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July 24, 2018

By U.S. Mail & E-Mail: falleyne@cccoe.k12.ca.us,

Contra Costa County Committee on School District Organization
c/o Dr. Fatima Alleyne, President
77 Santa Barbara Road
Pleasant Hill, CA 94526

Re: Proposal from West Contra Costa Unified School District to Establish Trustee Areas and Implement By-Trustee Area Voting for Election of Board Members

Dear County Committee Members:

The undersigned firm represents West Contra Costa Unified School District ("WCCUSD" or "District') in relation to the above-referenced proposal. On behalf of WCCUSD, we wish to comment briefly on the July 19, 2018, letter that attorney Scott Rafferty submitted to the County Committee. For sake of brevity, it is not our intent to engage in a back and forth on each of Mr. Rafferty's assertions here. The District's legal counsel will be in attendance at the County Committee meeting of July 24 to address any issues about which there may be questions.

The primary point made in Mr. Rafferty's letter is that the County Committee should put off taking action on the District's proposal until some undetermined future date. That is essentially the same request that Mr. Rafferty made in seeking an injunction in the pending case of *Ruiz-Lozito v. WCCUSD* (Contra Costa County Superior Court Case No. MSC18-00570). Last month, as Mr. Rafferty is well aware, the Superior Court soundly **rejected** that request, in no small part because the court was unwilling to "short-circuit the entire orderly process now underway" to move to trustee areas. A copy of the Superior Court's tentative ruling in this matter is enclosed; the court made its ruling final following oral argument on June 29, 2018. As the tentative ruling shows, Mr. Rafferty: fell "woefully short of establishing a case"; has not demonstrated anything unlawful in the process being followed by the District to move to trustee areas (or, for that matter, in the District's existing general election process); relied on assertions that were unsupported by evidence; and offered no compelling reason to stop the current process from moving forward. Based on input from WCCUSD's expert demographer, Dough Johnson of NDC, the court further acknowledged "serious questions about Mr. Rafferty's qualifications, data, and methodology."

Using the same types of unsupported assertions and questionable methodology, Mr. Rafferty now asks that the County Committee provide him with the same relief that the court denied. Just

as the court so no reason for the requested delay, there is no basis for the County Committee to put off its statutorily authorized duty to establish trustee areas (*see* Ed. Code, §5019(a)(1)) or its obligation to "approve or disapprove" of the District's proposal. (*Id.*, §5019(c)(2).) The fact that litigation is pending has no bearing whatsoever on the proceedings planned for the County Committee's July 24 special meeting. The suggestion in Mr. Rafferty's July 19 letter that the County Committee is somehow prohibited even from discussing this matter because the matters are "sub judice" (or, in plain English, under consideration by a court), is completely unsupported. While Mr. Rafferty is free to address the County Committee as a member of the public, he has no special authority over the County Committee's proceedings or greater voice than other members of the public merely because he is a lawyer who filed a lawsuit.

Mr. Rafferty also suggests that this body should recommend that the District negotiate with him. Prior negotiations did not bear fruit, and there is little reason for this body to direct another local body to engage in further settlement negotiations. Also of note, on June 4, 2018, Mr. Rafferty formally withdrew his settlement proposal to the District.

Mr. Rafferty asserts that there is no harm to delaying this matter. However, WCCUSD is informed by the Contra Costa County Registrar of Voters' Office that if no map has been approved prior to August 10, 2018, the Registrar will be unable to place the question of whether to move to trustee areas on the November, 2018, ballot, as is *required* by Education Code section 5020. This would mean having to have the issue decided at a future special election in order to have the trustee areas in place for the November 2020 general election. Based on data given to this office by the Registrar's office, such a special election would likely cost WCCUSD in excess of $600,000, in contrast to including the matter on the November 2018 general election ballot, which is expected to cost the District under $25,000.

There is nothing to support Mr. Rafferty's contentions either that the California Voting Rights Act ("CVRA") overrides the Education Code requirement of an election, or that the Federal Voting Rights Act ("FVRA") leaves this matter solely to the authority of a court. These are simply more unsupported assertions in an attempt to have this body provide Mr. Rafferty with the relief that the Superior Court so soundly denied. (The case he cites, Jauregui v. City of Palmdale (2014) 226 Cal.App.4th 781, addresses what happens when an earlier code section *conflicts* with CVRA; in this instance, there is no conflict between the CVRA and Education Code sections 5019 and 5020).

Mr. Rafferty makes reference to WCCUSD's "chaotic legislative process" that led up to the Board's recommendation of a trustee area map to this body. Ironically, what he is complaining about is precisely the process that is laid out in the CVRA, which includes the requirement of five public meetings over a matter of months (and not three days, as asserted by Mr. Rafferty). (Elections Code, §10010.)

Mr. Rafferty also makes unsupported assertions regarding what the Latino community and/or the African-American community do or do not support. WCCUSD's Board had to work from what the entire community actually had to say, following the District's extensive efforts to attract interest in the matter from the community, rather than simply Mr. Rafferty's hearsay about what others might think.

Another unsupported assertion by Mr. Rafferty is that the Board somehow did not act "within the timeframe required by state law." That is patently false. Seeking to approach this matter carefully and thoughtfully, the Board may not have acted within the time line of certain safe harbor provisions that might have limited Mr. Rafferty's claim to attorney fees (Elections Code § 10010(f)), or other time lines that address when and whether a plaintiff may file suit (id., §10010(e)(3)(B)), but it has at no time failed to comply with any actual statutory deadline found in the CVRA.

Mr. Rafferty also makes representations about what WCCUSD's individual trustees and its legal counsel may or may not have said or done, supported by incomplete citations or descriptions of what transpired. He also engages in speculation regarding what the Board may or may not have discussed or been informed by legal counsel in closed session or in attorney-client privileged communications. None of his assertions in these regards directly impacts the decision now before this body.

Finally, Mr. Rafferty throws out a series of numbers and percentages to suggest that the demographics relied upon by WCCUSD was erroneous. The District's demographer, Doug Johnson, is one of the most respected in the state, has assisted hundreds of local governments through the transition to district based elections, and will be present at the June 24 County Committee meeting to answer any questions.

Sincerely,

LOZANO SMITH

Harold M. Freiman

HMF/gc

Enclosure

cc: (by E-Mail, w/encl.)
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CONTRA COSTA SUPERIOR COURT

MARTINEZ, CALIFORNIA
DEPARTMENT: 12
HEARING DATE: 06/29/18

GENERAL INSTRUCTIONS FOR CONTESTING TENTATIVE RULINGS IN DEPT. 12

NOTE PROCEDURE CAREFULLY

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of his or her decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule* 3.43(2).)

Note: In order to minimize the risk of miscommunication, Dept. 12 prefers and encourages fax or email notification to the department of the request to argue and specification of issues to be argued – with a **STRONG PREFERENCE FOR EMAIL NOTIFICATION**. Dept. 12's Fax Number is: (925) 608-2693. Dept. 12's email address is: dept12@contracosta.courts.ca.gov. Warning: this email address is not be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 12 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

1. TIME: 10:00 CASE#: MSC18-00570
CASE NAME: RUIZ-LOZITO VS. WCCUSD
SPECIAL SET HEARING ON: PRELIMINARY INJUNCTION
SET BY COURT
**** TENTATIVE RULING: ****

Plaintiffs Ruiz-Lozito, Young, and Bay Area Voting Rights Initiative move for a preliminary injunction requiring defendant West Contra Costa Unified School District to conduct its 2018 election of the District's Board by single-member districts, rather than by District-wide at-large elections (as is the present practice). Plaintiffs offer a proposed districting map by which they argue this could be done, and effectively ask the Court to adopt that map as mandatory.

The motion is **denied**.

Plaintiff's Complaint, and the Setting for This Motion

Plaintiffs' complaint generally alleges that the District's current at-large voting structure impermissibly dilutes the votes of racial minorities, namely Latinos and black people. The result of the District's at-large voting system is that it deprives racial minorities of the opportunity to elect the trustees that comprise the District's five-member Board. The District's Board governs

five cities – Richmond, San Pablo, Hercules, El Cerrito, and Pinole – and eight unincorporated areas.

The totality of the circumstances, the complaint alleges, "indicates that the practice of at-large elections has the effect of denying Latino and black residents an equal opportunity to participate in the political process." Three of the five current trustees are white and from El Cerrito, which comprises only 10% of the District's population. Only three Latinos, six black people, and not one Asian candidate have been elected in the past 50 years.

The Complaint further alleges that Board members are aiming to repeat an illicit strategy in order "to conduct the 2018 election in violation of state and federal law [] and defer any compliance until 2020." (Compl. ¶ 43.) To prevent this outcome, Plaintiffs seek injunctive relief against the District for violations of the California Voting Rights Act of 2001 ("CVRA"), and in the alternative, for violations of § 2 of the Federal Voting Rights Act, 52 U.S.C. § 10301. (Complaint at ¶¶ 1, 56-63, 64-72.)

The District, for its part, has commenced a process of moving toward a switch to single-member districts. That process is underway, but not close to completion. Although plaintiffs are not entirely in agreement with the District about how to conduct this process, plaintiffs' principal criticism of it is simply that it takes too long – and in particular, that it cannot possibly result in any such switch-over in time for the 2018 election. As the Court remarked in its ruling last week on the District's demurrer to the Complaint, that is no small matter. The Court commented then: "It remains to be seen whether plaintiffs' demand for immediate relief is well-founded substantively; whether plaintiffs' proposed immediate action is workable and fair; or whether, as a matter of equitable discretion, the Court may choose to let matters proceed on a lengthier timeline. But as a pleading matter there is no justification for dismissing plaintiffs' complaint out of hand on the plea that 'we're working on it'. If (as plaintiffs allege) the present system violates state and federal statutes; and if (as plaintiffs allege) it is feasible to remedy that violation in time for the 2018 elections; and if (as plaintiffs allege) the District is dragging its feet if not worse – then plaintiffs have a cogent argument for immediate action despite the District's objections. If those things prove to be so, then plaintiffs are not required to tolerate an unlawful 2018 election just because the District wants to take longer to remedy a conceded illegality."

There is a countervailing consideration, however. It must be observed that the effect of this preliminary injunction, if granted, will be to short-circuit the entire orderly process now underway – including its elements of public participation and comment, and the direct involvement in conducting that process of the elected public officials to whom that job is supposed to be entrusted. Instead, plaintiffs seek to entrust the entire job of deciding how the District will conduct its elections to a single Superior Court Judge – and with that judicial decision to be made on the basis of a hastily briefed motion and a poorly developed paper record. To make that observation is not necessarily to doom plaintiffs' effort, for such judicial intervention is sometimes necessary to bring about compliance with the law. Were it otherwise, the entire South would still be segregated today. But the observation does command caution in deciding thus to dispense with the usual democratic procedures in favor of judicial ones.

The Applicable Legal Standards

In deciding plaintiffs' request, the Court must weigh (1) the likelihood that plaintiffs will ultimately prevail on the merits, and (2) the relative interim harm to both sides from issuance or non-issuance of the injunction. (See *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463-64.) The Court has discretion to balance these two factors; e.g., a particularly strong showing on the merits by plaintiffs might overcome a modest showing of interim harm by defendant. However, the first criterion is not completely dispensable; plaintiffs must show "some possibility" of prevailing on the merits, regardless of the relative interim harm. (See *Jessen v. Keystone Savings & Loan Assn.* (1983) 142 Cal.App.3d 454, 459.)

Further, plaintiffs seek a mandatory preliminary injunction that would change the status quo pending trial. Such a mandatory injunction is rarely granted; it is permitted only in extreme cases where the right to such relief is clearly established. (*Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 625.)

Plaintiffs have the burden of proof in this proceeding. (*O'Connell*, 141 Cal.App.4th at 1481.) To meet this burden, plaintiffs were required to come forward with "competent evidence". (*Carsten v. City of Del Mar* (1992) 8 Cal.App.4th 1642, 1655.)

Plaintiffs' Evidentiary Showing

Measured against these standards, plaintiffs' motion falls woefully short of establishing a case for a preliminary injunction. Indeed, it is only a slight exaggeration to say that plaintiffs present no admissible and competent evidence at all, either as to the illegality of the existing at-large system, or as to the suitability and feasibility of the substitute district map that plaintiffs are asking the Court to adopt wholesale.

Plaintiffs' brief in support of this motion contains much cogent and ardent argument as to why the Court must act, and why it cannot allow the status quo to remain in place given that the illegality of the present system is so patently shown, and an appropriate, fair, and feasible remedy is so easily identified. What the brief is lacking, however, is any serious attempt to *demonstrate* that the present system is illegal, or that the proposed remedy is appropriate, fair, and feasible. The brief essentially assumes its own premises.

Incompleteness of the brief would be of little substantive consequence, if the supporting *evidence* submitted in support of the motion were otherwise sufficient. It isn't.

At the outset, the Court must express its disapproval of Mr. Rafferty's practice (in both of his declarations) of substituting correspondence for sworn testimony. It is not a suitable practice to attach a previously sent letter (or other unsworn document) in which a party has laid out its arguments, and then just attest in the covering declaration that everything in the letter is true. Nor, in this age of word processing, is that even much of a logistical convenience. Putting one's factual assertions into the declaration as such, besides being proper form in itself, also has the advantages of causing the declarant to sort out his factual assertions from his legal arguments and rhetoric; to focus on whether the declarant really has a foundation of personal knowledge for his factual assertions; and to attest to them directly under oath.

Having said all that, however, the result of this motion would be no different if Mr. Rafferty had

put his factual assertions into his declarations. As will be discussed, most of those assertions are inadmissible, and they are substantively insufficient to support plaintiffs' motion.

At the time plaintiffs appeared ex parte with a request for a temporary restraining order, the Court commented informally that taking up this issue as a preliminary injunction motion would have the advantage of allowing plaintiffs to improve on what appeared to be a facially insufficient evidentiary showing on the merits. Plaintiffs' entire evidentiary submission on this motion as to illegality or liability, however, appears to be that same showing, or at least something not much amended from it – namely Rafferty's three-page first declaration. The Court makes detailed rulings infra on defendant's objections to this evidence. For now, the Court observes that the only exposition of facts offered to prove liability (that is, illegality) in this case is some seven pages of Rafferty's attached demand letter. Besides being unsworn, however, that presentation is entirely lacking in any mention of any sources or authentication of the data it asserts. Nor is there the slightest effort to show any foundation or expertise to support Rafferty's analysis of those data. Even if this exposition were more properly found in a sworn declaration, it would be flatly inadmissible as evidence.

The same is true of Rafferty's second declaration (half a page long), which purports to speak of the feasibility of plaintiffs' proposed district map. Again, it puts all its factual exposition into an unsworn letter; and again, it neither identifies any source for its data assertions, nor establishes that Rafferty has the expertise to be able to testify as an expert witness in demographic analysis. The Court sustains defendant's objection to this declaration in its entirety.

In response defendant presents a declaration from Mr. Johnson, who (as plaintiffs apparently don't dispute) *is* qualified as a demographic expert. This is not the trial, and the Court need not make any final factual findings on the merits. For purposes of assessing plaintiffs' showing on this preliminary injunction motion, however, the Court does view Johnson's critiques of Rafferty's analysis as trenchant and persuasive. Among other points, the Court shares Johnson's mystification as to why, in drafting a proposed district map, Rafferty uses an unsubstantiated spreadsheet-based methodology, rather than taking advantage of the free districting software that defendant has made available to the general public on its website. Defendant is hardly in a position to criticize that software methodologically. If plaintiffs had used it to demonstrate the fairness and feasibility of their proposed solution, it would have gone a long way toward making at least that half of their missing factual case.

Plaintiffs also assert that their "verified Complaint" demonstrates a violation of at least the federal Voting Rights Act. (Opening Memorandum at 13:13-16.) However, the Court's original of the Complaint is not verified.

Plaintiffs' opening and reply memoranda are replete with other assertions of fact that are not supported by any references to purported evidence, much less to competent evidence. As just one example, plaintiffs criticize defendant's public hearings as having been "almost completely unpublicized," but this factual assertion finds no support in plaintiffs' supporting declarations. (Opening Memorandum, pp. 12-13.) The Court has not considered any of these unverified factual assertions.

Finally, plaintiffs appear to be arguing that defendant has "conceded" plaintiffs' likelihood of

prevailing on the merits, either by voluntarily agreeing to adopt trustee-area districts in place of the current at-large voting system, or by failing to offer opposition evidence on the merits. "Conceded" where, and how? In other settings plaintiffs' counsel has himself complained volubly that he cannot get defendant to take a firm position on merits issues, such as whether voting patterns are or aren't polarized. Further, defendant's stated intention to move to a single-member system – or even its demographer's stated preference for minority-majority districts, assuming arguendo that that preference can be imputed to defendant itself – hardly constitutes a concession of illegality under either Voting Rights Act, as opposed to simply a decision that moving to single-member districts is a good thing to do. (Or, for that matter, that it's the way to avoid expensive litigation.) And as for defendant's own factual showing, defendant does not bear the burden of proof on this motion – plaintiffs do. If plaintiffs have not carried that burden, it is not required that defendant disprove plaintiffs' case at this juncture.

The Court notes that a document submitted by plaintiffs themselves demonstrates the lack of a consensus concerning the existence of past violations. (See, 1st Rafferty Dec., Exhibit 2.) Mister Phillips, defendant's clerk, offered the following comments:

> Mr. Phillips' remarks continued about the District currently being 67% majority minority with whites making up 32%. He asked how there could be racially polarized voting when the statistics say that minorities are not voting for minority candidates.... Mr. Philips continued to speak about the assumption that whites do not vote for other than white candidates saying he was of the opinion that the numbers were telling a different story.

These remarks hardly constitute a "concession" of state or federal violations.

On June 27 plaintiffs filed a third Rafferty declaration, despite having timely filed a reply brief. This is manifestly untimely and unfair. There is no warrant in the Court's rules for such a late submission, nor do plaintiffs proffer even the slightest excuse for not having submitted this material much earlier. Defendant for its part has been given no reasonable time or opportunity to review this material, object to it, or rebut it. Nor, for that matter, is the Court itself given sufficient time to review and digest this material before posting its tentative ruling. (And the inexorability of the July 5 electoral deadline would make it impractical to continue the matter for such review, objection, or rebuttal, even if the Court were otherwise inclined to tolerate this gamesmanship.) The Court simply disregards this impermissible untimely submission.

So where does all this leave plaintiffs? With almost literally no evidence at all. It is their burden to establish their case, both on the Voting Rights Act merits and on the equitableness and feasibility of the proposed remedy. They do not come close to carrying that burden.

Other Points and Concerns

Liability aside, the Court has significant concerns about plaintiffs' proposed remedy – which, it is worth repeating, would become ***the*** only basis for conducting the 2018 election if this preliminary injunction were granted.

First, the opposition declaration of professional demographer Douglas Johnson raises serious

questions about Mr. Rafferty's qualifications, data, and methodology. (Johnson Dec., ¶¶ 10-17.) These include the map's apparent failure to create a Latino-majority district, its failure to create compact districts, and its possible non-compliance with federal law on racial gerrymandering.

Second, plaintiffs appear to acknowledge that their map would require the County registrar to change at least one voting precinct boundary – an act that the registrar has so far been unwilling to perform. (See, 6-4-18 letter, p. 3 ["plaintiffs have accommodated [the registrar's] constraint, with the exception of San Pablo 106, a large precinct between San Pablo and Rollingwood"].) Because the County is not a party, the Court has no jurisdiction to order the registrar to change precinct boundaries. Thus, even if the Court were to order defendant to conduct the 2018 election as plaintiffs wish, it does not appear that defendant would be able to do so.

Third, while plaintiffs state in their opening papers that they intended to submit their proposed map for public comment, plaintiffs offer no evidence that they have actually done so. Defendant, by way of contrast, has offered opposition evidence demonstrating that it has submitted five alternative maps for public comment. (Walton Dec., ¶¶ 4-6.) The Court is highly reluctant to impose on the public a dramatic change to the current voting system, without the opportunity for public comment. Plaintiffs have offered no evidence demonstrating that any of defendant's five maps is unsatisfactory.

Finally, plaintiffs request that if their map is not used in the 2018 election, defendant should be enjoined from certifying the outcome of that election. But if the Court does not find a sufficient evidentiary showing why it should enjoin defendant from conducting that election, why on Earth would the Court be willing to preordain that that election will be an exercise in futility? Plaintiffs have not persuaded the Court that disenfranchising all voters within the District is an equitable way to address the alleged disenfranchisement of some minority voters. Nor do plaintiffs offer evidence that the trustees who would be appointed following an uncertified election would be more representative of minorities than the trustees who will actually be elected. The Court wonders how the public would react if a Latino trustee were elected in 2018, but was not allowed to serve by judicial fiat. Finally, plaintiffs have failed to address the cost of holding a special election in 2019.

As a third alternative, plaintiffs request that, if their map is not used in the 2018 election, the terms of the elected trustees should be limited to two years. The sole basis for this request is plaintiffs' speculation that the elected trustees would not perform their decennial redistricting duties in good faith. This is not a valid legal ground for granting injunctive relief. (See, *Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084 ["[a]n injunction cannot issue in a vacuum based on the proponents' fears about something that may happen in the future"].)

Evidentiary Objections

The Court rules as follows on defendant's evidentiary objections. In the future defendant shall number any evidentiary objections sequentially, for ease of reference.

1st Rafferty Declaration. The objection to the entire declaration is overruled; personal knowledge of at least a few matters may be inferred. **¶ 2**: overruled as to the authentication of

the "demand letter" attached as Exhibit 1, and as to the date defendant received the demand letter by certified mail (see Spinelli Dec., ¶ 3); sustained as to the contents of the demand letter, insofar as the declarant is impliedly alleging that the contents are true, based on a lack of demonstrated personal or expert knowledge; and otherwise sustained on the grounds stated in the objection. **¶ 3**: overruled as to the authentication of the official minutes attached as Exhibit 2, the authenticity of which defendant does not meaningfully dispute; sustained as to the declarant's characterization of those minutes. **¶ 4**: overruled as to the characterization of the Complaint, because the declarant is merely stating his intent when including the subject map within the Complaint; sustained as to the percentage figures for Latino voters, based on a lack of demonstrated personal or expert knowledge; sustained as to the subject map included within the body of the declaration, insofar as the declarant is impliedly alleging that the map is accurate, based on a lack of demonstrated personal or expert knowledge; sustained as to the allegations that the county registrar may have "reprecincted" parts of San Pablo, Hercules, and Briones, which allegations appear to be based on hearsay for which no hearsay exception has been established; and sustained as to the allegation concerning "the contiguity of the precincts," on all grounds stated in the objection and on the additional ground that the allegation is unintelligible. **¶ 5**: sustained as to the "draft map" attached as Exhibit 3, for lack of proper authentication; sustained as to the percentage figure for Latino voters, which appears to be based on hearsay for which no hearsay exception has been established; and sustained as to the criticism of "Area 4" and the characterization of "Area 5," based on a lack of demonstrated personal or expert knowledge. **¶ 6**: overruled as to the authentication of the email attached as Exhibit 5 (not 4), and as to the date of that email; sustained insofar as the declarant is impliedly alleging that the contents of the email are true, based on a lack of demonstrated personal or expert knowledge; and sustained as to the declarant's argumentative and superfluous characterization of the email. **¶ 7**: overruled as to the authentication of the letter attached as Exhibit 4 (not 5), and as to the date of the letter; sustained insofar as the declarant is impliedly alleging that the contents of the letter are true, based on a lack of demonstrated personal or expert knowledge; and sustained as to the declarant's argumentative and superfluous characterization of the letter. **¶ 8**: sustained on the ground that the allegation concerning video recordings is unintelligible — footnotes 2 and 3 of the memorandum filed on June 8 do not reference video recordings; sustained as to the "attempted" transcription of the video recordings by the declarant, which would appear to be hearsay for which no hearsay exception has been established.

2nd Rafferty Declaration. The objection to the entire declaration is sustained; this is an expert witness declaration for which no adequate foundation has been laid. The declarant does not adequately establish any of the following: (1) his qualifications for testifying as an expert in this area; (2) the materials on which he relied; (3) his methodology, and; (4) the reasoning by which he reached his opinion that plaintiffs' proposed map provides minorities with "the best chance at an equal opportunity to elect candidates of their choice …"