

Subject: URGENT - Districting Issue - Confirmation and Further Comments
From: "Bern Steves, Esq." <bernsteves@californiabizlaw.com>
Date: 7/10/2018 2:59 PM
To: lgillmor@santaclaraca.gov

Dear Mayor Gillmor,

Sorry to trouble you in this urgent matter when I understand you are traveling.

The email below was just sent to Mr. Doyle. It expands on points I raised in a brief meeting with him yesterday, and builds on earlier comments at the two "public hearings."

Main points for your information:

- My clients - including two Japanese American minors represented by their father - are **opposed** to any balkanization of the City into districts.
- The districting proposals mean that instead of having 5 votes for council members, each voter only gets one vote for a district candidate.
- The voting choice is further restricted by the additional restriction that candidates **MUST** reside in the district they seek to represent. This restricts the choice of available candidates to **one-fifth** of the available pool on average. The restriction is not dictated by any real logic, and does not seem to be *mandated* under the CVRA although it is mentioned.
- The Court's "statement of decision" specifically criticized the City's current **numbered-seat** voting system which could theoretically lead to the same majority block securing election for "its" candidates, without a fair chance of representation for a minority block (of whatever nature) in each of the single-seat races.
- The simplest and conventional answer is to have **open, at-large, "top-two" election** for the two seats up for reelection in November 2018. This is the system currently used, e.g. in Cupertino (see attached ballot) and thus thoroughly familiar to the Santa Clara Registrar of Voters organization.
- The **"top-two"** system goes a considerable way toward **addressing the plaintiffs' stated concerns**: if a significant minority block of voters focuses its voting power on one favored "minority" candidate, that candidate would gain a seat if the "minority" candidate gains more vote than **the second-ranked "majority" candidate**.
- **Cumulative voting** (CV) is an even better system to protect the interests of a voter minority (of whatever nature). CV functions in the same way as the conventional "top-two" system, except that voters are allowed to cast **both votes for one candidate** if they wish. Under a two-seat election using CV, a minority group comprising 34% of voters is **guaranteed** one out of two seats if all votes are concentrated on the minority's preferred candidate.
- In more real-life situations, CV gives **even smaller minority groups** a fair shot at securing the second seat for "its" candidate. This is because the majority will rarely allocate its votes **exactly 50/50** among its preferred candidates. More typically, three or more candidates would seek to appeal to the majority, out of whom one is a favorite. With a 70% majority

POST MEETING MATERIAL

group and 3 majority candidates, the majority's **second** most favored candidate would be lucky to get 20% of the total vote. The 30% minority in this example can easily ensure that its **most favored** candidate gets, e.g. 25% of all votes cast. **Result: the minority candidate is elected.**

REQUEST:

We respectfully request that the City permit my clients to PRESENT THEIR POSITION DIRECTLY TO THE COURT, and take all appropriate steps to facilitate such presentation procedurally, practically and financially.

Sincerely,

Bern Steves

Attorney for Steve Peck, Andrew Peck, David Peck and Hani Ajus
U.S. Citizens and City Residents

----- Forwarded Message -----

Subject:URGENT - Districting Issue - Confirmation and Further Comments

Date:Tue, 10 Jul 2018 14:09:24 -0700

From:Bern Steves, Esq. <bernsteves@californiabizlaw.com>

To:City Attorney Santa Clara <CityAttorney@santaclaraca.gov>

Dear Mr. Doyle,

Thank you for taking the time to meet with me briefly yesterday during what must be a particularly hectic period for your office.

Confirming and expanding on the points I made during the meeting:

(1) In addition to Mr. Steve Peck and his twin sons Andrew and David (Japanese Americans), I now also represent Mr. Hani Ajus. Mr. Ajus was born in Egypt and thus qualifies as an African American. (Cf. Declaration of Hosam Haggag filed by the City, para 5).

(2) My clients are **strongly opposed to any districting** of the City as proposed by the plaintiffs and apparently strongly favored by ad-hoc committee chair Yuki Ikeji and the city-retained "demographer" Ms. Gabelot. We note that the term "demographer" does not appear anywhere in the U.S. Constitution.

The proposed partition drafts all involve:

(a) reducing each voter's input from **five** (or six) votes for five council members, to **only ONE** vote for one district candidate who must happen to reside in the voter's arbitrarily-drawn "district."

(b) **further limiting the voting input of each voter** by banning votes for out-of-district candidates, however suitable and experienced in administering the City's business they may be.

Whether intended or not, **balkanization** of the entire City and long-term corruption of its politics would be unavoidable consequences.

(3) As I explained, **cumulative voting** (CV) is a clean, non-sectarian, non-divisive solution:

(a) CV is a well-established system under California law that is used to ensure that minority shareholders are fairly represented on a corporate board, i.e. to prevent a "tyranny by the majority" - precisely the "mischief" that the plaintiffs claim to be concerned about. CV is mandatory for non-public corporations in California. See details here: https://en.wikipedia.org/wiki/Cumulative_voting and <https://eminutes.com/did-you-think-the-majority-rules-in-california-think-again-cumulative-voting-is-the-law-for-all-california-corporations>

(b) CV by its nature gives ethnic (or any other minority) blocks of voters a full and fair opportunity to secure representation of their choice on the council. As the Court found, the current **numbered-seat system** risks leaving even a sizeable minority group without a fair chance of representation on the Council.

(c) In a hypothetical extreme case, a minority accounting for only **one-third of the voters plus one (e.g.33.4%)** could concentrate its vote on its preferred candidate and be **guaranteed** one spot. In a more realistic multi-candidate scenario, a **candidate with strong minority voter support** would effectively only have to defeat the **majority's second-ranked candidate** to secure the second of two council seats.

(d) CV can easily be implemented in practice. In fact, cumulative voting for two members at large is merely a **minor tweak on the conventional "top-two" system** practiced in cities within Santa Clara County such as, e.g. Cupertino. In a conventional "top-two" election, voters may cast votes for **any two** candidates, but **cannot give their two votes to the same candidate**. Simply removing this last restriction would produce cumulative voting.

(e) A sample ballot used for a "top-two" race in Cupertino in 2016 is attached for reference. For the November 2018 Santa Clara City election, we would simply print **two** fillable spaces next to each candidate. The instructions are equally simple: **"Vote for no more than Two. You may vote twice for one candidate."** **No further voter education is required.**

(f) No special arithmetic etc. needs to be implemented by the **Registrar of Voters**. The votes cast for candidate Jane Doe could simply be registered on the reading system as Jane Doe (1) and Jane Doe (2). The totals could easily be evaluated, if necessary manually. (Total time: 5 minutes to total and rank the voting results for the entire City Council election.)

(4) As a **less preferred** alternative to CV, a simple **top-two election** format would go a long way toward addressing the plaintiffs' stated concerns, **without** leaving the City riven into ethnic fiefdoms, and without abandoning fundamental basic American principles for the sake of a balkanizing *charade*. Under top-two, a sizeable minority group voting cohesively has an excellent chance of defeating the majority's second-most-popular candidate, particularly where - as often happens - the most popular candidate is ahead of the rest field. Both CV and top-two systems reward candidates with broader cross-group appeal.

(5) **My clients request that the option of CV, and the less preferred alternative of an open "top-two" election, be reported to the Court SPECIFICALLY and SEPARATELY from general community input.** The running of the public hearing by the Ad-Hoc Committee indicates that the Committee chair is *a priori* committed to an **unwarranted and unlawful agenda of ethnic balkanization**.

(6) In addition, we respectfully request that **the City agree to and make arrangements to enable us to present our position directly to the Court during the remedies trial phase.**

(7) Ms. Ikezi has revealed herself to be **biased** and wholly unsuitable to the responsibility of serving the **citizens in the City of Santa Clara as a whole**. The two other committee members remained almost entirely passive. Ms. Ikezi was either unfamiliar with the pleadings and the Court's statement of decision, or chose to ignore it and basic principles of U.S. Constitutional Law. For instance, at the 7/5/2018 hearing, one speaker made the the statement (at 1:39:44)

... it was disappointing to hear speakers propose that district boundaries be primarily based **on citizenship, or voter registration**, ... [emphasis added]

Ms. Ikezi took it upon herself to respond expressly (at 1:41:35):

Thank you for your very thoughtful comments and, uh, I completely agree with you that **everybody deserves representation**. [emphasis added]

In the context (and following unambiguous earlier oral and written communications to the committee on this precise issue), **Ms. Ikezi's remark constitutes blatant advocacy for boundaries drawn based on NON-CITIZEN residents who are not authorized to vote, and whose non-votes by definition cannot advance the plaintiffs' interests.**

(8) We note that the Court's "ORDER RE: SCHEDULE FOR REMEDIES PHASE OF TRIAL" specifically mandated with respect to the public hearings that:

"Like other City meetings, **the City Clerk (or a delegate) should keep minutes.**" [emphasis added]

It is incumbent on the City Council to ensure that the **Ad-Hoc Committee does NOT censor or suppress input that disagree with the chair's personal predilections.**

(9) Any remedial approach based on numbers of **aliens** residing in different parts of the city would be legally inapt and would make a mockery of the California **Voting Rights Act** and the Constitutional rights of citizen residents.

It bears restating that under the Constitution, aliens (to use the terminology on my clients' former "Alien Registration Card") enjoy full Constitutional protection largely indistinguishable from the protections extended to U.S. citizens. However, aliens - regardless of visa status - remain **barred from participation in elections**, and are NOT individually or as a class entitled to any protection under the California **Voting Rights Act**. (NOTE: different considerations apply in drawing Congressional district boundaries based on official Census figures.)

Indeed, long-term resident aliens are overwhelmingly OPPOSED to any approach that purports to give electoral "representation" to transient visitors with no knowledge of or interest in the American Constitution and the American form of government. Indeed, many of these non-citizen residents sought to be counted toward ethnic totals are likely unaware of these pseudo-democratic blessings purportedly bestowed on them in furtherance of what can only be ulterior aims quite unrelated to the personal well-being of citizens or non-citizens.

Sincerely,

Bern Steves

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Bern STEVES, Esq.
Managing Attorney
CALIFORNIA BUSINESS LAW OFFICE

Cell: 650 215 0888
Tel.: 408 253 6911
Fax: 408 638 0189
E-mail: bernsteves@californiabizlaw.com

CALIFORNIA BUSINESS LAW OFFICE
19925 Stevens Creek Boulevard #100
Cupertino, CA 95014

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THANK YOU.

Attachments: [Cupertino_2016_Ballot.pdf](#)

Cupertino_2016_Ballot.pdf

519 KB

SAMPLE BALLOT / BOLETA DE MUESTRA

E/S A

SANTA CLARA COUNTY OFFICIAL BALLOT-CONTINUED CONDADO DE SANTA CLARA BOLETA OFICIAL-CONTINUACIÓN

| FREMONT UNION HIGH SCHOOL DISTRICT DISTRITO DE ESCUELAS SECUNDARIAS UNIÓN DE FREMONT | CITY CIUDAD |
|---|--|
| Governing Board Member Miembro de la Junta de Gobierno Vote for no more than Two Vote por no más de Dos | *CITY OF CUPERTINO *CIUDAD DE CUPERTINO Member, City Council Miembro del Concejo Municipal Vote for no more than Two Vote por no más de Dos |
| ROY ROCKLIN Science Teacher Maestro de Ciencias | ◆ KRIS WANG Small Business Owner Dueña de Pequeño Negocio |
| JENNY YUAN Small Business Owner Dueña de Pequeño Negocio | ◆ VAL VITOLS Retired Jubilado |
| JEFF MOE Incumbent Titular | ◆ ROD G. SINKS Incumbent Titular |
| | ◆ STEVEN SCHARF Embedded Systems Engineer Ingeniero en Sistemas Embebidos |
| | JERRY LIU Research Engineering Manager Gerente de Ingeniería de Investigación |
| CUPERTINO UNION SCHOOL DISTRICT DISTRITO ESCOLAR UNIÓN DE CUPERTINO | DAVID FUNG Engineer/Consultant Ingeniero/Consultor |
| Governing Board Member Miembro de la Junta de Gobierno Vote for no more than Two Vote por no más de Dos | ◆ ROBERT MCCOY Community Volunteer Voluntario Comunitario |
| PHYLLIS VOGEL Governing Board Member, Cupertino Union School District Miembro de la Junta de Gobierno, Distrito Escolar Unión de Cupertino | ◆ PARTH BHARWAD Student Estudiante |
| GREGORY ANDERSON VP of Instruction Vicepresidente de Instrucción | |
| LIANG-FANG "LIANG" CHAO Parent/High-tech Engineer Madre de Familia/Ingeniera de Alta Tecnología | |
| JOSEPHINE (JO) LUCEY Governing Board Member, Cupertino Union School District Miembro de la Junta de Gobierno, Distrito Escolar Unión de Cupertino | DISTRICT DISTRITO |
| | CUPERTINO SANITARY DISTRICT DISTRITO SANITARIO DE CUPERTINO |
| | Director Director Vote for no more than Three Vote por no más de Tres |
| | TAGHI SAADATI Civil Engineer Ingeniero Civil |
| | ANGELA S. CHEN Incumbent Titular |
| | JOHN M. GATTO Incumbent Titular |
| | WILLIAM A. BOSWORTH Incumbent Titular |

*◆ A diamond means the candidate has agreed to voluntarily limit campaign spending.

*◆ Un diamante significa que el candidato ha acordado limitar voluntariamente los gastos de su campaña.

