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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
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12 LADONNA YUMORI KAKU et al.,

13 Plaintiffs,

14 vs.

15 CITY OF SANTA CLARA, and DOES 1 to 50,

16 Defendants.

Case No. 17CV319862

**STATEMENT OF DECISION RE:
REMEDIES PHASE OF TRIAL**

17
18 Plaintiffs allege the at-large method of election used by defendant City of Santa Clara
19 (“City”) violates the California Voting Rights Act (“CVRA”). In the liability phase of trial the
20 Court found that Plaintiffs proved by a preponderance of the evidence that the at-large method of
21 election used by the City impairs the ability of Asians to elect candidates as a result of the
22 dilution and abridgment of their rights as voters. Having found the City liable under the CVRA,
23 “the court shall implement appropriate remedies, including the imposition of district-based
24 elections that are tailored to remedy the violation.” (Elec. Code § 14029.) On July 18-20, 2018,
25 the remedies phase was tried before the Honorable Thomas E. Kuhnle without a jury.

26 **I. PROCEDURAL ISSUES**

27 As directed by the CVRA, this action was tried in two phases – liability and remedies. In
28 their pretrial submissions, both sides stated that additional proceedings may be necessary to

1 address implementation issues. Consequently, both sides stipulated that the Court would have
2 continuing jurisdiction in case later disputes arise.¹ In addition, for the remedies phase both
3 sides stipulated that the reference to “eight hours” in Rule 3.1590(n) of the California Rules of
4 Court would be changed to “twelve hours”; that a request for a statement of decision would be
5 deemed made; and that the statement of decision could be issued in writing immediately
6 following the completion of trial. Total trial time turned out to be about ten hours.

7 Plaintiffs filed a motion seeking that the Santa Clara County Registrar of Voters be joined
8 as a necessary party pursuant to Code of Civil Procedure section 389(a)(1). That statute provides
9 that “[a] person who is subject to service of process and whose joinder will not deprive the court
10 of jurisdiction over the subject matter of the action shall be joined as a party in the action if in his
11 absence complete relief cannot be accorded among those already parties.” The Registrar of
12 Voters, Shannon Bushey, was present in the courtroom and was represented by counsel. Counsel
13 agreed on behalf of her client that the Registrar of Voters could be joined as a necessary party,
14 subject to certain conditions. A stipulation and order joining the Registrar of Voters as a
15 necessary party was signed by the Court on July 20, 2018.

16 **II. EVIDENCE PRESENTED AT TRIAL**

17 Plaintiffs presented four witnesses: Wesley Kazuo Mukoyama, Dr. Jose Moreno,
18 Shannon Bushey, and David Ely. Defendants presented one witness: Dr. Jeanne Gobalet.
19 Mr. Ely and Dr. Gobalet were tendered as experts without objection. While the Court’s analysis
20 of the controverted issues is based on all of the evidence presented at trial, key evidence is
21 highlighted below.

22 **A. Fact Witness Testimony**

23 **1. Wesley Kazuo Mukoyama**

24 Mr. Mukoyama is one of the plaintiffs in this action. He has lived in the City for more
25 than four decades. He is Asian. Mr. Mukoyama testified that at no time while he has resided in
26 the City has an Asian be elected or appointed to the City Council. In addition, he testified that
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28 ¹ Initially the parties agreed to trifurcate the proceedings. Later in trial the agreement was modified to allow for continuing jurisdiction.

1 candidates for City Council rarely, if ever, knock on his door or call him or otherwise seek his
2 input on matters concerning the City. Mr. Mukoyama is in favor of Plaintiffs' proposal to adopt
3 seven districts within which City Council members would be elected.

4 **2. Dr. Jose Moreno**

5 Dr. Moreno, a Latino, is currently serving on the Anaheim City Council, where he is the
6 mayor pro tem. Dr. Moreno participated in a lawsuit, which was filed in 2012, that alleged
7 Anaheim's at-large election system violated the CVRA. He ran for an at-large seat on the City
8 Council in 2014 and lost. Anaheim settled the CVRA lawsuit and adopted a system with an at-
9 large mayor and individual council member districts. Dr. Moreno was elected to represent
10 District 3 in central-north Anaheim in 2016.

11 Dr. Moreno testified about the benefits of district-based elections. He testified that prior
12 to 2016 many city council members lived in the Anaheim hills, while few lived in the western
13 parts of Anaheim. He testified that only three Latino candidates had ever been elected to the
14 Anaheim city council. He also testified that at-large campaigns were costly, and that most
15 candidates had to focus on "high propensity" voters – voters who are most likely to turn out on
16 election day – and pay much less attention to other voters. In his district campaign in 2016
17 Dr. Moreno testified that he knocked on the doors of nearly all district residents; that he was able
18 engage all voters and not just high-propensity voters; that voters in his district appeared to be
19 more energized; and that he believed that district-based elections will allow council members to
20 address the needs of all residents.

21 **3. Shannon Bushey**

22 Ms. Bushey is the Santa Clara County Registrar of Voters. She testified in great detail
23 about the steps the Registrar of Voters must take to provide timely and accurate voting materials
24 to the cities it serves. Based on her long-time employment in the Registrar of Voters's office,
25 including serving as the Registrar of Voters since 2013, she discussed an almost day-to-day
26 timetable for the tasks that lead up to the November 2018 election. Ms. Bushey testified that her
27 office could provide timely and accurate election materials to voters in the City – even with
28 newly formed districts – as long as district-based information was provided by July 23, 2018. In

1 particular, she testified that she needed district-specific geographic information system (“GIS”)
2 data, accessor parcel numbers and addresses.

3 Ms. Bushey also testified that ranked-choice-voting that has been previously proposed by
4 the City cannot be implemented without the Secretary of State approving the voting technology,
5 which may take six to eighteen months.²

6 Ms. Bushey discussed the importance, in all elections, of cooperation between the City
7 and the Registrar of Voters. In this regard she described a significant number of tasks on which
8 the City and the Registrar of Voters must work together.

9 During the City’s cross-examination, Ms. Bushey testified that sometimes mistakes
10 happen. She was asked questions about events related to recent elections, including materials
11 printed by a vendor that omitted portions of a candidate statement. Ms. Bushey was asked if
12 district-based elections are more complicated, and thus might lead to more errors. She agreed
13 that district-based elections are more complicated and require more work, but in her experience
14 they do not necessarily lead to more errors.

15 **B. Expert Testimony**

16 **1. David Ely**

17 Mr. Ely testified for the Plaintiffs. He is an expert demographer with decades of
18 experience working for cities and various districts, and attorneys in litigation, to draw district
19 boundaries. He is familiar with the requirements of the CVRA and the federal Voting Rights Act
20 (“FVRA”).

21 In preparing his proposed district maps for the City, Mr. Ely testified that he began by
22 collecting, organizing and reviewing data from the 2010 census. He also reviewed data
23 generated through the Census Bureau’s American Community Survey (“ACS”), State of
24 California ethnicity reports, voter turnout reports, actual voting data, Google maps, Google
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28 ² The Court permitted FairVote to file a pretrial *amicus* brief on the disputed issues. FairVote argued that the Court should adopt multi-member districts and order a single non-transferable voting process be used. Neither party advocated in favor of a map with multi-member districts. Exhibit 68, which showed prior voting patterns in one election, also suggested a north/south division of the City for multi-member districts could be divisive.

1 Earth, and detailed City maps. In addition, Mr. Ely drove around the City and met with
2 residents.

3 Mr. Ely testified that in drawing the districts he sought to bring together residents with
4 similar community interests. He examined major thoroughfares to determine if they divide or
5 pull together local residents; he examined housing stock to assess socio-economic conditions; he
6 identified City infrastructure such as parks, libraries and schools; and he reviewed materials
7 prepared by the City's expert, Dr. Gobalet, and compilations of City resident comments about
8 voting methods and processes, including their views on at-large voting and district voting.

9 To address the remedial requirements of the CVRA and the FVRA, Mr. Ely took into
10 account the distribution and concentrations of Asian, Latino, black and white residents.³ These
11 data includes the percent of citizens who can vote, which is referred to as the Citizen Voting Age
12 Population ("CVAP").

13 Based on all of this information, Mr. Ely presented four maps – two showing seven
14 districts (Exhibits 54 & 55), and two showing six districts (Exhibits 69 & 70). For each map
15 Mr. Ely calculated numerous statistics, including CVAP percentages, by district, for each Census
16 classification.

17 Mr. Ely assured the Court he could provide GIS data, assessor parcel numbers, and
18 addresses for each district by the July 23, 2018 deadline prescribed by Ms. Bushey.

19 **2. Jeanne Gobalet, Ph.D.**

20 Dr. Gobalet testified for the City. She is an expert demographer with decades of
21 experience. She has worked as a consultant for the City since 2011.

22 The focus of Dr. Gobalet's testimony was on the City's "Draft Plan 3" which was shown
23 on page 6 of Exhibit 60. This map reflected Dr. Gobalet's knowledge of, and experience in, the
24 City. Her high-level approach was create districts that reflected City neighborhoods and other
25 communities with common interests. Like Mr. Ely, she started by identifying obvious dividing
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27 ³ The CVRA and FVRA rely on United States Census data. Those data recognizes six racial categories: White
28 American, Black or African American, American Indian and Alaska Native, Asian, Native Hawaiian and Other
Pacific Islander. It also classifies Americans as "Hispanic or Latino" and "Not Hispanic or Latino," which identifies
Hispanic and Latino Americans as an ethnicity (not a race) distinct from others.

1 lines such as thoroughfares, railroad tracks, and creeks. She then identified neighborhoods in
2 numerous ways, including taking into account information from “Nextdoor” – a social network
3 for neighborhood communities. Dr. Gobalet also took into account information from community
4 members who have spoken at public meetings that she has attended for many years.

5 Dr. Gobalet testified that Draft Plan 3 was presented at recent public meetings that were
6 held in conformity with the requirements of Elections Code section 10010. Consistent with the
7 purpose of that statute, Draft Plan 3 was slightly modified as a result of public comments.
8 Dr. Gobalet testified that the City’s Ad-Hoc Districting Advisory Committee, which has a
9 mandate of determining which voting maps to recommend to the City Council, concluded that
10 Draft Plan 3 was the best alternative. Dr. Gobalet calculated numerous statistics for Draft Plan 3,
11 including CVAP percentages.

12 **III. DISCUSSION**

13 **A. Legal Requirements for Selecting a Remedy**

14 CVRA remedies must address the dilution and abridgment of voting rights. It directs
15 courts “to implement appropriate remedies, including the imposition of district-based elections,
16 that are tailored to remedy the violation.” (Elec. Code § 14029.) “District-based elections,” in
17 turn, “mean a method of electing members to the governing body of a political subdivision in
18 which the candidate must reside within an election district that is a divisible part of the political
19 subdivision and is elected only by voters residing within that election district.” (*Id.* § 14026(b).)

20 Remedies must address election practices that impair the ability of members of a
21 protected class to elect candidates of their choice and their ability to influence the outcome of an
22 election. (Elec. Code § 14027.) Remedies may take into account “that members of a protected
23 class are not geographically compact or concentrated.” (*Id.* § 14028(c).) Lines drawn to form
24 voting districts may also take into account “(a) topography, (b) geography, (c) cohesiveness,
25 contiguity, integrity, and compactness of territory, and (d) community of interests of the council
26 districts.” (Gov’t Code § 34884; Elec. Code § 21601.) Federal law states that districts cannot be
27 drawn with race as a predominate factor. (See, e.g., *Miller v. Johnson* (U.S. Supreme Ct. 1995)
28 515 U.S. 900, 917-19.)

1 **B. The District Lines Shown in Draft Plan 3 Properly Remedy the**
2 **CVRA Violations**

3 Based on the evidence presented at trial, the Court finds the adoption of district-based
4 elections based on the district lines shown in Draft Plan 3 will adequately remediate the City’s
5 violations of the CVRA and best serve its residents. This conclusion is based on numerous
6 considerations, though four stand out.

7 First, the districts drawn in Draft Plan 3 reflect communities of interest, topography,
8 geography and integrity. Dr. Gobalet described at trial her process of identifying neighborhoods,
9 and then drawing district lines around them using significant geographic features.

10 Second, the statistics generated for Draft Plan 3 indicate it will remedy the dilution and
11 abridgment of voting rights of Asians who reside in the City. The Asian CVAP percentage for
12 District One is 51%. This is a proper remedy under both the CVRA and the FVRA. The lines
13 drawn for District Two also enhance the voting power of Latino voters. The Latino CVAP
14 percentage in that district is 27%, which allows for greater voting influence, including the
15 possibility of forming voting coalitions to elect preferred candidates.⁴

16 Third, the City is a charter city that currently elects an at-large mayor. Draft Plan 3
17 results in having six district-based elections for city council members, plus an at-large election
18 for the mayor who has now, and will continue to have, the same powers as city council
19 members.⁵ The Court was initially concerned that having an at-large mayor would not provide
20 remediation to the extent required under the CVRA, which can trump charter city rights.
21 (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 802.) But the Court is also sensitive
22 to the rights of people in California to form charter cities, and the greater degree of autonomy
23 charter cities provide. At trial, counsel for the City made an important point. He acknowledged
24 the Court’s view that eliminating the at-large mayor would provide additional CVRA

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26 ⁴ It should be noted that after the 2020 federal census the City will need to consider modifications to the district
boundaries. (Elec. Code § 21601.)

27 ⁵ At present the mayor has several non-substantive powers that are different than City Council members. Section
28 704 of the City Charter provides that “[t]he Mayor shall be the presiding officer. The Mayor shall have a voice and
vote in all its proceedings. He/she shall be the official head of the City for all ceremonial purposes.” Section 704.3
sets forth other powers of the mayor, such as presiding over the council meetings and making “recommendations to
the City Council on matters of policy and programs.”

1 remediation. But he noted that Draft Plan 3 provides sufficient remediation to comply with law
2 even with a mayor elected by the entire City electorate. That fact, combined with the comments
3 made at public meetings that expressed a preference for an at-large mayor, caused the Court to
4 conclude that all City voters should continue to elect the City's mayor.

5 Fourth, the Court recognizes the risk of implementing a new voting method relatively
6 close to the November 2018 elections. Throughout this case the Court has carefully balanced the
7 need to address the dilution and abridgement of voting rights on the one hand, and the need to
8 ensure the election process is not compromised. Both sides have worked diligently to resolve the
9 contested issues, including working with the Registrar of Voters to ensure a remedy can be
10 timely implemented. At the remedies trial three promises were made. The Registrar of Voters
11 said the election will run smoothly as long as the GIS, assessor parcel number, and address
12 information is provided by July 23, 2018. Both sides said their teams could provide the data for
13 their maps by that deadline. And the City promised to cooperate with the Registrar of Voters to
14 make sure all subsequent voting deadlines are met. Based on those promises, the Court has
15 every reason to believe this decision can be successfully implemented for the November 2018
16 elections.

17 It should be noted that the Court has considered Elections Code section 12262, which
18 states that precinct boundaries cannot be changed less than 125 days before an election.⁶ The
19 Court believes Draft Plan 3 does not violate that statute. But even if it did, in balancing the
20 hardships the Court would find the actions necessary to remedy the CVRA violations are so
21 fundamental that a procedural statute should not stand in the way of implementing Draft Plan 3.
22 In part this is because if an appropriate remedy is not implemented for the November 2018
23 elections, those elections would be jeopardized. (*Jauregui v. City of Palmdale* (2014) 226
24 Cal.App.4th 781, 791 [the certification of city council election results was enjoined based on
25 CVRA violations].)


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28 ⁶ The Article that includes Election Code sections 12260-62 is titled "Precinct Boundary Changes." Section 12262 uses the undefined phrase "jurisdictional boundaries." The Court finds that the phrase "jurisdictional boundaries" refers to precinct boundary changes as indicated in the title of the Article within which section 12262 appears.

1 **IV. DISPOSITION**

2 Having concluded the remedies phase of trial, the Court ORDERS the City to adopt
3 district-based elections based on the lines shown on Draft Plan 3 that was submitted by the City.
4 Further, the Court ORDERS the Registrar of Voters to immediately begin implementing district-
5 based elections for the November 2018 election.

6 One issue remains: the sequencing of elections. City voters currently elect two council
7 members and their mayor every four years, and two years later they elect four other council
8 members. The parties believe they can agree on a sequencing plan for the elections in 2018.
9 Very shortly the Court will prepare and file a final Amended Statement of Decision and
10 Judgment that will address this issue. What is certain right now is that in November 2018 City
11 residents will cast votes for a mayor and either two or three council members.

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13 Dated: July 23, 2018


Thomas E. Kuhale
Judge of the Superior Court