

06/12/18

Item #
18834
Closed Session

Lynn Garcia

From: Dave Kadlecek
Sent: Monday, June 11, 2018 4:37 PM
To: Mayor and Council
Subject: item 18-834 in closed session of June 12th City Council agenda

Mayor Gillmor and Councilmembers,

I presume that the two recent events related to the case, the apparent narrow defeat of Measure A on June 5th and Judge Kuhnle's June 6th decision finding the city in violation of the California Voting Rights Act, will be the basis of your closed session discussions of the item related to the case Yumori-Kaku v. City of Santa Clara. These comments address some of what I think the city should and should not do in response to those events.

First, do not appeal the the decision finding the city in violation of the California Voting Rights Act. It was apparent all along that, at least using a common sense definition of racially-polarized voting to mean that members of protected classes in Santa Clara tend to vote differently than non-Hispanic whites in Santa Clara, the there has been racially-polarized voting in Santa Clara which puts the city in violation of the CVRA. In my view (from reading documents and attending part of the liability phase of the trial), some of the arguments made by the city's outside attorneys and expert witness did have some validity in challenging some of the plaintiffs' statistical evidence, even if the judge didn't agree, and might be upheld on appeal, but winning on those points wouldn't reverse the judge's finding that the city was in violation of the CVRA, just clarify the standards for proving racially-polarized voting. Thus doing so would just be throwing good money after bad, and needlessly antagonize voting rights advocates, some of whom used the city's answer to the lawsuit to argue against Measure A before generally liberal or left groups that it was being put forward by a city that was trying to get rid of the California Voting Rights Act.

Second, do not plan to put another charter amendment on the November ballot related to how the City Council is elected except as part of a resolution of the CVRA lawsuit (by settlement or by a court decision). Unless the case is settled, the court will order a change in how City Council elections are conducted; at that point, the voters won't be able to amend the charter to do something different than what the court has ordered. In particular, the proposal to use the two three-member districts drawn for use under Measure A, but without single-transferable vote elections, is a non-starter because it is both unacceptable to the plaintiffs in the lawsuit and clearly does not provide any significant improvement over the current election method toward remedying the vote dilution.

Third, don't assume that the apparent narrow defeat of Measure A means that ranked-choice voting, either single-transferable vote (STV) for several council seats elected at once or instant runoff voting (IRV) for single-winner offices, cannot be part of a remedy ordered by the court.

There have been several cases where a city has put a possible remedy on the ballot before a court has ruled in a CVRA case, the voters have rejected the remedy, and the court has gone ahead and ordered that the rejected remedy (or something similar to it) be implemented. It is also still true that given the lack of ethnic neighborhoods in Santa Clara, the proportional representation effect of STV is a far more effective remedy than single member districts for ensuring effective representation of protected classes on the City Council, and that can and should be argued before the court if the city is unable to reach a settlement with the CVRA plaintiffs regarding a remedy, even if the court would not have to give such a remedy the deference it would have had to give the proposal of Measure A if it had passed.

Fourth, I urge that you explore a settlement with the plaintiffs that includes ranked choice voting. While persons associated with the Asian Law Alliance, one of the law firms representing the plaintiffs, argued against ranked choice voting to the general public during the campaign, they also told groups whose endorsement they were seeking to influence that they were open to the use of ranked choice voting, but just had problems with some of the details of Measure A.

In particular, if six or seven single-member districts were used, they recognized that it would be impossible to draw more than one district with a majority Asian citizen voting age population (CVAP) or any district with a majority Latino CVAP, but that the best single-member district map would include majority-minority "coalition" districts. With such a map, either two-round runoffs or IRV would be needed to guarantee that the coalition of protected classes within a district could elect a representative of its choice; plurality elections could frustrate such a coalition through vote splitting.

Fifth, the details of how ranked choice voting was to be used under Measure A were a compromise to keep the same size of City Council, keep staggering of terms of Councilmembers, and make the transition to the new system as smooth as possible. Presumably the court and the plaintiffs in this case would prioritize maximum representation of smaller groups of voters and improved representation as soon as possible. To address the first of these, the city should consider proposing, in settlement negotiations and/or to the court, City Council elections by STV in which all six councilmembers would be elected at once (with a threshold of representation around 15%, instead of the 25%+1 under Measure A's proposal) or in which the size of the council was increased from seven to nine, electing four members (with a threshold of representation of 20%+1) in each election. To address the second, the city should consider proposing use of a restricted form of STV known as "bottom up" for the 2018 elections only, which could be implemented by the county using the same hardware it already has with the software currently used in San Francisco and in Alameda County, or using temporary single-member districts for 2018 only and changing to use STV when the county gets its new voting equipment (presumably by 2020).

/Dave Kadlecek