

Heather Glaser

Subject: Representation by Districts in Malibu

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City of Malibu
Office of the City Clerk

Meeting Date 2/10/2020

Agenda Item # 4C

From: Jka Malibu [REDACTED]

Sent: Thursday, January 16, 2020 3:42 PM

To: Karen Farrer <kfarrer@malibucity.org>; Jefferson Wagner <jwagner@malibucity.org>; Rick Mullen <rmullen@malibucity.org>; Mikke Pierson <mpierson@malibucity.org>; Skylar Peak <speak@malibucity.org>

Cc: Reva Feldman <rfeldman@malibucity.org>

Subject: Representation by Districts in Malibu

Dear Karen, Jefferson, Rick, Mikke and Skylar,

I've read about the potential law suit pushing for voting by districts, rather than voting at large for our City Council elections. I did not know it would be on this past Monday's City Council meeting agenda, so I am writing you now with my thoughts. **Please note that these are my personal views and not the views of the Malibu Democratic Club.** The Club has not taken a position on this as yet, and I am not sure it will. But I spent my professional career working in, and dealing with, many different governments, within and outside of the US. Am an expert in systems of government.

I have not had the opportunity to read up fully on the situation, but in general, I don't think that using an at-large election structure in Malibu was motivated by race, nor do I see how it has had a racial impact.

But regardless of the reason why this issue arose, I wouldn't be afraid of change. I think there are good reasons to have city council members elected by district, in any event.

Having seen the challenges facing Malibu for the last several years, I have often thought that it was time for Malibu to have an elected mayor and representation by districts.

On the issue of representation by districts: Malibu is very spread out – 21-26 miles. The various neighborhoods or districts have very different topography, "personalities", and needs. For example, people who live up in the hills have very different needs and concerns (such as pumping water uphill) than those of us on Point Dume. In addition, those who live in east Malibu have some issues and concerns that are different from those of us who live in west Malibu. Having representatives of each neighborhood or district ensures that the concerns and viewpoints of each area are factored in with every decision. It should bring the City government closer to the people and vice versa – and that is always a good, and important, thing.

While change is often uncomfortable, I see no real downside, and potentially a lot of upside.

If the City decides to go forward with district-based elections, you can count on my support.

Sincerely,
Jane Albrecht

Heather Glaser

Subject: Better idea

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From: John Mazza [REDACTED]

Date: January 16, 2020 at 5:14:03 PM PST

To: Karen Farrer <kfarrer@malibucity.org>, Rick Mullen <rmullen@malibucity.org>, Skylar Peak <speak@malibucity.org>, Jefferson Wagner <jwagner@malibucity.org>, Mikke Pierson <mpierson@malibucity.org>

Subject: Better idea

Although I still believe we are being shaken down and have done nothing wrong, this might be a better system to present to the citizens for a vote. We would all be able to vote in each election city wide and it would give "minorities" a much better chance to be heard since they are psread all over town right now.

<https://voiceofoc.org/2018/07/mission-viejo-likely-first-california-city-to-use-cumulative-voting/>

John Mazza

CUMULATIVE VOTING

Mission Viejo Likely First California City to Use Cumulative Voting



Mission Viejo City Hall JEFF ANTENORE, Voice of OC Contributing Photographer

By  SPENCER CUSTODIO

([HTTPS://VOICEOFOC.ORG/AUTHOR/SCUSTODIO/](https://voiceofoc.org/author/scustodio/)) July 27, 2018

Mission Viejo likely will be the first California city to use “cumulative voting” to elect its City Council starting in 2020 after Orange County Superior Court Judge Walter Schwarm Thursday signed a proposed judgement.

Officials involved with the suit, as well as the Secretary of State’s office, said they knew of no other California city that has cumulative voting.

“I don’t have a list of cities that have adopted ‘cumulative voting,’ so I can’t confirm if Mission Viejo is the first,” said Secretary of State spokesman Sam Mahood in a Friday morning email.

Cumulative voting gives people as many votes as there are city council seats up for election. For example, if five seats are up for election, people will get five votes each and can use all five votes for one candidate, or spread them out between different candidates.

Cumulative voting is used when a city has a large number of minority voters but they are so scattered through the community that it is difficult to draw a district that includes most of them.

“I don’t know of any (cumulative voting) in Southern California,” City Attorney Bill Curley said. “We would be the leader, or at least the icebreaker so to speak, in doing it this way.”

Common Cause (<https://www.commoncause.org/>), California Policy Director, Nicolas Heidorn, who was not involved in the suit, said no other city in the state has cumulative voting.

“I did a study of all 482 CA cities voting practices, published in our 2016 ‘Municipal Democracy Index.’ No other CA city uses cumulative voting,” Heidorn wrote in a Friday evening email.

Although cumulative voting is new to California, the method has been used in local elections in Alabama, Texas and Maryland, according to Fairvote.org.

Election rights attorney Kevin Shenkman [sent a demand letter to Mission Viejo Sept. 26](https://voiceofoc.org/2017/11/mission-viejo-to-consider-district-elections/) (<https://voiceofoc.org/2017/11/mission-viejo-to-consider-district-elections/>) which claimed the city's at-large election system violated the California Voting Rights Act (CVRA) because it disenfranchised minority voters and said the city should adopt district-based elections to fix it.

The letter spurred five legally required public hearings and public input on potential district maps. In his letter, Shenkman said Latino representation has been scarce throughout the city's history and there hasn't been a Latino on the council in over nine years.

The at-large issue has hit a number of Orange County cities in recent years, including [Anaheim](https://voiceofoc.org/2015/01/anaheim-makes-moves-toward-district-elections/) (<https://voiceofoc.org/2015/01/anaheim-makes-moves-toward-district-elections/>), [Fullerton](http://v/) (<http://v/>) and [Lake Forest](https://voiceofoc.org/2017/11/lake-forest-finalizes-map-to-create-city-council-districts/). (<https://voiceofoc.org/2017/11/lake-forest-finalizes-map-to-create-city-council-districts/>) [Santa Ana](https://voiceofoc.org/2018/03/santa-ana-asking-court-to-put-district-elections-on-june-ballot/) (<https://voiceofoc.org/2018/03/santa-ana-asking-court-to-put-district-elections-on-june-ballot/>) is in the middle of a [political fight](https://voiceofoc.org/2018/03/after-dramatic-days-santa-ana-district-elections-now-appear-dead-for-june-ballot-but-maybe-not/) (<https://voiceofoc.org/2018/03/after-dramatic-days-santa-ana-district-elections-now-appear-dead-for-june-ballot-but-maybe-not/>) over whether it should put district elections on the November ballot. The city council filed a [lawsuit against Mayor Miguel Pulido](https://voiceofoc.org/2018/03/santa-ana-sues-mayor-for-blocking-ballot-measure/) (<https://voiceofoc.org/2018/03/santa-ana-sues-mayor-for-blocking-ballot-measure/>) for refusing to sign the papers that would put it on the June ballot. Superior Court Judge Glenn Salter ordered Pulido to sign the paperwork, which Pulido did April 9, a month after deadline. But Salter didn't order Registrar of Voters Neal Kelly to put it on the June ballot.

After its five legally required public hearings on the matter, the Mission Viejo City Council admitted the city is violating state voting law and [unanimously voted Feb. 13 to explore different options, including cumulative voting.](https://voiceofoc.org/2018/02/mission-viejo-city-council-rejects-district-elections-seeks-alternatives/) (<https://voiceofoc.org/2018/02/mission-viejo-city-council-rejects-district-elections-seeks-alternatives/>)

Shenkman and Curley asked Schwarm to order cumulative voting in a July 20 court filing. The proposed judgement filing asked for cumulative voting to start in 2020 and have the upcoming November elections be two-year terms so that all five seats will be up for election in 2020.

"The court has been getting emails about the matter from the public on this," Schwarm said during Friday's court hearing. "I'm going to refer them to your office," he told Curley in the courtroom.

Curley said the city will start an educational outreach program for residents and City Council candidates to inform people how the new system will work and why its being implemented. He also said the city will be working with the Registrar of Voters to prepare rolling out cumulative voting.

Mayor Ed Sachs and council members Greg Rath and Wendy Bucknam will be on November's ballot.

"We all came to the same thought that this looks like the most appropriate, beneficial response," Curley said in a Wednesday phone interview. "The thought is we will present this to the court — by no means it's a done deal. I learned long ago to never presume, so I don't. We hope that it will be well-received."

Shenkman, in a Thursday phone interview, applauded the city for admitting its violation of state voting law.

"I will commend Mission Viejo in at least one respect and that is they admitted there's racially polarized voting, they admitted there's a problem and after we filed suit, they worked diligently to figure out what the appropriate remedy is," Shenkman said.

"We agree we're in violation of the CVRA, we agree that districting isn't probably the best solution for Mission Viejo, so now what do we do? We started to look what was done under the Federal Voting Rights Act," Curley said, referring to a 2008 federal voting rights

case which originated in Port Chester, New York. The Port Chester case implemented cumulative voting, which led to its first Latino representative elected the city government in a town that's roughly 60 percent Latino.

After Friday morning's court hearing, Curley said, "We're looking heavily at the Port Chester process. — we're not going to recreate the wheel."

The City Council doesn't meet until Aug. 28, at which time the Council can start deciding how to roll out the educational process.

"We're looking to get it done sooner rather than later," Curley said.

Leading up to the Mission Viejo lawsuit, which was served on the city May 15, Sachs emailed a March 10 newsletter to subscribers on an email list indicating no lawsuit would happen. (<https://voiceofoc.org/2018/03/suit-or-no-suit-confusion-over-voting-rights-issue-in-mission-viejo/>) It confused some residents and drew the ire of Shenkman, who filed the lawsuit March 22. (<https://voiceofoc.org/2018/03/mission-viejo-sued-for-violating-state-voting-law/>)

Santa Clarita tried to switch to cumulative voting for its City Council when faced with a lawsuit similar similar to the one Mission Viejo is facing, but in September 2015 Los Angeles Superior Court Judge Terry A. Green ruled against it. Shenkman represented the plaintiffs in that lawsuit which ended up costing Santa Clarita roughly \$1.2 million.

Shenkman said he didn't think the Santa Clarita case would repeat itself.

"The reason being is that Santa Clarita was fighting ... was doing cumulative voting kicking and screaming. And they managed to work the system enough and found an unlikely ally in (California Secretary of State) Alex Padilla. Mission Viejo, I feel, is committed and committed to doing it the right way," Shenkman said.

Although Green was initially onboard with cumulative voting, a letter from Padilla warned that cumulative voting may not be legal in the state, reported The Santa Clarita Valley Signal February 2016. (<http://archive.signalscv.com/archives/149064/>)

The Secretary of State's office didn't respond to legality questions.

"He (Green) did initially find that cumulative voting was no problem and Santa Clarita continued to fight and fight and fight and I think he got sick of us being in the courtroom ... and figured, forget this shit, I'm not having any of this," Shenkman said.

In a Thursday phone interview, Kelly said the current Orange County voting machines haven't been tested for cumulative voting.

"We wouldn't be able to do it right now," Kelly said. "Our current system will accomodate cumulative voting, but it's not tested and not certified in California."

But the Orange County Registrar of Voters will likely be able to handle cumulative voting in 2020 after it receives new machines and gets certified by the Secretary of State, he said.

"That's very possible, because the new systems we will be looking at. Although I can't guarantee anything, we will most likely have that possibility," Kelly said. "There's other parts of the country that use cumulative voting, so obviously those systems would want to be sold elsewhere."

Spencer Custodio is a Voice of OC reporter who covers south Orange County and Fullerton. You can reach him at scustodio@voiceofoc.org. Follow him on Twitter @SpencerCustodio

