

September 7, 2016

**CONFIDENTIAL AND ATTORNEY-CLIENT PRIVILEGED**

**VIA EMAIL & U.S. MAIL**  
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Bill Scroggins, Ph.D.  
President/CEO  
1100 N. Grand Avenue  
Walnut, CA 91789

**Re:   *Opinion Letter – Consolidation of Trustee Elections under SB 415, the  
California Voter Participation Rights Act***  
**Client-Matter: MO160/001**

Dear Dr. Scroggins:

You have asked us for guidance regarding Mt. San Antonio Community College District's ("District") obligations under SB 415, the California Voter Participation Rights Act, codified as Election Code sections 14050, *et seq.* Specifically, you have asked for advice on the proper interpretation of the law, including confirmation of the law's applicability to the District and, if it applies, the manner in which the District should consolidate Trustee elections with statewide elections in even numbered years, should consolidation be necessary.

**I.       QUESTIONS PRESENTED**

- A.     Does the California Voter Participation Rights Act ("Act") apply to the District?
- B.     If the Act applies, what is the proper method for determining whether consolidation of Trustee elections with statewide elections is necessary under the Act?
- C.     If consolidation proves to be necessary, how should the District transition to elections in even numbered years given that the current Board consists of Trustees elected to serve four year terms during elections held in odd numbered years (2013 and 2015)?

## **II. SHORT ANSWERS**

- A. The Act applies to the District because community college districts are expressly included within the scope of the Act. (Election Code § 14051, subd. (a).)
- B. In order to determine whether the District must consolidate its Trustee elections (currently held during odd numbered years) with a statewide election, the District should determine voter turnout for all precincts within the District during the most recent 2015 Trustee election and compare it to the average turnout for the preceding statewide general elections held in 2014, 2012, 2010 and 2008. If the voter turnout in the District for the 2015 election was less than 75% of the average turnout for the 2014, 2012, 2010 and 2008 elections, then consolidation is required no later than the November 8, 2022, statewide general election. (Election Code §§ 14051 and 14052, subd. (a).)
- C. If the District is required to consolidate, the Board of Trustees may adopt a resolution to consolidate its Trustee election with the statewide election so that the next Trustee election will take place in November 2018 (and every even numbered year after that), instead of November 2017. Should the Board do so, the Trustees elected in 2013 and 2015, whose terms of office would have expired in 2017 and 2019, respectively, will instead continue in their offices until successors are elected in 2018 and 2020, respectively. (See Election Code §§ 1302, subd. (b), and 10405.7, subd. (g).)

Alternatively, as long as the resolution for consolidation is passed by January 1, 2018, the District could continue to hold elections in odd numbered years through 2019, with the 2021 election being pushed back to 2022. If it does so, the Trustees elected in 2017 and 2019 whose four-year terms of office would have expired in 2021 and 2023, respectively, will continue in their offices until their successors are elected in 2022 and 2024. (See Election Code §§ 1302, subd. (b), and 10405.7, subd. (g).)

## **III. ANALYSIS**

SB 415, signed by Governor Brown on September 1, 2015, added a new chapter to the Election Code, sections 14050 to 14057, known as the “California Voter Participation Rights Act.” The Act was enacted to increase voter participation in local elections by requiring that such elections be held concurrently with state and federal elections. The Act, which goes into effect on January 1, 2018, prohibits political subdivisions, including, but not limited to cities, school districts and community college districts from holding an election other than on a statewide election date if holding an election on a nonconcurrent date (e.g., on odd numbered years) “has previously resulted in a significant decrease in voter turnout.” (Election Code § 14052, subd. (a).)

The Act defines “significant decrease in voter turnout” to mean the voter turnout for a regularly scheduled election in a political subdivision that “is at least 25 percent less than the average voter turnout within that political subdivision for the previous four statewide general elections.” (Election Code § 14051, subd. (b).)

“Voter turnout” is defined as “the percentage of voters who are eligible to cast ballots within a given political subdivision who voted.” (Election Code § 14051, subd. (c).)

If the voter turnout during an election on a non-statewide election date is less than 75% of the average turnout for the previous four statewide general elections, then the election on a nonconcurrent date will be deemed to have caused a significant decrease in voter turnout under the Act and the political subdivision will be required to hold its elections on a statewide election date.

Here, the District currently holds its Trustee elections during odd numbered years. To determine whether the District must consolidate its Trustee elections with a statewide election on even numbered years, the District should obtain voter turnout data for all precincts within the District during the most recent 2015 Trustee election. The District should also obtain voter turnout data for all precincts within the District during the statewide general elections held in 2014, 2012, 2010 and 2008. Under the Act, the District will be required to have a plan in place by January 1, 2018, to consolidate its Trustee elections with the statewide general election no later than November 8, 2022, if the voter turnout in the District for the 2015 election was less than 75% of the average turnout for the 2014, 2012, 2010 and 2008 elections.<sup>1</sup> (Election Code §§ 14051 and 14052, subd. (a).)

If the District is required to consolidate its Trustee election, the Board of Trustees may adopt a resolution pursuant to Election Code sections 1302 and 10405.7 to consolidate its election with the statewide election so that the next Trustee elections will take place in November 2018 and 2020, instead of November 2017 and 2019, respectively. Should the Board do so, pursuant to Election Code section 10405.7, subdivision (g), the Trustees’ terms will automatically be extended by one year to account for the consolidation:

If, pursuant to subdivision (b) of Section 1302, a district governing board member election is held on the same day as a statewide general election, those district governing board members whose four-year terms of office would have, prior to the adoption of the

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<sup>1</sup> Because the Act requires consolidation anytime “holding an election on a nonconcurrent date has *previously resulted in a significant decrease in voter turnout*” (emphasis added), and the Act does not place any limitation as to how far back a potential defendant evaluate decreases in voter turnout, there is a risk of plaintiffs’ attorneys attempting to take advantage of the open-ended language of the Act by potentially bringing claims based on decades-old decreases in voter turnout. Accordingly, even if a review of the 2015 election does *not* reveal a “significant decrease in voter turnout,” we recommend repeating the analysis for prior elections (2013, 2011, 2009, etc.), if possible, to better protect against claims based on older decreases in voter turnout.

resolution, expired prior to that election shall, instead, continue in their offices until successors are elected and qualified.

(Election Code § 10405.7, subd. (g).)

Accordingly, Trustees elected in 2013, whose four-year terms of office prior to adoption of the resolution would have expired in 2017 will instead continue in their offices until successors are elected in 2018. Similarly, the Trustees elected in 2015, whose terms would have expired in 2019, will instead continue in their offices until their successors are elected in 2020.

Alternatively, because the Act does not require consolidation until the November 2022 election, as long as the Board passes a resolution for consolidation by January 1, 2018, the District could continue to hold elections during odd numbered years through 2019, with the 2021 election being pushed back to 2022. If the District opts to continue elections during odd numbered years through 2019, the Trustees elected in 2017 whose four-year terms of office would have expired in 2021 will continue in their offices until their successors are elected in 2022. Similarly, the Trustees elected in 2019, whose terms would have expired in 2023, will continue in their offices until their successors are elected in 2024. (See *id.*)

In the event the District violates the Act, either by failing to timely consolidate Trustee elections with a statewide election, or failing to have a plan in place for such consolidation by the January 1, 2018, deadline if evidence exists of previous “significant decrease in voter participation,” the Act authorizes voters who reside within the District to file an action in superior court to enforce the Act. (Election Code § 14055.) Should the plaintiff (other than the state or political subdivision) prevail in the action, the plaintiff would then be entitled to recover reasonable attorney’s fees and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. (Election Code § 14054.) Prevailing defendants under the Act are not entitled to recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation. (*Id.*)

#### **IV. CONCLUSION**

Based on the foregoing, if the voter turnout in the District for the 2015 election was less than 75% of the average turnout for the 2014, 2012, 2010 and 2008 elections, then consolidation is required no later than the November 8, 2022, statewide general election. (Election Code §§ 14051 and 14052, subd. (a).) The District would then need to pass a resolution, pursuant to Election Code sections 1302 and 10405.7, moving Trustee elections to even numbered years beginning with the 2018 election, or it could wait until 2020 or 2022. In either case, Trustees then in office who were elected to serve four-year terms during elections held in odd numbered years will have their terms extended by a year until their successors are elected.

Bill Scroggins, Ph.D.

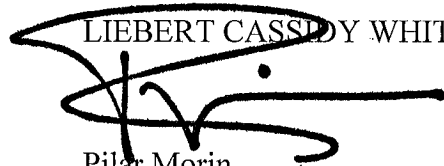
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Thank you for the opportunity to assist you in this matter. Please do not hesitate to contact us if we may be of further assistance.

Very truly yours,

LIEBERT CASSIDY WHITMORE

Pilar Morin  
Alex Y. Wong

PM:AYW:js