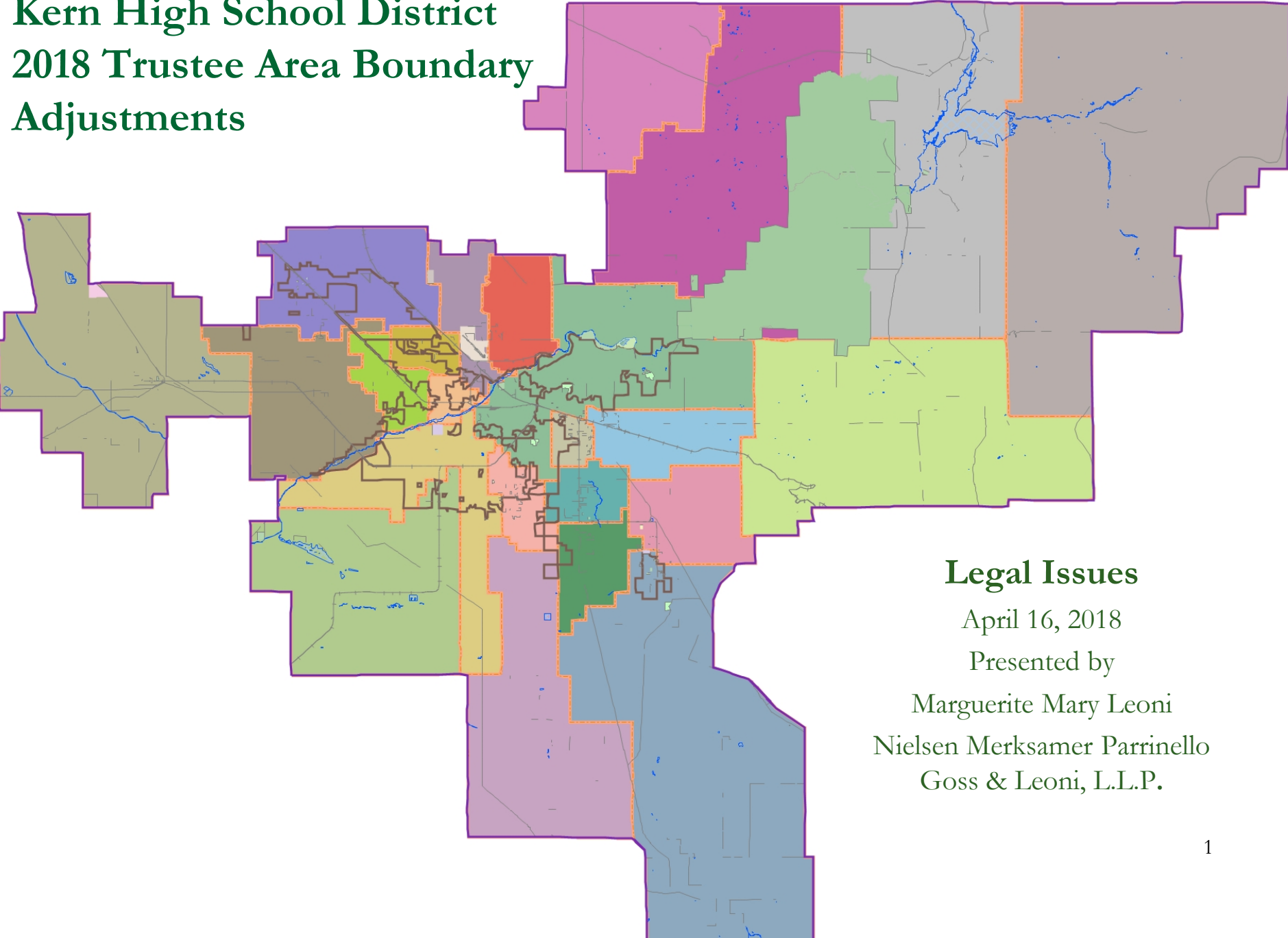


Kern High School District 2018 Trustee Area Boundary Adjustments



Legal Issues

April 16, 2018

Presented by

Marguerite Mary Leoni
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Adjusting the Boundaries: Updates

- 1. Schedule Change – May 21, 2018 Public Hearing.
- 2. Dolores Huerta Foundation Map Electronic Files Received.
- 3. KHSD Electronic Files Provided to DHF.

2018 Process Date Change

DATE	ACTION
March 2, 2018	Decision to Commence Process to Adjust Trustee Area Boundaries
March 5, 2018	Adoption of Timeline
March 19, 2018	Demographic Presentation; Public hearing on criteria to guide adjusting Trustee Areas, including communities of interest. Possible adoption of resolution specifying criteria to guide adjusting Trustee Areas.
April 9, 2018	Presentation & consideration of possible Trustee Area boundary adjustments.
April 16, 2018	Presentation & consideration of possible Trustee Area boundary adjustments; Public Hearing
May 7, 2018	Presentation & consideration of possible Trustee Area boundary adjustments; Public Hearing
<u>May 21, 2018</u>	Presentation & consideration of possible Trustee Area boundary adjustments; Public Hearing; Possible adoption of resolution proposing adjustments to Trustee Area boundaries and authorizing adjusted map to be filed with Kern County Committee on School District Organization
May 24, 2018	County Committee proceedings on Resolution proposing adjustments to Trustee Area boundary adjustments, including public

Adjusting the Boundaries: Legal Issues

- 1. Standard for measuring population and legality of current Trustee Area Plan under equal population standard.
- 2. California and federal Voting Rights Act compliance as applied to current Trustee Area Plan.
- 3. Avoiding contests between incumbents as a traditional redistricting principal.

Adjusting the Boundaries: Population Equality Determined By The 2010 Census

- Overriding criterion is population equality.
- Total deviation less than 10% presumptively constitutional.
- Kern HSD demographer reports the 2011 Trustee Area Plan has a total deviation of **1.93% under 2010 Census**.
- DHF PowerPoint Presentation reported deviation of **31% under the American Community Survey** (p.5).

	L&GDR Presentation	DHF Presentation
Total Population of KHSD	596,351 2010 Census	635,411 2016 ACS
Ideal Population of a Trustee Area	119, 270 2010 Census	127, 082 2016 ACS
Deviation	1.93%	31%

Adjusting the Boundaries: Population Equality Determined By The 2010 Census

- DHF relies on estimates from the 2012-2016 American Community Survey.
- 2011 Plan is not illegal because it is population-balanced based on the 2010 Census.

Ed. Code § 5019.5

- Adjustments to the 2011 trustee area boundaries must also achieve equal population according to the most recent decennial Census.

Ed. Code § 5019.5; Elec. Code § 22000.

Adjusting the Boundaries: Population Equality Determined By The 2010 Census

- If a school district chooses to make trustee area boundary adjustments before the next Census, it may consider population shifts during the decade if the shifts ‘can be predicted with **a high degree of accuracy...**”

Kirkpatrick v. Preisler, 394 U.S. 526, 535 (1969).

- However, the Census Bureau itself states that the American Community Survey should not be used for population balancing:

“The American Community Survey is the premier source of statistics about the socioeconomic and housing characteristics of our nation, but it is not the official source of population counts.”

“American Community Survey ... should not be used as actual population counts.”

Census Publication, “*American Community Survey: Key Facts*”

Adjusting the Boundaries: California & Federal Voting Rights Act Compliance

- DHF Presentation p. 11: “Current Trustee Districts Do Not Comply with California Voting Rights Act.”
- The California Voting Rights Act applies only to jurisdictions that conduct elections “at-large”.
Elec. Code § 14027.
- KHSD elects trustees “by-trustee area”, not at-large.
- Under the most recent ACS, Latinos are about 35% of the eligible voters in KHSD.
- KHSD currently has two majority LCVAP trustee areas.
- Proportionality is an indicator that Latino citizens have an equal opportunity to participate in the political process in compliance with Section 2 of the federal Voting Rights Act.
Johnson v. DeGrandy, 512 U.S. 997 (1994)
- Adjustments being considered in light of *Luna v. County of Kern*.

Adjusting the Boundaries: Incumbency Is A Traditional Districting Criterion Not Subordinate To Other Local Traditional Criteria.

- DHF Presentation p. 10: “Incumbency ... is recognized as a low priority insubordinate to the previous principles [compactness, contiguity, political subdivisions, communities of interest].”
- *Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (“Any number of consistently applied legislative policies might justify some variance [from equal population], including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, **and avoiding contests between incumbent Representatives.**” (Emphasis added.)
- The United States Supreme Court has repeatedly held that avoiding contests between incumbents when redistricting is a legitimate goal: it is only subordinate to the equal protection clause and section 2.

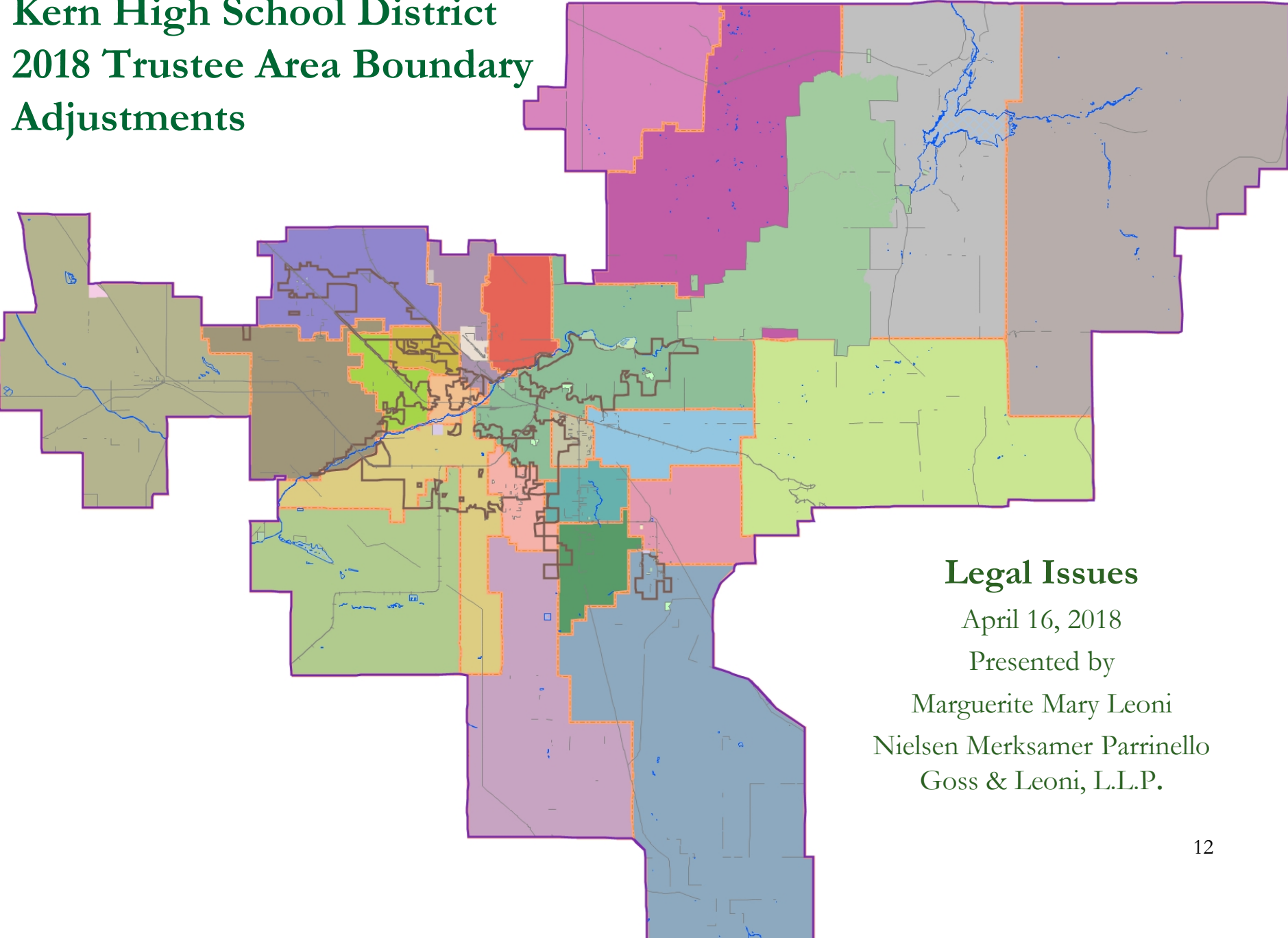
Adjusting the Boundaries: Incumbency Is A Traditional Districting Criterion Not Subordinate To Other Local Traditional Criteria.

- Of course, a state can have a different rule.
- California Constitution Art. XXI, § 2(e) prohibits consideration of incumbency for partisan redistricting, i.e. Congress, State Assembly, State Senate, and Board of Equalization:
 - “The place of residence of any incumbent or political candidate shall not be considered in the creation of a map. Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.”
- Article XXI, §2(e) **does not apply to local redistricting.**
- In the remedial redistricting plan in *Luna v. Kern County*, no incumbent Supervisors are combined in the same district.
- Section 2 does not require that incumbents be combined to guarantee the election of a minority-preferred candidate.

Adjusting the Boundaries: Incumbency Is A Traditional Districting Criterion Not Subordinate To Other Local Traditional Criteria.

“[T]he ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race.” *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 428 (2006) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994)). “[M]inority voters are not immune from the obligation to pull, haul, and trade to find common political ground, the virtue of which is not to be slighted in applying a statute meant to hasten the waning of racism in American politics.” *De Grandy*, 512 U.S. at 1020.

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