

February 23, 2022

Via Email

Bakersfield City Council
c/o Julie Drimakis, City Clerk
1600 Truxtun Avenue
Bakersfield, CA 93301
city_clerk@bakersfieldcity.us

**Re: Public Access and Compliance with State and Federal Redistricting Laws
February 23 City Council meeting, Item No. 9.a.**

Dear Members of the Bakersfield City Council:

Consistent with California's open meeting and redistricting laws, we request that the Bakersfield City Council: 1) remove any time limits to the public comment period; and 2) make tonight's redistricting hearing available via Zoom or another similar teleconferencing platform so that the public can remotely address the Council during the hearing. The City Council must also adopt a map with districts that are substantially equal in population and that follow mandatory state map-drawing criteria that were only discretionary during the last redistricting cycle, including the requirement that wards be contiguous, maintain communities of interest, and be compact. You must also work with counsel and consultants to ensure that the final City Council map complies with the federal Voting Rights Act of 1965 (VRA) and does not impermissibly dilute the voting strength of the Latino community.

I. Public Participation at Redistricting Hearings

While we appreciate that the Council extended the time allotted for public input from fifteen to thirty minutes,¹ we urge the Council to dispose of time limits altogether because this unnecessarily restricts your access to the information you need draw lines. The thirty-minute limit means that, at most, only fifteen residents will have an opportunity to provide testimony at tonight's hearing, and fewer than fifteen if some speakers need interpretation. Cal. Gov't Code § 59454.3(b)(2)-(3) (requiring City Council to provide twice the allotted time to address the Council to a member of the public who utilizes consecutive interpretation). This cap on public comment deviates from your obligations under the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions Act (Fair Maps Act), which recognizes that to draw an equitable map the City must collect detailed testimony about communities of interest from as many residents as possible by "encourag[ing] residents . . . to participate in the redistricting process," *id.* § 21628(a), and by hosting public hearings where the public can "provide input regarding the composition of one or more council districts," *id.* § 21627.1(a).

¹ See Notice of February 23, 2022 Public Hearing regarding Ward Redistricting, City of Bakersfield, <https://bit.ly/3M389QC> (notifying the public that thirty minutes will be allotted for public input).

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The City Council should instead follow the lead of other line-drawing bodies throughout the state that have not restricted the amount of time for public comment during meetings on redistricting. The City of Santa Ana, for example, has not placed any limits on public comment and received input for over an hour at its most recent redistricting hearing.² Last summer and fall, Orange County staff and supervisors received testimony for well over half an hour during workshops and hearings.³ The California Citizens Redistricting Commission similarly recognized that receiving community of interest testimony from as many members of the public as possible is necessary for map drawing. Last summer, they set aside at least three hours for each regional public meeting but did not limit those meetings to just three hours. Instead, the meetings were over “upon the closing of business,” or after those members of the public who wished to speak had an opportunity to speak.⁴ The City Council should likewise allow all members of the public to provide testimony on redistricting during public hearings.

It is also extremely concerning that the City continues to refuse to offer remote access to its redistricting meetings two years into the pandemic and in the middle of another surge.⁵ The Brown Act requires the Council to allow members of the public to provide live testimony during City Council meetings, not just to provide written comment. Cal. Gov’t Code §§ 54954.3(a), (b)(1) & (2) (allowing members of the public to “directly address” the legislative body during a public meeting, and referring to members of the public who make a comment as “speakers”); *see also Galbiso v. Orosi Pub. Util. Dist.*, 167 Cal. App. 4th 1063, 1079-80 (2008) (holding that a local agency violates the Brown Act by prohibiting a person from speaking during the public comment period). Without a remote participation option, people with certain disabilities who are at greater risk for severe illness from COVID-19 do not have an equal opportunity as people without those disabilities to provide comment at redistricting hearings. This violates Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, which require that state and local governments give people with disabilities an equal opportunity to benefit from all local government programs, services, and activities including public meetings. Without an immediate change, Bakersfield residents will have to continue to choose between their health and their right to address the City Council.

The City is refusing to offer a remote option purportedly due to “practical and legal issues under AB 361” and because the City “does not have the technology . . . to meet the legal requirements to provide remote access to the public[.]”⁶ AB 361, however, makes clear that legislative bodies should “use teleconferencing for the benefit of the public,” *id.* § 54953(b)(1), not as an excuse to withhold public access. What’s more, we know Bakersfield can hold such meetings. All redistricting workshops have had a remote participation option,⁷ and the City Council provides a live streaming option during all Council meetings.⁸ Jurisdictions similar in size to Bakersfield have consistently offered a remote participation option to the public without issue. For example, the city council in Santa Ana, a city with fewer residents

² Video of February 16, 2022 Special Council Meeting, City of Santa Ana at 18:30 to 1:21:15, <https://bit.ly/35jJoyz> (showing that the Santa Ana City Council received public input on redistricting for over an hour).

³ Video of November 16, 2021 Board of Supervisors Meeting, County of Orange at 1:38:21-3:11:22, <https://bit.ly/3s9GDZF> (showing that the Orange County Board of Supervisors received public input on redistricting for over an hour and a half); Video of August 4, 2021 Redistricting Community Workshop – District 1, County of Orange at 40:22-1:59:23, <https://bit.ly/36qWqe5> (showing that staff received public input on redistricting for over an hour); Video of November 2, 2021 Board of Supervisors Meeting, County of Orange at 27:40-2:12:18, <https://bit.ly/3LSpk7i> (showing that the Orange County Board of Supervisors received public input on redistricting for over forty-five minutes).

⁴ *See, e.g.*, California Citizens Redistricting Commission, Communities of Interest (COI) August 25, 2021 Input Meeting for Zone F, <https://bit.ly/35hIClR> (public notice for community hearing in Kern County).

⁵ Rob Stein, *More Contagious Version of Omicron Spreads in U.S., Fueling Worries*, NPR (Feb. 21, 2022) <https://n.pr/3v9dks1>.

⁶ February 2, 2022, Email from Brianna Carrier, Assistant to the City Manager, to Julia A. Gomez, ACLU Staff Attorney.

⁷ Ward Redistricting, City of Bakersfield, <https://www.bakersfieldcity.us/819/Ward-Redistricting> (listing the December 8, 2021 and February 15, 2022 workshops as virtual).

⁸ Meeting Broadcasts & Videos, City of Bakersfield, <https://bit.ly/3p6vqHu>.

than Bakersfield,⁹ is hosting all its redistricting hearings in person and via Zoom and allows the public to provide live comment in person and remotely.¹⁰ In the Central Valley, cities like Fresno have also provided videoconference access to redistricting hearings held during city council meetings.¹¹ By refusing to offer a remote option for the public, the City is inhibiting, rather than encouraging, public participation. This practice not only contravenes redistricting and open meeting laws, but it also means that you are restricting the very testimony you need to draw a fair map. We urge the City to immediately offer remote access to tonight's hearing and to any future hearings.

II. Equality of Population and the Fair Maps Act

The Fair Maps Act, adopted in 2019 and amended in 2020, outlines detailed substantive and procedural requirements that all cities must follow this redistricting cycle. *See, e.g.*, Cal. Elec. Code §§ 21621, 21627.1, 21628. Section 21621(a) of the Elections Code provides that, following each decennial census, the City must adopt a new ward map that balances the population. *Id.* § 21621(a). The map must also comply with the VRA and must contain wards that, in order of priority and where practicable: are contiguous, maintain communities of interest, have boundaries that are easily identifiable and understandable, and are compact. *Id.* §§ 21621(b) & (c). Importantly, the Act prohibits partisan gerrymandering, *id.* § 21621(d), and prohibits you from considering relationships with political parties, incumbents, or political candidates as part of the communities of interest assessment, *id.* § 21621(c)(2). Unlike in 2011 when the City Council had discretion to consider or ignore traditional redistricting criteria like compactness and maintaining communities of interest, any new map that the City adopts this cycle must follow the mandatory line-drawing criteria in the Fair Maps Act.

The existing map and Map A, which simply balances the population, violate the Fair Maps Act.¹² Both maps include wards that are not compact. The Act defines compact districts as those that do not bypass “nearby areas of population . . . in favor of more distant populations.” *Id.* § 21621(c)(4). Wards 3 and 4, respectively labeled wards A and D in Map A, do just that by bypassing nearby areas of population in favor of more distant areas in the northwest part of the City. Map A does this even though it is possible to comply with higher ranked criteria while keeping wards fairly compact, as shown by the Equitable Maps Coalition (EMC) public map submission.¹³ These wards, and particularly Ward 3/D, extend over large strips of land that have roads and industrial areas instead of residents in them. *See Shaw v. Hunt*, 517 U.S. 899, 903, 916-918 (1996) (rejecting a district as noncompact where the district extended over areas that were “no wider than [a freeway] corridor”). Although they are technically contiguous, the configurations defeat the purpose of this principle to facilitate political organization, electoral campaigning, and constituent representation by binding communities of interest together. *Karcher v. Daggett*, 462 U.S. 725, 756 (1983) (noting importance of compactness); *Bethune-Hill v. Va. State Bd. of Elec.*, 141 F. Supp. 3d 505, 536-37 (E.D. Va. 2015) (noting importance of contiguity).

Public map submission 2a violates the Fair Maps Act and the U.S. Constitution. The map violates the constitutional and statutory requirement that districts be substantially equal in population. Cal. Elec. Code § 21621(a); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964). The map has a total deviation of 19.7%,

⁹ Compare Santa Ana City, California Quick Facts, U.S. Census Bureau, <https://bit.ly/3sa6X5P> (showing that Santa Ana has 310,227 as of the 2020 census) with Bakersfield City, California Quick Facts, U.S. Census Bureau, <https://bit.ly/3IdWIZc> (showing that Bakersfield has 403,455 residents as of the 2020 census).

¹⁰ City Council Redistricting Process, City of Santa Ana, <https://www.santa-ana.org/cc/redistricting> (providing link for public to participate in all redistricting hearings and workshops via Zoom); *see also* Special City Council Meeting Agenda (Feb. 16, 2022), <https://bit.ly/3lcl9n> (noting that the public can address the City Council via Zoom and in-person during the redistricting hearing, the only item on the agenda).

¹¹ City Council Meeting Agenda, City of Fresno (Dec. 9, 2021) at 2, 28, <https://bit.ly/36qWLNT> (providing Zoom option for public comment during City Council meeting, including during redistricting hearing).

¹² *See* Current Ward Districts, City of Bakersfield, <https://bit.ly/3sZi0ht>; City of Bakersfield: Draft Plan A, Redistricting Partners, <https://bit.ly/3JJpbRN>.

¹³ City of Bakersfield: Public Map: Kern EMC, Redistricting Partners, <https://bit.ly/36xVAMS>.

well above the allowable 10% deviation.¹⁴ See *White v. Regester*, 412 U.S. 755, 764 (1976) (holding that deviations of under 10% are presumptively constitutional). Wards 3 and 4 also extend over large swaths of the City, bypassing nearby population areas in favor more distant populations. See Cal. Elec. Code § 21621(c)(4). Like in the current map and in Map A, Wards 3 and 4 in public map submission 2a are not compact, “wind[ing] in a snake-like fashion through” the northern part of the City. *Hunt*, 517 U.S. at 903 (describing noncompact district that was ultimately rejected by the Court).

Although the City of Bakersfield contains many islands, it is practicable to create a map with contiguous and relatively compact wards while still complying with higher ranked criteria. It would be completely unnecessary, and therefore violate the Fair Maps Act, to adopt a map with noncompact and/or noncontiguous wards. In addition, to the extent Map A and public map submission 2 were drawn to protect incumbents or to advance the interests of a political party, those are also impermissible bases on which to draw lines under the Fair Maps Act. The Council must reject any maps that violate the Fair Maps Act, including Map A and public map submission 2.

III. The Federal Voting Rights Act

The City must ensure that the final ward map does not dilute the voting power of any protected communities. 52 U.S.C. § 10301. Under certain circumstances, Section 2 requires the City to draw wards that provide minority voters with an effective opportunity to elect candidates of choice. To determine whether the Council must create such wards, the Council must first examine the three *Gingles* preconditions: (1) whether the Latino community in Bakersfield is sufficiently large and geographically compact to constitute a majority in one or more single-member district; (2) whether Latino voters are politically cohesive; and (3) whether bloc voting by the majority of voters usually prevents Latino voters from electing their preferred candidates. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). Together, the second and third factors describe racially polarized voting (RPV). Once these preconditions are established, you must “consider[] whether ‘on the totality of circumstances,’ minorities have been denied an ‘equal opportunity’ to ‘participate in the political process and to elect representatives of their choice.’” *Abrams v. Johnson*, 521 U.S. 74, 91 (1997) (quoting 52 U.S.C. § 10301(b)).

The first *Gingles* precondition requires the City to look at CVAP. *Cano v. Davis*, 211 F. Supp. 2d 1208, 1233 (C.D. Cal. 2002). The Latino population makes up 40.4% of the City’s CVAP,¹⁵ and our analysis shows that it is possible to draw two to three compact wards with Latino CVAP well over 50%, meeting *Gingles* factor I. A federal district court also found in 2018 that there is RPV in Kern County, *Luna v. County of Kern*, 291 F. Supp. 3d 1088, 1127, 1131 (E.D. Cal. 2018), indicating that there is likely RPV in Bakersfield. The City Council must therefore work with counsel and consultants to: 1) inform the public about the role of the VRA in redistricting, including the need for the City to review community testimony, CVAP data, and socioeconomic data, and the need for the City to conduct an RPV analysis; and 2) assess whether draft maps comply with the VRA, including by reviewing community testimony, socioeconomic data, and data on political participation rates to confirm that the new wards will actually give Latinos opportunities to elect candidates of their choice. See *Corbett v. Sullivan*, 202 F. Supp. 2d 972, 985 (E.D. Mo. 2002) (rejecting a remedial district that did not consider low voter turnout and voter registration); *Neal v. Coleburn*, 689 F. Supp. 1426, 1437 (E.D. Va. 1988) (holding that supermajorities in remedial districts were necessary as a corrective measure because socioeconomic disparities had resulted in depressed political participation rates).

¹⁴ City of Bakersfield: Public Submission 2, Redistricting Partners at 2a, <https://bit.ly/3BIJgF2>.

¹⁵ 2019 American Community Survey CVAP Tabulation.

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We urge the City Council to make redistricting accessible, reject any map that does not comply with federal and state law, and engage in a good faith effort to adopt a fair and equitable ward map. If you have any questions, please feel free to contact us at jgomez@aclusocal.org and cvalencia@aclusocal.org.

Sincerely,

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