



November 15, 2021

Sent via email

Orange County Board of Supervisors
Hall of Administration, Board Hearing Room
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**Re: Partisan Gerrymandering
November 16, 2021 Board of Supervisors Meeting, Agenda No. 37**

Dear Members of the Orange County Board of Supervisors:

We are deeply concerned with the extreme partisanship of some of the draft supervisorial district maps that the Board is considering, including some of the maps released today. Democratic voters make up the plurality of registered voters in the County and it is possible to draw a map that complies with state and federal law. Nonetheless, some proposals, especially versions of Proposals 2 and 4, unnecessarily break up communities of interest, crack cohesive Latinx communities, split cities, and clearly discriminate against Democratic voters by making it difficult, if not impossible, for these voters to elect candidates of choice in all but one or two districts. If adopted, these maps would violate not only the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions Act (hereinafter, the Fair Maps Act),¹ but also the California Constitution, which prohibits the Board from infringing on the equal protection, speech, association, and free election rights of its citizens. We request that the Board reject these maps and instead adopt a fair map that permits all Orange County residents to have a real opportunity to engage in the political process. We further request that the Board and County staff immediately conduct a thorough assessment of all proposed maps to ensure that they are not improper partisan gerrymanders.

I. Prohibition Against Partisan Gerrymandering

The Board does not have unfettered discretion when drawing new lines. Instead, the Fair Maps Act places mandatory, non-discretionary duties on the Board. This includes creating districts that are contiguous, maintain communities of interest, and are compact so that, if drawn properly, districts facilitate political organization, electoral campaigning, and constituent representation. *See* Cal. Elec. Code § 21500(c). The Act excludes incumbency protection from the list of line drawing criteria and is clear that “[c]ommunities of interest *do not* include relationships with political parties, incumbents, or political candidates.” *Id.* § 21500(c)(2) (emphasis added). Because of the danger partisan gerrymandering poses to

¹ The provisions of the Fair Maps Act that apply to county redistricting can be found in sections 21500 to 21509 of the California Elections Code.

EXECUTIVE DIRECTOR Hector O. Villagra

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fair maps, the Act is explicit that the Board “shall not adopt supervisorial district boundaries for the purpose of favoring or discriminating against a political party.” *Id.* § 21500(d).

The California Constitution also places constraints on the Board, including the obligation that the Board permit free and fair elections, provide all people with equal protection under the law, and not restrict people’s rights of association and political expression. Cal. Const. art. II, § 3 (providing for free elections); *id.* art. I, § 7 (guaranteeing equal protection of the laws); *id.* art. I, §2(b) (guaranteeing freedom of speech and association); *see also Jauregui v. City of Palmdale*, 226 Cal. App. 4th 781, 800 (2014) (noting that the state’s free speech and association constitutional provision provides voting protections and that the state’s equal protection clause “quite naturally applies to voting related issues” and protects voters “against dilution of their votes because of the manner in which elections are conducted”). The cornerstone of free elections is to ascertain the will of the people, and a map that discriminates against a certain group of voters or creates barriers to the free expression of the will of the people infringes on all three of these rights. There is a history of state courts finding that partisan gerrymandering violates state constitutional rights, and it is likely that a California court would come to the same conclusion with respect to versions of Proposal 2 and Proposal 4 as well as Proposals 5A-1 and 5B-1. *See, e.g., League of Women Voters v. Commonwealth*, 645 Pa. 1, 8 (S. Ct. Pa. 2018) (Pennsylvania Supreme Court holding that “the 2011 [Congressional] Plan violates Article I, Section 5—the Free and Equal Elections Clause—of the Pennsylvania Constitution” because it is a partisan gerrymander); *Common Cause v. Lewis*, 2019 WL 4569584, at *128 (S. Ct. N.C. Sept. 3, 2019) (holding that the partisan gerrymander at issue “violate[d] the fundamental constitutional rights of free elections, equal protection, speech, assembly and association”).

II. Some Draft Proposals are Partisan Gerrymanders

For at least the past decade, Democratic voter registration in the County has been trending upward and Republican registration has been trending downward. For example, in October 2010, Democratic voters made up 31.9% of Orange County registered voters and Republican voters made up 43.1%.² Today, Democratic voters make up 37.1% of all active registered voters and Republican voters have dropped down almost ten percentage points to 33.5%.³ While voters are increasingly choosing to associate with parties other than the Republican Party and are consistently voting in favor of Democratic candidates,⁴ some proposals seek to again entrench Republican control of the Board for the next ten years⁵ by splitting up concentrations of Democratic voters and submerging them into redder districts, impermissibly diluting their vote.

Although we should expect to see at most one to two districts in the final map with higher shares of Republican voters, all versions of Proposal 2 are maps where Republicans have an advantage in three out of the five districts. What’s more, all versions of Proposal 2 place incumbent Supervisor Andrew Do, a registered Republican,⁶ in a district that only slightly has more Democratic voters. This gives Republican voters an advantage in four out of the five districts, much more than their size merits. Public

² California Secretary of State, Report of Registration as of October 18, 2010: Registration by County at 3, *available at* <https://elections.cdn.sos.ca.gov/ror/ror-pages/15day-gen-10/county.pdf>

³ Orange County Registrar of Voters: Election Data Central, Current Registration Counts, <https://www.ocvote.com/datacentral/?tab=registration> (last accessed Nov. 15, 2021).

⁴ *See, e.g.,* Orange County November 6, 2018 Official Results, Registrar of Voters, <https://www.ocvote.com/fileadmin/live/gen2018/results.htm> (showing that Orange County voters consistently favor Democratic candidates in statewide races, including the races for Governor, Secretary of State, Controller, Treasurer, and Attorney General).

⁵ *See, e.g., Supervisors Approve GOP-Friendly Political Boundaries*, Voice of OC (Aug. 24, 2011), <https://voiceofoc.org/2011/08/supervisors-approve-gop-friendly-political-boundaries/>.

⁶ Ahn Do, *O.C. Supervisor Andrew Do Moves Closer to Reelection in Hotly Contested Race*, L.A. Times (Nov. 9, 2016), <https://www.latimes.com/local/lanow/la-me-ln-oc-supervisor-20161109-story.html>.

testimony indicates that this map was originally proposed, or at least supported, by Supervisor Do,⁷ and written testimony also shows that this proposal is supported by individuals affiliated with the Lincoln Club,⁸ confirming that some Republican leaders believe this map creates a safe seat for Supervisor Do even in a district that slightly leans Democrat. Proposal 2 achieves this Republican advantage by breaking up communities of interest and cities. It divides the cities of Irvine and Costa Mesa and draws the Irvine, Costa Mesa, and Tustin community of interest into three districts. Finally, proposal 2A-1 unnecessarily draws an incumbent into the majority-Latinx district, making it more difficult for Latinx voters to elect candidates of their choice.

While most versions of Proposal 4 create two districts where Republicans represent the plurality of registered voters, these maps contain an additional district, District 1, that includes incumbent Supervisor Do and only narrowly leans Democrat, again likely locking in Republican control. Proposals 4C and 4C-1 are more egregious, with three districts with voter registration numbers that clearly lean Republican. Proposal 4C-1 in particular draws Democratic incumbent Supervisor Katrina Foley in with Supervisor Do in Republican leaning District 1. Similarly, Proposals 5A-1 and 5B-1 create three districts where Republicans represent most of the voters and achieve this goal by dividing the City of Irvine and thereby cracking Democratic voters into two districts.

These maps appear to be drawn with the intent to entrench Republican control of the Board for the next decade, will no doubt achieve this result, and cannot be explained by other non-partisan considerations. These proposals flout the clear commands of the Fair Maps Act and the California Constitution by grouping many voters into districts predominantly based on partisan criteria and packing and cracking Democratic voters to dilute their collective voting strength. The proposed maps draw three to four seats to favor Republicans and thus do not correspond with voters' preferences as manifested by the voter registration of the two major parties. If any of these maps are adopted, the map, and not the will of voters, will dictate election outcomes. We saw this precise result in 2011. The Board cannot make the same mistake again.

* * *

We urge the Board to reject all versions of Proposals 2 and 4 as well as Proposals 5A-1 and 5B-1. These proposals discriminate against Democratic voters for the benefit of the Republican Party. We further urge the Board and County staff to immediately conduct a review of all proposals to ensure that they do not improperly discriminate or favor any political party. To fairly represent your constituents and avoid unnecessary and costly litigation, the Board must adopt a map that complies with federal and state laws. Proposals 5, 5A, and 5B do just that. If you have any questions, please do not hesitate to contact me at jgomez@aclusocal.org.

Sincerely,



Julia A. Gomez
Staff Attorney
ACLU Foundation of Southern California

⁷ Nick Gerda, *What's Orange County Going to Look Like Politically Over the Next Decade?*, Voice of OC (Nov. 3, 2021), <https://voiceofoc.org/2021/11/whats-orange-county-going-to-look-like-politically-over-next-decade/> (noting that to public speakers at the November 2 redistricting hearing identified Supervisor Do as the leader in supporting Proposal 2).

⁸ Various Emails from Members of the Public to the Board of Supervisors re Item 23, Received November 2, 2021 at 4, 7-9, available at http://cams.ocgov.com/Web_Publisher/Agenda11_02_2021_files/images/23_4-11022021_9857022.PDF (showing emails in support of Proposal 2 sent in response to a call to action from Teresa Hernandez, President of the Orange County Lincoln Club, with the subject line "Supervisors have received 50 emails all from Dems, this is our chance please email each of them Map 2 is the winner. Teresa").