



Northern
California



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Sent via e-mail

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San Mateo County Supervisorial District
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Re: Public Comment on the Supervisorial Redistricting Process

Dear Members of the San Mateo County Board of Supervisors and Members of the Supervisorial District Lines Advisory Commission:

The American Civil Liberties Union Foundation of Northern California (“ACLU”) and Asian Americans Advancing Justice – Asian Law Caucus write regarding San Mateo County’s ongoing redistricting process. We thank you for your service and for your efforts to plan and execute a redistricting process that is fair and transparent. We highlight below certain legal requirements regarding redistricting to ensure that the Commission recommends and the Board adopts a map that both represents all communities and complies with federal and state law. In addition, we urge the Commission to schedule at least one additional public hearing before making its final map recommendations to the Board. This will help maximize public participation, increase transparency, and result in a map that ensures fair representation for all San Mateo County communities.

This redistricting cycle, line drawers in California must comply with both federal law and the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (FAIR MAPS) Act (hereinafter, the “FAIR MAPS Act” or “Act”).¹ In particular, the Board and Commission must keep in mind the following substantive requirements when preparing the redistricting plan and drafting and considering maps:

¹ The supervisorial districts provisions of the FAIR MAPS Act are codified in sections 21500 to 21509 of the California Elections Code.

American Civil Liberties Foundation of Northern California

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1. The final map must have districts that are substantially equal in population.²
2. The final map must comply with the United States and California Constitutions as well as Section 2 of the Voting Rights Act of 1965.³ This may require the County to draw majority-minority districts where minority voters have an opportunity to elect candidates of their choice.
3. The County must follow the required redistricting criteria laid out in the FAIR MAPS Act in this order of priority: contiguity; maintain neighborhoods and communities of interest; maintain cities and census designated places; follow natural and artificial boundaries; and compactness.⁴
4. The County may not adopt a map that favors or discriminates against a political party,⁵ and cannot consider relationships with political parties, incumbents, or political candidates when assessing communities of interest.⁶

I. Adherence to the FAIR MAPS Act Ranked Criteria

The FAIR MAPS Act is an important reform and warrants further comment. While we appreciate the County’s counsel and demographic consultant’s efforts to be precise when presenting or fielding questions, we are concerned that some of the written materials may cause confusion about what the Act allows or requires. We address two concerns below: (1) giving undue weight to preserving existing boundaries; and (2) properly prioritizing maintaining communities of interest over maintaining cities.

First, at the October 7, 2021 public hearing, the County’s demographic consultant presented a draft map titled “NDC Minimal Changes” that attempts to maintain existing district lines as much as possible.⁷ Similarly, the County’s website and the consultant’s initial presentation to the Commission describe as “Other Traditional Redistricting Principles” or “Other Goals” of the redistricting process “[p]reserving the core of existing districts” and “continuity in office”—both of which go to maintaining existing district lines.⁸ These materials are concerning because only changing the districts at the margins to balance population prioritizes maintaining the core of existing districts over mandatory criteria in violation of federal law and the FAIR MAPS Act.

² Cal. Elec. Code § 21500(a).

³ *Id.* § 21500(b); 52 U.S.C. § 10301.

⁴ Cal. Elec. Code § 21500(c).

⁵ *Id.* § 21500(d).

⁶ *Id.* § 21500(c)(2).

⁷ Public Hearing by Supervisorial District Lines Advisory Commission at 31:09–32:57 (Oct. 7, 2021), <https://bit.ly/3vKKgoV> (hereinafter “October 7, 2021 Hearing”); *see also* County of San Mateo District Lines Advisory Commission, *Draft Maps*, <https://bit.ly/3bapvtC> (last accessed Oct. 25, 2021).

⁸ *See, e.g.*, County of San Mateo District Lines Advisory Commission, *FAQ*, <https://bit.ly/3FR0IZB> (last accessed Oct. 25, 2021) (“What criteria will our Board of Supervisors use when drawing district lines?”); Kristen Parks, National Demographics Corp., *San Mateo County District Lines Advisory Commission: Introduction to Redistricting* at 5, Initial Meeting of the District Lines Advisory Commission (Aug. 25, 2021), <https://bit.ly/3j41hFO>.

This approach would defeat the fundamental purpose of the redistricting process. The purpose of decennial redistricting is not simply to achieve equality of population for its own sake but rather to serve a larger goal: “achieving fair and effective representation for all citizens.”⁹ The California Legislature took a firm position that counties may not simply tweak lines every ten years to address malapportionment when it mandated that counties use certain redistricting criteria in addition to equality of population. Accordingly, counties like San Mateo County must follow the criteria that the California Legislature determined best advance the democratic value of fair and effective representation that underlies the larger goal of decennial redistricting.

With the intervening passage of the FAIR MAPS Act since the County adopted its existing district map, the County must redraw its lines under an entirely different legal scheme. Previously, the County was only required to ensure equality of population and avoid vote dilution under the Voting Rights Act; it could place as much weight as it wanted on other redistricting principles. Now, in addition to maintaining substantially equal population and avoiding potential vote dilution, the County must also follow the FAIR MAPS Act’s mandatory ranked criteria in order of priority. Complying with this new legal scheme could require more than “minimal” line adjustments. And prioritizing other goals or principles over the ranked criteria could risk violating state law. The Act does not include “[p]reserving the core of existing districts” and “continuity in office.” To the contrary, state law expressly prohibits many of the practices that animate these principles. For example, the Act precludes the County from adopting a map “for the purpose of favoring or discriminating against a political party.”¹⁰ The Act is also clear that “[c]ommunities of interest do *not* include relationships with political parties, *incumbents*, or political candidates.”¹¹ Accordingly, we urge the Board and Commission to start with a blank slate and hew to the Fair Map Act’s mandatory ranked criteria rather than any other goals.

Second, we are concerned by comments and draft maps that either conflate FAIR MAPS Act criteria or place undue emphasis on lower-ranked criteria like maintaining cities over higher-ranked criteria like maintaining the integrity of communities of interest. For example, when presenting the “NDC Minimal Changes” draft map, the demographic consultant explained that this map makes only “minor changes” to the existing district lines to balance population and “listen to public input.”¹² But rather than cite any testimony on communities of interest, the consultant cited only public comment on maintaining “the integrity of cities.”¹³ We appreciate that the demographic consultant separately acknowledged the requirement to maintain

⁹ *Reynolds v. Sims*, 377 U.S. 533, 565–66 (1964).

¹⁰ Cal. Elec. Code § 21500(d).

¹¹ *Id.* § 21500(c)(2) (emphasis added).

¹² October 7, 2021 Public Hearing at 31:09–32:57; *see also* 29:41–30:18 (demographic consultant presenting “NDC City Focus” draft map that responds to public comment that particular cities should not be divided).

¹³ *Id.* at 31:09–32:57. Similarly, when asked by one Commissioner whether the “NDC Minimal Changes” map “improves issues” related to “communities of interest” under the current district map, the demographic consultant’s response focused solely on balancing population and keeping cities whole. Public Hearing by Supervisorial District Lines Advisory Commission at 1:13:13–1:14:40 (Oct. 21, 2021), <https://bit.ly/3nqrO1e> (hereinafter “October 21, 2021 Hearing”).

communities of interest when presenting a third map that attempts to incorporate testimony on a coastal community of interest—but we understand that this map is no longer under consideration.¹⁴ Finally, at the October 21, 2021 public hearing, many of the Commissioners largely focused on how to keep cities whole with barely any mention of communities of interest.¹⁵

While some communities of interest may align with city boundaries, the concepts are distinct. A community of interest is “a population that shares common social or economic interests that should be included within a single supervisorial district for purposes of its effective and fair representation.”¹⁶ For example, the Commission has received testimony about communities of interest based around socioeconomic status, language spoken, ethnic background, transportation needs, access to public resources and services, and many other factors. We urge the Board and Commission to keep the communities of interest requirement—and the Fair Map Act’s ranked order—in mind when considering all maps.

II. Compliance with the Federal Voting Rights Act

We also urge you to work with your counsel and demographic consultants to ensure that any district maps that you recommend and adopt comply with the federal Voting Rights Act of 1965 (hereinafter the “VRA”). Section 2 of the VRA prohibits election systems and practices that have the effect of diluting the voting power of racial, ethnic, and language minorities.¹⁷ Under certain circumstances, Section 2 requires line drawers to create district maps with one or more districts where a politically cohesive minority group has an effective opportunity to elect their candidates of choice.¹⁸ Assessing whether an “effective opportunity” district is required calls for “an intensely local appraisal” of the “totality of the circumstances” going beyond just demographic data.¹⁹ It is therefore incumbent on you to work closely with counsel to avoid potential VRA liability and explore the need to create and/or preserve Section 2 compliant districts.

¹⁴ October 7, 2021 Public Hearing at 27:36–28:14 (demographic consultant presenting “NDC Coast Map”); October 21, 2021 Hearing at 28:15–28:40

¹⁵ For example, one Commissioner suggested drawing the district lines based on and *around* city boundaries in response to public comments about the importance of maintaining cities. *See* October 21, 2021 Hearing at 41:43–41:52. And the demographic consultant cited as one of her “biggest challenges” trying to “*balance*” maintaining cities like Belmont and San Bruno with the competing consideration of keeping a coastal community of interest together—notwithstanding the FAIR MAPS Act’s ranked order. *Id.* at 36:12–37:04 (emphasis added). These are but two examples of the overall tenor of the public hearing, which centered largely on keeping cities whole as opposed to any other factor.

¹⁶ Cal. Elec. Code § 21500(c)(2).

¹⁷ 52 U.S.C. § 10301; *see Thornburg v. Gingles*, 478 U.S. 30, 44–45 (1986).

¹⁸ *See Gingles*, 478 U.S. at 48–51.

¹⁹ *Id.* at 79 (internal quotation marks, citation omitted).

III. Holding Additional Meetings to Ensure a Full and Fair Process

In light of the importance of public testimony on communities of interest and the “intensely local appraisal” required under Section 2, we urge the Commission to schedule at least one additional public hearing to receive public input on communities of interest and draft maps. Currently, it appears that the Commission plans to consider and select the final map(s) it will recommend during the October 28, 2021 public hearing.²⁰ The need for an additional meeting is compounded by the fact that new district map proposals were not presented at the Commission’s October 21, 2021 public hearing. Multiple Commissioners had proposed maps via email or online tools, or requested that the demographic consultant create map alternatives, which were not posted for or presented at the hearing.²¹ Adding a meeting would provide the Commission with more time to consider and receive comment on additional proposals from both Commissioners and the public, and to ensure they are creating a map that complies with federal and state law.

Given that the Commission has until November 12, 2021 to recommend a map or maps to the Board,²² the Commission need not artificially compress the public’s opportunities to engage with this once-in-a-decade process or undermine its own ability to recommend equitable maps. The Resolution creating the Commission instructs it to complete its work by November 12, 2021, and the Board of Supervisors must adopt a final map no later than December 15, 2021.²³ The Board has numerous opportunities to discuss and adopt a final map during that window: Board meetings are currently scheduled for November 16, December 7, and December 14.²⁴ Public notice requirements are compatible with this timeline.²⁵ For example, the Commission could take its final recommendation vote on November 12, the Board could post the proposed map or maps by December 3, and the Board could take a final vote at its December 7 meeting. There is no justification for rushing through final map deliberations.

* * *

We urge the Board and Commission to do what is right, prioritize the mandatory criteria in their ranked order, and disregard other redistricting principles, particularly because the FAIR MAPS Act may require the County to start from a blank slate and adopt a dramatically different map than the current one. In addition, and in light of the mandate to maintain communities of interest, we encourage the Commission to schedule at least one more public hearing to gather additional public testimony on communities of interest and the draft maps.

²⁰ County of San Mateo District Lines Advisory Commission, Schedule of Workshops and Public Hearings, <https://bit.ly/3jA9mCp> (last accessed Oct. 25, 2021).

²¹ October 21, 2021 Hearing at 32:45–34:00, 34:28–38:40, 46:20–48:20.

²² See Resolution No. 078341 at 6, County of San Mateo, Cal. (Aug. 3, 2021), <https://bit.ly/3pyDZvP>.

²³ *Id.*; Cal. Elec. Code § 21501(a)(2).

²⁴ County of San Mateo Board of Supervisors Calendar, <https://bit.ly/3GiwXkx> (last accessed Oct. 25, 2021). The Board may consolidate its redistricting hearings with regular or special meetings. Cal. Elec. Code § 21507.1(d).

²⁵ A draft map shall be published for at least seven days before being adopted as a final map by the Board, unless there are fewer than 28 days until December 15, in which case the draft map need only be posted for three days. Cal. Elec. Code § 21508(d)(1).

We look forward to working with you to make this a fair, open, and transparent process. If you have any questions, please feel free to contact us at hkieschnick@aclunc.org and juliam@advancingjustice-alc.org.

Sincerely,



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