



The Center for
Voting and Democracy

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Mayor Helene Schneider
735 Anacapa Street
Santa Barbara, CA 93101

Dear Mayor Schneider:

FairVote is a nonpartisan, non-profit organization dedicated to research and analysis of electoral rules. We are writing concerning the options for Santa Barbara to best remedy its alleged violation of the California Voting Rights Act that is the subject of a lawsuit. We advocate consideration of election methods that involve maintaining at-large elections, but implementing modified at-large election methods that we call "fair representation voting." In particular, we suggest either adoption of ranked choice voting or extension of cumulative voting rights as both would be good, legal options to balance Santa Barbara's goals of citywide representation with fair representation for its diversity of views and interests.

FairVote has participated in Voting Rights Act cases nationwide, advocating for the use of fair representation voting systems as a remedy. We have successfully argued that such systems wholly remedy racial minority vote dilution while allowing the jurisdiction to retain its at-large electoral character. This may be an option open to Santa Barbara.

The attached legal memo, prepared by Drew Spencer, senior staff attorney for FairVote, explains that to avoid litigation with an at-large system, the city should review the option of ranked choice voting or a similar fair representation voting system.

If you have any questions, please contact me (rr@fairvote.org) or Drew Spencer (dspencer@fairvote.org). For in-state assistance, we recommend contacting Steve Chessin of Californians for Electoral Reform at (916) 455-8021 or steve.chessin@cfer.org. We will be happy to more fully describe Santa Barbara's options and answer any questions as you review election methods.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Richie".

Rob Richie
Executive Director, FairVote



TO: Mayor Schneider and the Santa Barbara City Council
FROM: FairVote
DATE: August 7, 2014
RE: Fair At-Large Voting in Santa Barbara

INTRODUCTION

This memorandum analyzes the options for Santa Barbara to remedy minority vote dilution claims under the federal Voting Rights Act and the California Voting Rights Act. Although Santa Barbara may do so by adopting district elections, it may also keep at-large elections with the adoption of a fair representation voting system. In particular, Santa Barbara should consider adoption of **ranked choice voting, cumulative voting, or the single vote** system.

“**Fair representation voting systems**” are those that elect candidates at-large, but have rules that allow like-minded voters to elect their fair share of preferred candidates based on a threshold lower than a majority of votes. This permits more groups of voters to achieve representation in an at-large election in proportion to their voting strength. In the context of racially polarized voting, this wholly remedies concerns of racial minority vote dilution that can result in Voting Rights Act liability as long as the protected racial minority has a share of the electorate larger than the vote share necessary to win a seat.

Fair representation voting systems have been adopted in more than 100 jurisdictions to resolve Voting Rights Act or California Voting Rights Act cases, they have been mentioned in opinions by Supreme Court Justices as available remedies under the federal Voting Rights Act, and they have been upheld as wholly constitutional and as upholding the principles of majority rule and one person, one vote.

As noted by the California Court of Appeal, they are legal under the California Voting Rights Act and available as remedies. *Sanchez v. Modesto*, 145 Cal. App. 4th 660, 670 (2006); *Juaregui v. City of Palmdale*, Case No. B251793, at 27 (2nd DCA May 28, 2014) (certified for publication) (all remedies available under the federal Voting Rights Act are also available under the California Voting Rights Act). In March, 2014, Santa Clarita became the first city in California to settle a California Voting Rights Act lawsuit by agreeing to use a fair representation voting after a court determines its legality; a judge is expected to issue a ruling on September 8th, 2014.

“**District elections**” are those where the city divides into geographic wards, and each ward independently elects a single candidate to represent it on the city council.

BACKGROUND

A claim for racial minority vote dilution is based on a city conducting its elections in such a way that racial minorities, even if they are fully able to exercise their right to vote, lack the ability to actually elect any candidates of choice because of how those votes translate into representation.

The most familiar form of vote dilution occurs in cities that elect their city councils at-large by plurality vote. For example, Santa Barbara elects a seven-member city council by staggered three-

seat elections (plus a separate election for mayor), in which voters have three votes each. In cases of bloc-voting, that means that the majority bloc will cast all their votes for three majority-preferred candidates and the minority bloc will cast all their votes for minority-preferred candidates. Because the majority bloc is larger, the three majority-preferred candidates will all win more votes than any of the minority-preferred candidates nearly every time. Consequently, a bloc-voting group constituting a slim majority of the city can control the entire city council.

In instances of racially polarized voting, these rules typically means that the white majority in a city with a substantial racial minority population will be able to elect every single member of the city council, leaving most members of the racial minority population without a preferred candidate representing them. Even if that pattern does not occur in every single election, it remains illegal under both the federal and California Voting Rights Act.

If voting is racially polarized—something plaintiffs will need to prove to win their case—and Santa Barbara’s at-large elections do result in vote dilution, then that will be sufficient to require election changes under the California Voting Rights Act.

The use of fair representation voting methods can fully remedy racial minority vote dilution claims. Under a fair representation voting method, elections are at-large, but instead of the majority being able to control every seat elected, like-minded groups of voters have the power to elect candidates of choice in proportion to their share of the electorate. In a three-seat election, the majority group will always elect the majority of seats (in this case, two out of three seats), but if a like-minded group of voters constitutes more than 25% of the voting population, that group will be able to elect one member as well. By electing members from discrete groups of voters, fair representation voting can operate similarly to districts. However, by operating at-large, it effectively allows voters to “self-district” based on how they vote, rather than being districted based on where they live.

Candidates win by receiving votes beyond the “threshold of election”—that is, the fewest number of votes that only the winning number of candidates can obtain. This threshold will be just over one-quarter of the vote when electing three seats, just over one-fifth of the vote when electing four seats and so on. If, as is currently done, three seats are elected each cycle, a group would need to constitute at least 25% of voters (plus one vote) to elect a candidate of choice.

Santa Barbara has a significant Latino population totaling 38% of city residents. Consequently, Santa Barbara could fully remedy its alleged racial minority vote dilution of Latino voters by adopting a fair representation voting method with three seats elected in each election. Alternatively, it could add increased flexibility to population changes and decrease barriers to entry by joining many cities around the country in eliminating staggered elections; with six candidates elected at-large, candidates would compete for an election threshold of about 14.3% of the vote.

BENEFITS OF FAIR REPRESENTATION VOTING

If it wants to keep an at-large system, Santa Barbara should evaluate fair representation voting methods. As a charter city, Santa Barbara has the freedom to adopt whatever election method it chooses by charter amendment, within the constraints set by Article XI of the California Constitution. Doing so would plainly remedy the alleged vote dilution, and so it would moot any litigation brought against it, saving it the costs of the imminent legal battle.

Santa Barbara can also remedy its vote dilution claims by switching to election from districts, as many other California cities have done. However, the California Voting Rights Act does not require cities with racially polarized voting to use district elections. Although districting has been an

effective response to Voting Rights Act litigation elsewhere, Santa Barbara should be ready to adopt the best electoral system tailored to its particular needs and circumstances. Adoption of a fair representation method would carry a number of benefits for Santa Barbara.

A. Avoid Redistricting

One benefit of fair representation voting over districts is that fair voting does not require any districts of any kind. The use of districts requires the process of districting. This includes a substantial cost in terms of both time and money. As population densities and demographics change, the city must redistrict again and again. Such a system also may not handle changes in where people live during a decade, distorting representation before the next cycle of redistricting.

Meanwhile, redistricting engenders ongoing litigation to resolve whether a given set of district lines adequately represents racial minorities. Every ten years, new census numbers require the reconsideration of district lines, with all accompanying costs and litigation.

In contrast, an at-large remedy uses no districts, and so it would require no districting or redistricting whatever. Representation would reflect voting patterns in each election cycle fluidly as populations move and demographics change. Fair representation voting is inherently fair provided there is equitable voter turnout; its fairness is not contingent on how district lines are drawn.

B. Maintain Race Neutrality

Districting to guarantee racial minority representation requires the mapmakers to categorize residents by race and draw lines to ensure that some district has a population with at least 50% belonging to a racial minority group. This race-conscious districting may subject Santa Barbara to litigation for “racial gerrymandering,” as the U.S. Supreme Court has held that districting which utilizes race as a predominant factor violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, even when done for remedial purposes. *Miller v. Johnson*, 515 U.S. 900, 920 (1995). Some judges express general hostility to race-conscious districting. *See, e.g., Holder v. Hall*, 512 U.S. 874, 906–07 (Thomas, J., concurring) (1994) (noting this objection and recommending cumulative or ranked choice voting as an alternative).

C. Mitigate Racially Polarized Voting

All voters deserve fair representation, but ideally, civil rights litigation under the California or and federal Voting Rights Acts should not merely be to provide representation to racial minorities under conditions of racially polarized voting, but also to help erode racial polarization itself. Voters and representatives across racial groups should be able to work together, and remedial schemes that help get jurisdictions closer to that ideal should be favored.

There is compelling evidence that fair representation voting systems do just that by fostering the construction of cross-racial coalitions of both voters and legislators. This has been noted in New York City, Cincinnati (Ohio), and Cambridge (Massachusetts), each of which uses or used ranked choice voting. Steven J. Mulroy, *Alternative Ways Out: A Remedial Road Map for the Use of Alternative Electoral Systems as Voting Rights Act Remedies*, 77 N.C. L. Rev. 1867, 1903 (1999). It has also been noted in Chilton County, Alabama since it adopted cumulative voting to settle its Voting Rights Act claim. Richard H. Pildes and Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. Chi. Legal F. 241, 297 (1995). In 1967, the “Kerner Commission” noted that racial unrest in Cincinnati was at least partly attributable to the city’s decision to repeal ranked

choice voting for its city council. Report of the National Advisory Commission on Civil Disorders, 48 (Bantam Books, 1968). This has also been the experience of jurisdictions overseas. For example, ranked choice voting has been credited with ensuring cooperation in Northern Ireland as compared to the single-seat district system it had used prior to adopting ranked choice voting. Mulroy, *supra*, at 1903–04.

D. Encourage Women Candidates

The evidence is clear that more women candidates will run and win in at-large elections than in single-member districts. This pattern has been noted in state legislative elections for decades. Currently, women hold 31% of all state legislative seats elected in multi-seat districts, compared to fewer than 23% of those elected in single-member districts. The same pattern continues on city councils (including seats held by mayors who serve on council). In the United States' 100 largest cities, women represent hold 29.6% of seats elected in districts as compared to 39% of seats elected in at-large elections.

The pattern is even clearer when examining these 100 cities in order of their share of women on council. Among the 10 cities with the highest percentage of women on the council, nine elect some or all members at-large, with 40% of seats elected at-large altogether. On the other hand, in the 10 cities with the lowest percentages of women, only one elects any members at-large, with only 3.3% of seats elected at-large altogether. The four California cities in the bottom 10 for women city councilors are Fresno, Los Angeles, Riverside, and Sacramento, which collectively have just two women serving in 37 council seats. The three California cities in the top 10 for women councilors are Anaheim, Chula Vista, and Oakland, where collectively 12 of 18 seats are held by women, including fully 8 of these cities' 11 at-large seats.

CHOICE OF ELECTION METHOD

Choosing to adopt a fair representation voting system would still allow Santa Barbara significant flexibility in implementation. In balancing the goal of a representative city council elected at-large with ballot design preferences, Santa Barbara can find an option that best reflects its situation. Although other methods are used internationally, we recommend ranked choice voting as the best system for Santa Barbara, particularly for how it promotes cross-racial coalitions. We also suggest attention to two other fair representation methods that have been successful in other cities in the United States.

Each of these systems would adequately remedy the racial minority vote dilution claims brought against Santa Barbara. They each allow the election of candidates of choice for racial minorities making up a percent of the voting population equal to at least one over one more than the number of seats to be elected. Consequently, if Santa Barbara maintains a city council electing three seats at each election, they would remedy vote dilution claims for any racial minority making up more than 25% of Santa Barbara's voting population.

As Santa Barbara has a significant Latino voting eligible population, this would wholly remedy any vote dilution claims and likely obviate any need for future changes in the foreseeable future. Santa Barbara would be the second California city to do so, after Santa Clarita. Many other U.S. cities have done the same to settle claims brought under the federal Voting Rights Act.

Regardless of whatever remedy is chosen, we would suggest a voter education campaign introducing voters to their new system. This is particularly important for absentee voters who will

not benefit from a machine rejecting their ballot if it includes an overvote. Ranked choice ballots have been used with great effectiveness by California voters, including absentee voters, but voter education is always useful when making a change of any kind in an election system.

A. Ranked Choice Voting

Ranked choice voting represents the best option in terms of reflecting the interests of voters, encouraging positive campaigning and coalition-building, and avoiding tactical voting and campaigning. Mulroy, *supra*, at 1911–13. Everyone has one vote to elect a preferred candidate, but can indicate backup choices which will be used to ensure that every vote will really count. Ranked choice voting maximizes the number of voters who help elect a preferred candidate, and encourages candidates to run and seek votes from the full breadth of the city's eligible voters.

Under ranked choice voting in at-large elections, voters rank the candidates on the ballot in order of preference—a straightforward task for voters as proven in a wide range of jurisdictions. A victory threshold is established based on the number of seats being elected. This threshold is just over one-quarter of the vote in a three-seat election and just over one-seventh of the vote in a six-seat election. During tabulation, if any candidates surpass the election threshold, the surplus votes they received in excess of that threshold are added to the totals of their next choice candidate. If no candidates have enough votes to guarantee election, the candidate with the fewest votes is defeated and that candidate's ballots are added to the totals of the next choice candidate on each ballot. This process then repeats until all seats have been filled. Through this round-by-round tabulation, ranked choice voting not only elects candidates based on their degree of support, but also maximizes the opportunity of every vote to matter toward the election of some candidate, giving every voter a stake in the election's outcome.

Ranked choice voting has historically been used in some two dozen cities throughout the U.S. and many more internationally – including every voter in at least one governmental election today in Australia, Ireland, New Zealand, Northern Ireland, and Scotland. Voters in Cambridge, Massachusetts use it to elect their city council and school committee, and Cambridge has had continuous representation of African Americans on the city council for more than a half century. Voters in Minneapolis, Minnesota use ranked choice voting to elect their multi-seat offices. Although no jurisdiction in California uses ranked choice voting to elect multi-seat offices, several California jurisdictions use ranked choice voting in single-seat elections, which uses an identical means of voting (ranking candidates in order of preference).

Santa Barbara may currently use voting equipment that is incapable of tabulating ranked choice ballots with the push of a button, but today the nation's three largest equipment vendors (ES&S, Dominion and Hart Intercivic) are able to administer ranked choice voting elections. There are also other ways to administer the vote-counting, as was done in 2011 in Portland, Maine when it held a single-seat ranked choice election by contracting with a smaller equipment vendor.

B. Cumulative Voting Rights

Like ranked choice voting, extending cumulative voting rights to voters would result in more voters electing at least one preferred candidate. Voters would have the same number of votes as seats to be elected, as currently provided in Santa Barbara elections, but they would also have “cumulative voting rights”—that is, if they vote for fewer than the allowed number of candidates, their total allotment of votes is divided evenly between those they choose. That means that if a voter selects

only one candidate in a three-seat race, that candidate receives three votes. Alternatively, voters could assign three votes freely, for example being able to give one candidate two votes and another one vote. Having cumulative voting rights allows a like-minded group of voters to cumulate or “plump” their votes behind a single candidate, making that candidate more likely to be elected. The threshold of election is the same for cumulative voting as it is for ranked choice voting.

Cumulative voting has an extensive history in the U.S. It has been used to remedy vote dilution in local elections in Texas, Illinois, New Mexico, South Dakota, New York, and Alabama. Illinois used cumulative voting to elect its house of representatives from three-seat districts for over a hundred years. Cumulative voting is also required in California corporate elections to prevent a single majority shareholder from controlling the corporation’s entire board of directors. Earlier this year, Santa Clarita settled a California Voting Rights Act claim against it by extending cumulative voting rights to its citizens, pending judicial affirmation of the settlement’s legality.

Santa Barbara’s current voting equipment can accommodate an election by at least one of the forms of cumulative voting. However, to be an effective remedy, cumulative voting requires more candidate and voter sophistication than ranked choice voting because it is possible for like-minded voters to split their vote in a way can undercut fair representation. In order for cumulative voting to remedy a claim of racial minority vote dilution, the candidates and voters must be able to use it effectively.

C. The Single Vote

The single vote provides a simple, but less flexible method of conducting a fair representation voting election. Under the single vote, each voter may cast one vote rather than the same number of votes as seats. The single vote, along with other variants of the system, has been used to remedy vote dilution claims in Alabama, North Carolina, Texas, and Georgia. Philadelphia (Pennsylvania) and Hartford (Connecticut) are among cities that use a variant on the single vote to elect city council seats.

The single vote shares the same threshold of election as ranked choice voting and cumulative voting. As a result, it provides a like-minded minority group the opportunity to elect a candidate of choice, though voters will have fewer options than with cumulative voting rights or the ability to rank their choices. Use of the single vote would require no modification to current voting equipment in Santa Barbara.

CONCLUSION

Both the California and federal Voting Rights Act permit the use of fair representation voting systems. By adopting ranked choice voting or another fair voting method, Santa Barbara can end its current litigation while avoiding districting, ensuring race neutrality, and helping to move toward a political landscape that favors ideas over identities.

For more information, including details on how Santa Barbara can adopt and implement any of these systems now or in the future, please contact us by contacting Drew Spencer at (301) 270-4616 or dspencerr@fairvote.org. In-state resources include Steve Chessin of Californians for Electoral Reform at (916) 455-8021 or steve.chessin@cfer.org. We also are ready to provide a speaker who can more fully describe Santa Barbara’s options and answer any of its questions as it considers the available alternatives to district-based elections.