



Northern
California



November 12, 2021

Sent via e-mail

San Mateo County Board of Supervisors
c/o Sukhmani S. Purewal
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Re: Public Comment on the Supervisorial Redistricting Process

Dear Members of the San Mateo County Board of Supervisors:

The American Civil Liberties Union Foundation of Northern California (“ACLU”) and Asian Americans Advancing Justice – Asian Law Caucus write regarding certain comments made during the Board of Supervisors’ November 9, 2021 public hearing on redistricting. We are concerned these comments reflect potential confusion about the legal requirements that apply to redistricting. In particular, and similar to the issues we flagged in our October 25, 2021 public comment letter, we are concerned these comments reflect an intent to (1) give undue weight to preserving existing boundaries and (2) improperly prioritize maintaining cities over maintaining communities of interest.

First, although the Supervisorial District Lines Advisory Commission specifically voted against recommending the draft map titled “NDC Minimal Changes” to the Board,¹ multiple Board members specifically requested that map be considered.² Beyond merely considering that map in conjunction with the two recommended by the Commission, some members actually

¹ San Mateo County Board of Supervisors Meeting, Agenda Item No. 8 at 54:48–55:40 (Nov. 9, 2021) (hereinafter “Nov. 9, 2021 Meeting”), available at

http://sanmateocounty.granicus.com/player/clip/925?view_id=1&redirect=true.

² *Id.* at 2:18:05–2:18:36 (Supervisor Horsley explaining that he “would like to see the Minimal Change Map,” “what that looks like,” and “what are the demographic changes with the Minimal Change Map”); *id.* at 2:18:50–2:19:09 (Supervisor Pine supporting Supervisor Horsley’s request to consider the Minimal Changes Maps).

American Civil Liberties Foundation of Northern California

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indicated a preference for using a “minimal changes” map as a baseline going forward. For example, while acknowledging that the “folks who submitted maps . . . came pretty close,” one member recommended “going back to the minimal map and then making some changes there.”³ Finally, even while acknowledging that the title of the NDC Minimal Changes map “captures the essence” of the map, members suggested it was an “unfortunate title” and acknowledged that the “minimal change idea seem[s] to offend a number of [public] speakers.”⁴

The Board’s interest in maintaining the current lines by only slightly adjusting them to balance population both runs contrary to the purpose of decennial redistricting and risks violating state law. As we explained in our October 25, 2021 public comment letter, the goal of redistricting is not to achieve equality of population for its own sake but to “achiev[e] fair and effective representation for all citizens.”⁵ This is why the County must redraw the lines to “maintain[] a reasonably current scheme of legislative representation” that reflects not just population changes but other demographic changes as well.⁶ The Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (FAIR MAPS) Act (hereinafter, the “FAIR MAPS Act” or “Act”),⁷ reflects the California Legislature’s determination of which criteria best advance the democratic value of fair and effective representation. And by mandating certain redistricting criteria in addition to equality of population, the California Legislature took a firm position that counties like San Mateo may not simply tweak lines to address malapportionment.

Because the FAIR MAPS Act was passed since the County last drew its supervisorial map, the County must now redraw its lines in compliance with new requirements. In addition to maintaining substantially equal population and complying with federal law, the County must follow the Act’s mandatory ranked criteria in order of priority, which were previously only discretionary. Compliance with the Act likely requires more than “minimal” line adjustments. And prioritizing other, non-statutory principles could risk violating the Act. As we previously explained, the Act precludes many of the practices that animate goals like preserving the core of existing districts and continuity in office.⁸ Accordingly, we urge the Board to resist the temptation to merely adjust district lines to address malapportionment and instead ensure that whatever map it ultimately adopts complies with the FAIR MAPS Act’s substantive requirements.

³ *Id.* at 2:19:22–2:19:30 (Supervisor Groom stating she was “also interested in the minimal map with some changes and a little more work here and there”).

⁴ *Id.* at 2:24:30–2:25:47 (Supervisor Slocum); *id.* at 2:28:31–2:28:52 (Supervisor Horsley saying he “hates to use that term [minimal change]” while suggesting that the Board subcommittee consider that map).

⁵ *Reynolds v. Sims*, 377 U.S. 533, 565–66 (1964).

⁶ *Id.* at 583–84.

⁷ The supervisorial districts provisions of the FAIR MAPS Act are codified in sections 21500 to 21509 of the California Elections Code.

⁸ For example, the Act precludes the County from adopting a map “for the purpose of favoring or discriminating against a political party,” Cal. Elec. Code § 21500(d), and is clear that “[c]ommunities of interest do not include relationships with political parties, incumbents, or political candidates,” *id.* § 21500(c)(2).

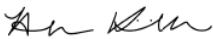
Second, we are concerned that some comments indicate an intent to prioritize lower-ranked criteria like maintaining cities over higher-ranked criteria like maintaining the integrity of communities of interest. For example, while acknowledging that the Board was “supposed to have a priority” for “communities of concern” over “the splitting of cities,” one member expressed a deep concern over splitting cities.⁹ Another member “totally agree[d]” with the comment about the importance of keeping cities together.¹⁰

An effort to prioritize avoiding splitting cities over maintaining communities of interest would violate the FAIR MAPS Act’s clearly ranked order of priority.¹¹ And to be clear, while some communities of interest may align with city boundaries, the concepts are legally distinct.¹² Accordingly, it would be inaccurate for one to say they are “maintaining communities of interest” as a shorthand for “maintaining cities.” We urge the Board to keep the FAIR MAPS Act’s ranked order in mind when considering all maps.

* * *

Thank you for your commitment to making this a fair, transparent, and lawful redistricting process. If you have any questions, please feel free to contact us at hkieschnick@aclunc.org and juliam@advancingjustice-alc.org.

Sincerely,



Hannah Kieschnick
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ACLU Foundation of Northern California



Julia Marks
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⁹ Nov. 9, 2021 Meeting at 2:29:07–2:29:41 (Supervisor Groom).

¹⁰ *Id.* at 2:29:42–2:29:47 (Supervisor Slocum).

¹¹ *See* Cal. Elec. Code § 21500(c) (setting forth mandatory redistricting criteria in ranked “order of priority”).

¹² *Id.* § 21500(c)(2) (defining “community of interest”).