

SUPPLEMENTAL REPORTS & COMMUNICATIONS I
Office of the City Clerk

City Council of the City of Napa
Special Meeting

February 11, 2020

FOR THE CITY COUNCIL OF THE CITY OF NAPA:

EVENING SESSION:

3. ADMINISTRATIVE REPORTS:

3.A. Transition from At-Large Elections to District-Based Elections for Councilmembers.

- PowerPoint Presentation by Marguerite Leoni, Nielsen, Merksamer, Parrinello, Gross & Leoni
- PowerPoint Presentation by Paul Mitchell, Redistricting Partners.
- Letter from Scott J. Rafferty, Attorney at Law, dated February 11, 2020 regarding "Comments in Support of the Resolution of Intent".

Legal Considerations Governing Districting

City of Napa
February 11, 2020

by Marguerite Mary Leoni
Nielsen, Merksamer, Parrinello, Gross & Leoni

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Drawing the Lines—Legal Considerations: Population Equality

- Overriding criterion is total population equality (*see Reynolds v. Sims*, 377 U.S. 533 (1964); see Elec. Code § 21620).
- Based on total population according to latest Census, not citizens or eligible voters.
- Unlike congressional districts, local electoral districts do not require perfect equality—some deviation acceptable to serve valid governmental interests even-handedly applied.
- While goal is equal population, total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)

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Drawing the Lines—Legal Considerations: Population Equality

- Deviation is calculated by summing the amount by which the largest district exceeds the ideal population for a district and the amount by which the smallest district falls short of the ideal population.

- Example: Ideal Population: 19,229

District Number:	1	2	3	4
Population:	18,954	19,379	19,564	19,018
Deviation from Ideal:	-275	150	335	-211
Deviation %:	-1.43%	0.78%	1.74%	-1.10%
Deviation Range:	610			
Total Deviation %:	3.17%			

- Redistricting in 2021

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Drawing the Lines—Legal Considerations: Federal VRA

- Section 2 of the federal Voting Rights Act prohibits electoral practices (including district plans), which deny to racial and language minority voting rights an equal opportunity to nominate and elect candidates of their choice.
- Absent discriminatory intent, creation of minority districts required only if the minority group can form the majority of eligible voters (citizens of voting age) in a single-member district that otherwise complies with the law. *Bartlett v. Strickland*, 556 U.S. 1 (2009).

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Drawing the Lines—Legal Considerations: California VRA

- California Voting Rights Act is silent with respect to the shape of electoral districts, so long as they are used.

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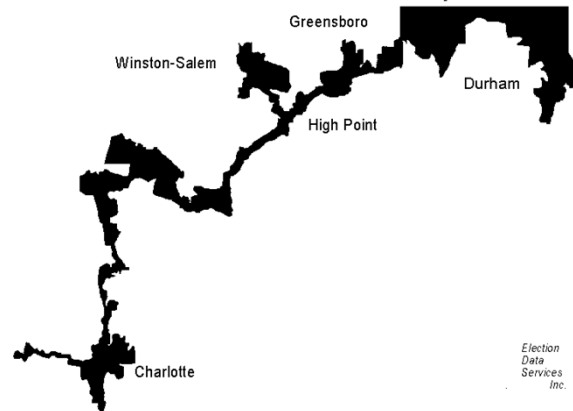
Drawing the Lines—Legal Considerations: No Gerrymandering

- The Fourteenth Amendment restricts the use of race as the “predominant” criterion in drawing districts and the subordination of other considerations. *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995).
- Looks matter! Bizarrely shaped electoral districts can be evidence that racial considerations predominate. (See next slide, NC CD 12 stretched 160 miles across the central part of the State, for part of its length no wider than the freeway right-of-way.)

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Drawing the Lines—Legal Considerations: No Gerrymandering



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Drawing the Lines—Legal Considerations: No Gerrymandering

- But bizarre shape is not required for racial considerations to “predominate”.
- “Race may predominate even when a reapportionment plan respects traditional principles, the [Supreme] Court explained, if ‘[r]ace was the criterion that, in the State’s view, **could not be compromised**,’ and race-neutral considerations ‘came into play only after the race-based decision had been made.’ *Shaw v. Hunt*, 517 U.S. 899, 907.” *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 798 (2017), emphasis added.
- Fourteenth Amendment does not, however, prohibit all consideration of race in redistricting. *Easley v. Cromartie*, 532 U.S. 234 (2001). If race does predominate, strict scrutiny applies and compliance with Section 2 may be a sufficiently compelling justification.
- **Focus on communities of interest.**

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Drawing the Lines -- Legal Considerations: Elec. Code §21621

- Elec. Code § 21621(c)&(d) specify mandatory criteria and prioritizes them (See Gov. Code § 34886):
 - (c)(1) Council districts shall be geographically contiguous.
 - (c)(2) The geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division.
 - (c)(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

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Drawing the Lines -- Legal Considerations: Elec. Code §21621

- (c)(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.
- (d) The council shall not adopt council district boundaries for the purpose of favoring or discriminating against a political party.

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More About Neighborhoods: How to Identify

Public testimony:

1st Question: what is your neighborhood?

2nd Question: What are the geographic definers/boundaries of your neighborhood?

Examples of physical features defining a neighborhood or delineating a community:

- Natural neighborhood dividing lines, such as highway or major roads, rivers, canals, and/or hills
- Areas around parks
- Other neighborhood landmarks

Lacking public testimony, planning and other similar documents may provide definition.

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More About Communities of Interest:

Elections Code § 21621(c)(2) defines “Community of Interest”:

- A “community of interest” is a population that shares common social or economic interests ***that should be included within a single district for purposes of its effective and fair representation***. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

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More About Communities of Interest: How to Identify

1st Question: what is your community?

Examples of identifiers:

- School attendance areas
- Homeowner's associations
- Specific housing types: historic, senior, mobile home, single family, multi-family
- Common issues, neighborhood activities
- Shared demographic characteristics such as similar levels of income or education
- Similar business activities

2nd Question: Where is your community located/ what are its boundaries?

3rd Question: Is the neighborhood or community best represented united in one district, or divided to have influence in multiple districts?

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Drawing the Lines -- Legal Considerations: Other Considerations Approved by Courts

- Use of whole census geography (*e.g.*, census blocks).
- Other non discriminatory considerations unique to the jurisdiction.
 - Location of public facilities
 - Location of other jurisdictional boundaries

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Drawing the Lines: Draft Plans

- An exercise in balancing criteria.
- More than one draft map is common – there is no one perfect map!
- Draft maps are intended to be modified in the discretion of the City Council considering public comment and the Council's own knowledge of the City.

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Questions?

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Traditional Redistricting Principles

Ensuring a fair and open districting process

There are a number of criteria that have been used nationally and upheld by courts.

- Relatively equal size - people, not citizens
- Contiguous – districts should not hop/jump
- Maintain “*communities of interest*”
- Follow city/county/local government lines
- Keep districts compact – appearance/function

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Communities of Interest

Bringing like people together for representation

What is a community of interest includes ethnic and language minorities and other groups.

- Communities covered by the Voting Rights Act
 - Latinos
 - Asians
 - African Americans

While race is a community of interest, it cannot be the *predominant factor* in drawing districts.

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Communities of Interest

Bringing like people together for representation

What is a community of interest includes ethnic and language minorities and other groups.

- Other Communities, example are:
 - People living near an industry (farming, higher education, manufacturing)
 - Senior Citizens or Students
 - Downtown / Urban
 - Rural or Agricultural
 - Homeowners or Renters

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City of Napa

What's Next

Public hearings will be held to obtain input on communities of interest before any map is drafted and receive feedback on potential districting plans prior to board adoption

Input can be provided in public hearings or using our "Community of Interest Worksheet."



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City of Napa

What's Next

Public hearings will be scheduled to obtain input on communities of interest before maps are drafted and receive feedback on potential districting plans prior to board adoption.

- **First Hearing** – Public Information / Feedback
- **Second Hearing** – Public Information / Feedback
Release of maps 7 days before next hearing
- **Third Hearing** – Discussion of Maps
Release of Amended Maps 7 days before next hearing
- **Fourth Hearing** – Selection of Map
Release of final map 7 days before next hearing
- **Final Vote on plan** – (up or down, no significant changes)

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REDISTRICTING PARTNERS

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Tentative Timeline

- **Tuesday February 25** – 1st public hearing without maps of proposed district boundaries, to provide information to the public, and solicit input from the public and Council on composition of the districts.
- **Tuesday March 3** – 2nd public hearing without maps of proposed district boundaries, to provide information to the public, and solicit input from the public and Council on composition of the districts.
- **Saturday March 7** – Community workshop - Public Meeting where Consultant will provide a presentation to the public and solicit input from the public regarding proposed district boundaries.
- **Tuesday March 17** – 3rd Public hearing – 1st hearing with maps of proposed district boundaries produced by the demographer and published seven days in advance, and with a summary of comments received during the Community Workshop, for consideration and feedback by the public and Council
- **Tuesday April 7** – 4th public hearing - with revised map(s) of proposed district boundaries produced by the demographer and published seven days in advance; consideration of public input regarding the revised map(s), and introduction an ordinance establishing a district-based election system and map of district boundaries for Councilmembers
- **Tuesday April 21** – 5th public hearing to adopt an ordinance establishing a district-based election system and map of district boundaries for Councilmembers



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Recommended Action

Adopt a Resolution Declaring the City's Intention To Transition from At-Large Elections to District-Based Elections of Councilmembers; Outlining Specific Steps to Facilitate the Transition (Including Public Outreach to Solicit Public Input, and Public Hearings); and Estimating a Timeframe for the Transition.



SCOTT J. RAFFERTY
ATTORNEY AT LAW

**City Council Special
Meeting
2/11/2020
Supplemental I - 3.A.
From: Scott Rafferty**

February 11, 2020

Ms. Tiffany Carranza
Clerk, City of Napa
955 School Street
P.O. Box 660
Napa, CA 94559

Re: Comments in Support of the Resolution of Intent

Dear Ms. Carranza:

On behalf of my client, Napa County Progressive Alliance, I submit these comments in support of the City Clerk's recommendation to adopt the resolution of intent to implement districts for the November 2020 elections.

The community has benefited from detailed press coverage, to a degree that is not always typical at this stage. The Council has further promoted community engagement by providing information prominently on its website. We are grateful that the City has translated the website into Spanish. We would request that translation be made available at all future hearings and at the Saturday workshop, and that at least one be held at a time and venue that the Latino community finds convenient and most likely to promote wide participation.

Districting is a long-term reform that will make elections more competitive to the benefit of all voters; it is not designed to promote or disadvantage any incumbent or potential challenger. We agree with the interpretation of the new statute in FAQ #4, including its prohibition on considering political parties, incumbents, and candidates. This criteria applies not only to incumbents, but also to candidates. The determination of which districts elect council members this year should prefer those that have significant minority populations or which have had particularly low turnout in the gubernatorial cycle. We do not expect the City to create a majority Latino district. However, ethnicity should be considered in conjunction with additional socio-economic factors to equalize political influence for all citizens of the City of Napa, including other groups that have been previously underrepresented.

My client wishes to outline an issue that will almost certainly be discussed at the two "pre-map" hearings, and which will likely require a concurrent process and additional resolution by the Council. As the City of Napa has grown, it has excluded certain "islands" from its annexations. The two largest islands (West Pueblo/Linda Vista and Imola/Parrish) appear to be more than 60 percent Latino. They have approximately 1660 eligible voters, equal to about two percent of the City's electorate. The Legislature has disfavored unincorporated islands. The legislative history of the Cortese-Knox-Hertzberg Act cites inefficiencies, incompatible planning, and increased costs of delivering services. Parts of the excluded areas

lack sidewalks, streetlights, and other amenities enjoyed by elsewhere in the same neighborhood. These enclaves do not follow streets or census blocks and fragmentize Pueblo Park, Shurtleff and other communities that share schools, shops, and other communities of interest. West Pueblo is assigned to a City of Napa police beat, but Imola-Parrish is excluded from the Shurtleff beat. Either way, the public safety is compromised because the municipal code cannot be uniformly enforced. Unfortunately, the costs of these inefficiencies are borne by the excluded minority community. According to the Local Area Formation Commission of Napa County ("LAFCO"), each household pays approximately \$60 more a year in taxes and user fees. Tenants are ineligible for code enforcement and relocation assistance under Chapter 8.18 of the Municipal Code. Many residents do not examine their tax bills or ballots closely enough to realize that they have been redlined out of the City.

This is an opportune time for the City of Napa to submit a resolution annexing the eleven unincorporated islands that LAFCO identified as a high priority goal. It is difficult to understand why these island were ever excluded from the City's annexation program. The City of Napa's current General Plan, adopted in 1998, specifically identifies Pueblo Park as one of the reasons that the City and County agreed upon a Master Plan. See [Envision Napa 2020 at 4](#). Each document established the policy of using annexation to control growth and create "long-term urban service boundaries." *Id.* at 6. All of the areas subsequently excluded from annexation were assigned to a land use planning areas. Appendix B identifies the "islands" – Pueblo and Terrace/Shurtleff – as within archetypal neighborhoods "D" and "E" in which the City generally developed or improved public amenities after annexation. The City committed to annex all land proposed for development within the rural urban limit. Policy LU 2.2. *Id.* at 1-11. Many of these areas have a significant number of tenants. The narrative suggests that the only "county pockets" are areas in which "residents," not landowners, "declined to become incorporated into the City." *Id.* at 1-12. We have not yet been able to identify any ballot question or other consultation at which the residents "declined" the benefits of annexation.

LAFCO is committed to waiving fees and prompt resolution of these discriminatory anomalies. Because these areas are fully developed and rezoned, they appear to qualify for a categorical exemption to environmental review under 14 CCR 15319. (Alternatively, the existing city general plan could satisfy a negative declaration.) The City and County would have to settle upon a division of revenues, but they have already negotiated a master agreement that could be applied. The County appears to have neglected some infrastructure elements, and should cede these areas to the City on an equitable basis to permit the City to provide services in the efficient manner that the Legislature intends. Annexation will promote the criteria set forth in Section 21621, since these islands currently impair geographical contiguity and destroy the integrity of local neighborhoods.

These Latino communities pay more and receive less because they do not have equal

influence – or *any* influence – in elections for City Council, which is precisely the problem this petition seeks to remedy. Their votes are not merely diluted, but excluded entirely, even though they live inside the City of Napa. It is no answer to say that a historical series of selective annexations has defined them out of citizenship in the City. In Gomillion v. Lightfoot (1960) 364 U.S. 339, 341, the Supreme Court held that whenever the “inevitable effect” of boundary changes is “to deprive [members of a protected minority] discriminatorily of the benefits of residence,” it is unnecessary to demonstrate racial animus or discriminatory intent. In City of Mobile v. Bolden (1980) 446 U.S. 55, 83, the Supreme Court declined to extend Gomillion by suggesting that a showing of discriminatory intent was necessary to prohibit at-large elections. Congress responded by amending Section 2 of the Voting Rights Act to extend the effects test generally. Gerrymandered city boundaries remain at the core of this law, having been the first electoral device condemned by this standard, so annexations that are discriminatory in effect continue to violate federal law.¹ Conforming past annexations to the federal Voting Rights Act will increase efficiency in providing services, in enforcing the municipal code, and in maintaining the public safety. This benefits residents of all ethnicities throughout the city.

For many years, these anomalies have inflicted inefficiencies and social cost on the entire city. The lack of attention and resolution illustrates both the costs and the injustice of failing fully to understand the experience of minority neighborhoods. District elections will improve city government by empowering all neighborhoods. At its meeting on February 3, 2020, LAFCO opened wide its door to expedite approval of a resolution that will provide geographic integrity to the City of Napa. If this approach proves inexpedient in any way, my client is willing to provide an opportunity for judicial approval of a consent decree, joint stipulation, or other judgment to ensure that the rights of these Latino communities to enjoy the benefits of residence in the City of Napa, including the right to vote in the 2020 council election.

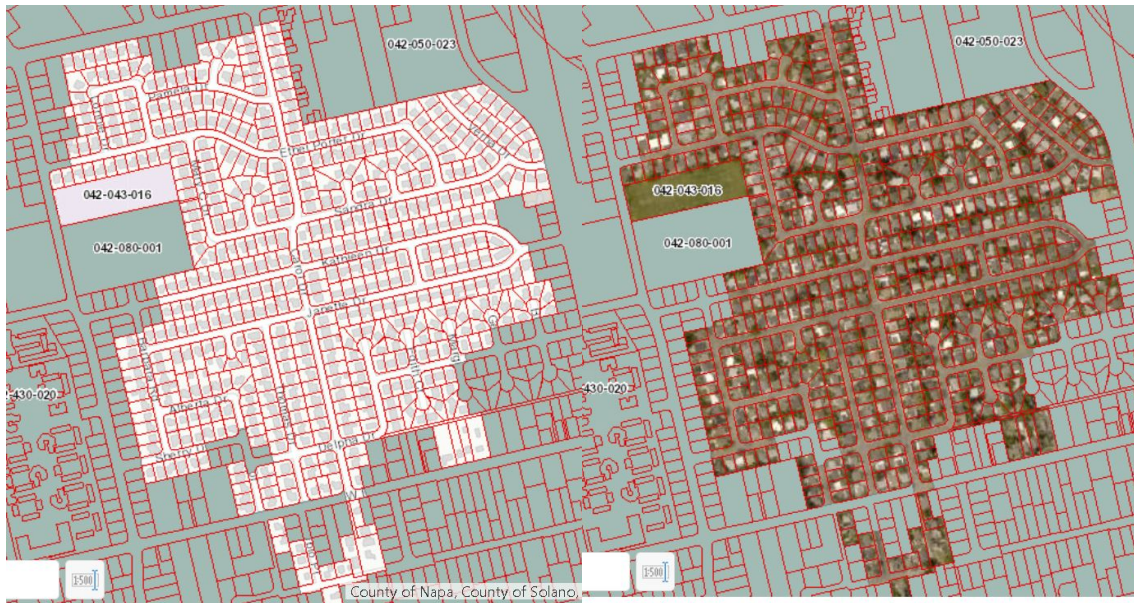
Sincerely,



Scott J. Rafferty

¹ There are significant differences between City of Napa and Tuskegee, Alabama at the time of the Gomillion case. Petitioners never suggested that Tuskegee’s gerrymander was adverse to race-neutral policies of the State Legislature, which is the case here. Gomillion challenges a 15-sided polygon. West Pueblo/Linda Vista has at least 43 sides and curves, and does not follow streets or census blocks.

West Pueblo/Linda Vista



Imola/Parrish

