

**Minutes of the Study Session of the Board of Trustees
San Mateo County Community College District
March 14, 2012
San Mateo, CA**

The meeting was called to order at 6:13 p.m.

Board Members Present: President Dave Mandelkern, Vice President Helen Hausman, Trustees Richard Holober, Patricia Miljanich and Karen Schwarz, Student Trustee Patiane Gladstone

Others Present: Chancellor Ron Galatolo, Executive Vice Chancellor Kathy Blackwood, College of San Mateo President Michael Claire, Cañada College President Jim Keller and District Academic Senate President Fermin Irigoyen

Pledge of Allegiance

DISCUSSION OF THE ORDER OF THE AGENDA

None

MINUTES

It was moved by Trustee Holober and seconded by Trustee Schwarz to approve the minutes of the February 22, 2012 meeting of the Board. President Mandelkern asked that the minutes be amended to state that Les Williams was awarded a Congressional Gold Medal rather than the Congressional Medal of Honor. The motion to approve the minutes as amended carried, all members voting "Aye."

STATEMENTS FROM THE PUBLIC ON NON-AGENDA ITEMS

President Mandelkern said a request was received from Trustee Chris Stampolis of the West Valley-Mission Community College District to distribute a written communication to the Board at tonight's meeting. The communication shares the draft recommendations of the "Task Force on Developing Community College and pre-K-12 Trustee Relations," which is a task force of the Board of the California Community College Trustees. This communication will be part of the official record of this meeting and copies may be obtained by contacting the secretary of the Board. Trustee Stampolis requested that the Board review the draft recommendations. The Board agreed to table the discussion until Board members have time to review the material.

NEW BUSINESS

APPROVAL OF PERSONNEL ACTIONS: CHANGES IN ASSIGNMENT, COMPENSATION, PLACEMENT, LEAVES, STAFF ALLOCATIONS AND CLASSIFICATION OF ACADEMIC AND CLASSIFIED PERSONNEL (12-3-1A)

It was moved by Trustee Holober and seconded by Vice President Hausman to approve the actions in Board Report No. 12-3-1A. The motion carried, all members voting "Aye."

STUDY SESSION

CONTINUING DISCUSSION OF AT-LARGE AND DISTRICT ELECTIONS (12-3-1C)

Chancellor Galatolo said this topic was discussed at two previous Board meetings and the Board recommended that experts be brought in to address the issue. He introduced William Tunick of the law firm Dannis Woliver Kelley and Paul Mitchell of Redistricting Partners. Mr. Mitchell works through the Community College League of California to assist community colleges with this issue. Mr. Tunick and Mr. Mitchell made a PowerPoint presentation, which is attached to the official minutes of record and provides a detailed explanation of the issue. A summary of the presentation follows.

Mr. Tunick and Mr. Mitchell explained that the issue revolves around the California Voting Rights Act (CVRA) which prohibits a method of election from being "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, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class. . .”

The CVRA applies to at-large elections in which (a) Board members are elected by all voters within the district, such as the SMCCCD Board of Trustees, and (b) in which Board members are required to reside in a geographic subdivision of the district, but are elected by all voters within the district (“from-trustee area elections”), such as the San Mateo County Board of Supervisors. The CVRA does not apply to “by-trustee” elections in which Board members must reside within a geographic subdivision of the district and are elected only by the voters residing in that area.

A protected class includes any race, color or language minority group. Racially Polarized Voting (RPV) exists where there is a difference in the voting patterns of voters based on their membership in a protected class. The pending lawsuit against the County of San Mateo, which challenges the way voters elect the Board of Supervisors, is based on the size of Latino and Asian populations; the lawsuit included examples of racially polarized voting within the County. The two strongest methods of analysis that can be used to determine RPV are homogenous precinct analysis, which looks at precincts that are dominated by one ethnicity to determine election trends, and regression analysis, which shows how the vote changes as the ethnic population of a precinct changes and provides a mathematical equation that can predict vote outcome. Methods of determining ethnicity include Census data and voter registration. If ethnicity is not specified, other methods are used, such as analysis of surnames.

CVRA challenges can be brought by any voter; most are being brought by the Lawyers’ Committee for Civil Rights. A challenge usually begins with a request for information or a demand letter. Examples of pending challenges were provided. A successful challenger can recover his or her attorneys’ fees even if the case settles. Courts have broad authority to fashion “remedies” for violations, which can include an injunction against elections, drawing of trustee area boundaries and ordering of alternative voting systems.

CVRA applies to SMCCCD since it uses at-large elections. The District’s options are (1) continue to use at-large elections, (2) conduct a comprehensive study to help determine whether there is a need to change the current method of election, and (3) transition to by-trustee area elections. A comprehensive study would provide important information and could indicate little risk of a successful challenge; however, the County of San Mateo lawsuit suggests a basis for potential challenge. If a challenge is successful, the District could be liable for attorneys’ fees and the court could draw trustee areas. A transition to by-trustee elections could immunize the District from any liability under the CVRA. AB 684 provides a streamlined procedure for transition; the District Board adopts transition and draws the trustee areas, and the Board of Governors approves the transition. A district has the option to have between five and nine seats and/or a “top two” primary. If SMCCCD opted for a five-member board, the population would be 136,000 to 150,000 per trustee areas. With a seven-member board, the population would be 97,000 to 107,000 per trustee area. Line drawing follows traditional redistricting criteria and incumbency can be considered as a factor in the name of stability. There would be no impact on current Board members, who would serve their remaining terms. The new election system would take effect at the next election (November 2013) beginning with those facing re-election. Incumbent Board members who are up for re-election would need to reside within their trustee area.

In response to Board questions and comments, the following information was provided by Mr. Tunick and Mr. Mitchell:

- The approximate number of community college districts in the state which are CVRA compliant is 20.
- While the “multi-racial” category is growing, it is still a very small percentage within each ethnic group.
- It is feasible to move to at-trustee elections in time for the 2013 election.
- With by-trustee elections, the threshold to be elected changes to 50% (currently lower if more than one candidate is running).
- CVRA is not outcome-based, so incumbents could continue to be elected even if they are not in a protected class.
- The complaint against the County of San Mateo includes eight to ten examples of RPV. It is important to also look at data plaintiffs would use around the State.
- By virtue of Board discussions, including this meeting, it would be difficult for a plaintiff to bring a successful challenge forward at this time.

Vice President Hausman said there is a possibility that a candidate who campaigns for office in a small area rather than the entire County would be less likely to consider the entire County when serving on the Board. President Mandelkern said that, while it is beneficial to be exposed to the varied areas in the county, there are also barriers to running Countywide. Mr. Mitchell said he does not believe there is a correlation between the method of election and the functionality of governing boards. Trustee Miljanich added that, regardless of functionality, there is a potential for a lawsuit, particularly in San Mateo County.

Dan Kaplan, AFT Executive Secretary, asked how “structural disenfranchisement” is defined. Mr. Mitchell said it is the inability to effectively campaign or win elections. He said it could include misinformation, newspaper endorsements and other, more subtle actions. It would be up to the courts to interpret whether an action rose to the level of structural disenfranchisement.

President Mandelkern thanked Mr. Tunick and Mr. Mitchell for their excellent presentation. He said the Board now must consider the options listed above.

Trustee Holober said he believes there are significant differences between the methods used to elect San Mateo County Supervisors vs. the District Board of Trustees, with the District’s method being more democratic. However, he does not have a strong sense that the District’s current method of at-large elections is so much better than the by-trustee method that keeping it would be worth risking a lawsuit.

Trustee Miljanich said she believes the issue is broader than the need to avoid a lawsuit. She noted that the County is diverse and yet there have not been any Latino or Asian Board members, while these groups are politically active and winning elections in certain areas.

Trustee Schwarz said she is concerned that candidates with more money to spend on an election are the ones who win. She said there have been candidates of different ethnicities who have run for office but have not won and they might have a better chance in a by-trustee election. She said it is a difficult issue and her main concern is the good of the District.

President Mandelkern said he believes the District is in a highly targeted situation because of the lawsuit against the County. He said that from a pragmatic point of view, changing to by-trustee elections might not actually help members of protected classes get elected, but will protect the District from the any risk of a lawsuit and give the District the opportunity to be in control of its destiny.

There was discussion regarding whether it would be beneficial to conduct a comprehensive study, given that information is available from the pending lawsuit against the County. Responding to a question from Vice President Hausman, Mr. Mitchell said he believes a study is not imperative and would not be particularly helpful in drawing the trustee areas. Mr. Mitchell said that, without a comprehensive study, the District can presume that RVP exists and hire experts to help with the drawing of lines for by-trustee election areas. Those experts would use different sets of criteria and present different options to the Board for their input and eventual agreement. The Board would make a commitment to changing to by-trustee elections only after seeing the lines that are drawn. Trustee Holober said this is an issue which must be Board-driven rather than staff-driven. He said there will likely be different iterations of drawings and he suggested that the Board appoint a subcommittee of the Board whose members would meet with the experts to review and refine the iterations and would report back to the full Board. Vice President Hausman said the Board should be careful in the appointment of subcommittee members as the selection could have an impact on the Board and the community. Trustee Miljanich noted that a subcommittee would not have authority to make decisions and would rely on experts for statistics.

President Mandelkern asked Mr. Mitchell about the cost of expert services. Mr. Mitchell said a contract with his firm which includes a comprehensive study and the drawing of lines has a cost of \$35,000. A contract for the drawing of lines only has a cost of \$25,000. Trustee Holober asked if a legal review is included in the cost. Mr. Mitchell said he would work with the District’s counsel. The Board agreed that legal counsel would need to be retained. The Board also agreed that at the March 28 Board meeting, they will consider entering into a professional services contract with a firm having expertise in the area of drawing boundaries for district voting areas. The Board will also consider the appointment of a subcommittee as described above.

RECESS TO CLOSED SESSION

President Mandelkern said that during Closed Session, the Board will (1) consider the personnel items listed as 1A and 1B on the printed agenda, (2) hold a conference with Agency Labor Negotiator Harry Joel; the employee organizations are AFSCME, AFT and CSEA, and (3) hold a conference with legal counsel regarding one case of existing litigation as listed on the printed agenda.

The Board recessed to Closed Session at 8:40 p.m.

The Board reconvened to Open Session at 10:10 p.m.

CLOSED SESSION ACTIONS TAKEN

President Mandelkern reported that at the Closed Session just concluded, the Board voted 5-0 to approve the items listed as 1A and 1B on the printed agenda.

ADJOURNMENT

It was moved by Trustee Miljanich and seconded by Trustee Holober to adjourn the meeting. The motion carried, all members voting "Aye." The meeting was adjourned at 10:15 p.m.

Submitted by

Ron Galatolo
Secretary

Approved and entered into the proceedings of the March 28, 2012 meeting.

Helen Hausman
Vice President-Clerk