

From: Scott Smith <Scott.Smith@bbklaw.com>
Subject: Re: CVRA Maps
To: Enmeier, Mark <EnmeierM@san-clemente.org>
Sent: November 3, 2023 12:11 AM (UTC-04:00)

Hey Mark. 3:00 tomorrow's great if school's out. And pretty much any time Saturday morning too. Sunday afternoon.

Scott C. Smith
of Best Best & Krieger LLP



Scott Smith
Partner
scott.smith@bbklaw.com
T: (949) 263-6561 | C: [REDACTED]
bbklaw.com | [REDACTED]

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received and all attachments.

On Nov 2, 2023, at 8:50 PM, Enmeier, Mark <EnmeierM@san-clemente.org> wrote:

CAUTION - EXTERNAL SENDER.

Hello Scott,

It is so good to hear from you and that you are doing well. You definitely hit the nail on the head on the concerns that I had. I'm hesitant to say more over email, but I'd be happy to talk to you more about it over the phone. Let me know if there is a time you'd like to talk.

Best Regards,

Mark Enmeier
San Clemente City Council
[REDACTED]

<Outlook-wig5jsri.jpg>

From: Scott Smith <Scott.Smith@bbklaw.com>
Sent: Wednesday, November 1, 2023 2:51 PM
To: Enmeier, Mark <EnmeierM@san-clemente.org>; 'cduncan@san-clemente.org' <cduncan@san-clemente.org>
Subject: CVRA Maps

Gentlemen:

I hope you're doing great. I really miss seeing and working with you both and appreciate your service to San Clemente so much. I'm doing great and enjoying work and family a lot.

I don't want to be seen as meddling in this in any way, but I listened to the video where Council narrowed its voting district maps and noted your dissent to the decision. You may both be at peace with that

outcome or resigned to what might be an inevitable outcome, but if there's still life in your opposition, I wanted to share this input, but only as a constituent.

The issue of 4/1 districts (with the mayor elected at-large) may be water under the bridge, but I was surprised the Council moved past that so fast. I kind of missed that chapter. There should be a couple of concerns about that. First, if there's an way to increase the potency of the Latino vote in any particular district by making them smaller, I think the CVRA requires that there be 5, not 4. Additionally, we think the CVRA "safe harbor" is really only available when the conversion to districts is 100% (i.e., 5/0 not 4/1). Agencies can get claimants to settle on a 4/1 system, but that doesn't bind third parties. So even if Michelle Jackson is down with this outcome, it doesn't mean that someone else can't come along with a new demand for a 5/0 configuration requiring you to fall back and redistrict again. We fear there may be a second wave of districting demands for our clients who land on 4/1 systems.

Second, I thought that at the meeting, the consultant kind of ducked Mark's question about the comparative Latino composition of the mapped districts. The CVRA says you're not supposed to consider race, but the *Santa Monica* case says you are, so maybe that's what flummoxed him. However, that case makes it clear that the CVRA test is different from the federal test in that you need to look at the comparative "influence" (not just the potential for a minority/majority voice) that minorities will have in the resulting districts. I think that's the information Mark wanted but couldn't get. I think the Act requires that you look at potential configurations of four- and five-district maps in San Clemente and decide whether any configuration in either system will give minority voters more "influence," if not a majority.

So, for example, let's hypothetically imagine that the highest concentration of Hispanics is in the Pier Bowl area of town. Obviously, no district line should parse this minority concentration, so a district line is drawn around them. If there is such a concentration, it would be important to know whether the 4/1 system dilutes that minority's influence in that district. In other words, if a 4/1 configuration gives that minority bloc a 45% majority in a district comprised of 25% of the city's population, but a 5/0 configuration would push that minority's influence to 51% in a district comprised of 20% of the City, both state *and* federal law require that the districts be smaller and that bloc be included in one of the five districts. I'd argue that if the Hispanic share of that 20% is significant but not >50%, the *Santa Monica* case still requires five districts.

It's possible that the layer of minority population is spread too evenly across the City for them to receive much more influence with smaller voting districts. It's also possible that the concentration/distribution of that population really doesn't lend itself to fitting within a compact district line, so none of this is relevant. I've always suspected that the latter condition is true in San Clemente. Just the same, I think the Council ought to know this before it locks in on an ordinance.

Again, I know you need to choose your battles, and this one may be futile. But I, like you, was disappointed in the outcome and thought that this additional information should have been more forthcoming what Mark sought it. There's definitely potential vulnerability in an outcome where the 4/1 configuration and the adopted map compromise the minority voice the CVRA intends to enhance.

I appreciate the chance to provide you this input as an "unnamed source" in case you opt to use it. 😊

Very best wishes to you guys. You're two of the best I've ever worked with and I wish you and your families every joy.

SCOTT



Scott Smith

Partner

scott.smith@bbklaw.com

T: (949) 263-6561 | [REDACTED]

bbklaw.com | " " "

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received and all attachments.