court is to use independent judgment to evaluate adequacy of the search terms and methods the agency used

- Agency bears burden to demonstrate "beyond a material doubt" the adequacy/reasonableness of the search

- Requestor is allowed discovery, but agency can only have discovery upon showing of "extraordinary circumstances"

Litigation Update-PRA "Strike" Lawsuits

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Attorney for Petitioner RONALD AUSTIN

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Superior Court of California,
County of San Diego

08/19/2020 at 02:44:37 PM

Clerk of the Superior Court
By Jose Hernandez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

RONALD AUSTIN,

      Petitioner and Plaintiff,

    vs.

CALIFORNIA STATE UNIVERSITY SAN MARCOS; and DOES 1 through 5, inclusive,

      Respondents and Defendants.

Case No. 37-2020-00029114-CU-WM-CTL

VERIFIED PETITION FOR WRIT OF MANDATE

I.

INTRODUCTION

1. The California Public Records Act (the "Act" or "CPRA") is an indispensable component of California's commitment to open government. The purpose of the Act is to give the public access to information that enables them to monitor the functioning of their government. The Act's fundamental precept is that governmental records shall be disclosed to

Litigation Update— Other PRA Lawsuits

- *Edais v. Superior Court—* Coroner's file and photographs

- *Committee to Support Recall of Gascon v. Logan—*Inspection of Recall Petition

Brown Act

Pending Legislation—AB 557

- Eliminates current January 1, 2024 sunset provision regarding teleconference meetings for local agencies during declared state of emergencies

- Extends renewal period for teleconferenced meetings during a declared state of emergency from 30 days to 45 days

Litigation Update— Brown Act

- *G.I. Industries v. City of Thousand Oaks*—CEQA Exemptions

- *City of Oxnard v. Starr*—Scope of Voter Initiatives re Public Meetings

Trends Coming Your Way

Independent Redistricting Commissions

Already Created

- Fresno County
- Kern County
- Los Angeles County
- Riverside County
- San Diego County

Pending Legislation to Compel Cities > 300,000

Ranked Choice Voting

Instructions to Voters

To vote, fill in the oval like this ●

To rank your candidate choices, fill in the oval:

- In the 1st column for your 1st choice candidate.
- In the 2nd column for your 2nd choice candidate, and so on.

Continue until you have ranked as many or as few candidates as you like.

Fill in no more than one oval for each candidate or column.

To rank a Write-in candidate, write the person's name in the write-in space and fill in the oval for the ranking of your choice.

President Vice President	1st Choice	2nd Choice	3rd Choice	4th Choice	5th Choice	6th Choice
Biden, Joseph R. **Harris, Kamala D.** Democratic	O	O	O	O	O	O
De La Fuente, Roque "Rocky" **Richardson, Darcy G.** Alliance Party	O	O	O	O	O	O
Hawkins, Howard **Walker, Angela Nicole** Green Independent	O	O	O	O	O	O
Jorgensen, Jo **Cohen, Jeremy** Libertarian	O	O	O	O	O	O
Trump, Donald J. **Pence, Michael R.** Republican	O	O	O	O	O	O
Write-in	O	O	O	O	O	O

Digital Technology Use

- County Recorder's recent authorization to use digital stamp to certify records

- QR codes on candidate statements

- Disclosure of edited images, AI images, other materials

ORIGINAL DEEPFAKE

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