From: Steve Birdlebough
To: _CityCouncilListPublic
Subject: Fwd: Statutory Interpretation of "District" Requirements
Date: Wednesday, January 24, 2018 17:23:24

Dear Mayor Coursey and Council Members--
The analysis below may help clear up the legal issue that I raised during last night's hearing with respect to permissible district boundaries.
Thanks for your work on this matter.
Steve Birdlebough

---------- Forwarded message ----------
From: **Sheffield, Ed** <Ed.Sheffield@asm.ca.gov>
Date: Wed, Jan 24, 2018 at 3:18 PM
Subject: RE: Statutory Interpretation of "District" Requirements
To: Steve Birdlebough <scbaffirm@gmail.com>

Hi Steve,

The quick answer is No, there is nothing to prevent a municipality from staggering-in the districting process.

Here's the long answer:

In 2002, the California legislature enacted the California Voting Rights Act ("CVRA"), which prohibits the use of at-large elections of governing elected officials for a county, city or school district if it, "impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election..." (Elections Code § 14027). Under the CVRA, the only election system that provides an accepted "safe harbor" from a potential CVRA claim is a "by-district area" election system.

Needless to say, drawing up district maps can be tricky. Any drawn-up districts that would allow minority voters to sue local governments for disenfranchisement would hopefully be cast out by the demographers and lawyers hired to assist with the process.

> *CVRA, prohibits the use of an at-large election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The CVRA provides that a voter who is a member of a protected class may bring an action in superior court to enforce the*

provisions of the CVRA, and, if the voter prevails in the case, he or she may be awarded reasonable litigation costs and attorney's fees. The CVRA requires a court to implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy a violation of the act.

As you know, the City of Santa Rosa and the Santa Rosa City School District (as well as a number of other municipalities throughout the state) have been targeted by private law firms for alleged violations of the CVRA. Unlike the City of Santa Rosa, Santa Rosa City Schools has been examining CVRA issues going back to 2015-2016. To comply with the law, Santa Rosa and City Schools' governing bodies (with legal counsel) have decided that the best course of action is to quickly establish district election systems to avoid potential violations and lawsuits.

The timing of district rollouts is definitely something that can be strategically implemented. Once Santa Rosa and City Schools chose to enter into district elections, they were given a set period of time (three months to initiate the process, I believe) to begin the process of determining the number of districts to be formed, how their boundaries are to be defined, whether to have a directly elected Mayor (Santa Rosa), and the timing and sequence of district elections—meaning it is permissible to stagger-in electoral districts for 2018 and 2020.

It is important to note, however, that the law does not allow newly formed districts to cut short or extend the terms of elected officials through this process. That being said, rolling out the timing of each district also gets tricky and can also be done strategically. Because elected officials cannot be unelected for their terms, communities should consider this when giving input on the timing of things. For example, one approach might be to phase-in the first districts for the areas where incumbents are up for reelection in 2018. This would quickly address any claims against voter suppression. A more cunning approach, however, would be to do the opposite. Hold off on the districting of incumbents in order to secure additional years in office. Imagine if the City Councilmembers up for reelection in 2018 were to run at-large because their districts don't go into effect until 2020. In this scenario, they would all hold on to their seats and couldn't be opposed until 2022 when their 4-year term is up. Of course, there are any number of combinations that can and will be attempted to give elected officials an advantage for reelection.

I hope this thoroughly answers your questions.

-ed

From: Steve Birdlebough [mailto:scbaffirm@gmail.com]
Sent: Tuesday, January 23, 2018 3:06 PM
To: Sheffield, Ed
Subject: Statutory Interpretation of "District" Requirements

Hi Ed--

As you know, Santa Rosa is looking at district elections this November.

We need to know if there is anything to prevent dividing the city into three districts of equal size for the 2018 elections, and four districts of equal size for for the 2020 elections.

Could we get a quick answer either from staff of a committee or from Legislative Counsel?

Steve B.

576-6632