

**FINAL REPORT**  
**ELECTIONS REVIEW AD HOC COMMITTEE (ERC)**  
**DECEMBER 9, 2019**

**BACKGROUND**

In April 2018, the “Coast Committee for Responsive Representation” (CCRR), sent a letter alleging that the City of Fort Bragg violated the California Voting Rights Act of 2001 (CVRA, California Elections Code §§ 14025-14032). The CVRA protects the voting rights of minorities from dilution and can require communities to form districts when there is “racially-polarized<sup>1</sup>” voting.

That allegation was based on a theory that a lack of Latinos running or winning a seat on the Fort Bragg City Council happens because voting at large causes racially polarized voting in favor of the non-Hispanic majority.

The ERC would like to point out that the statement is incorrect. Historically Latinos have indeed run for Fort Bragg City Council seats during elections in 2002, 2004, 2006, and 2018. Brian Baltierra served from 2002 to 2006.

To enforce the CVRA, the plaintiff must demonstrate that Fort Bragg DOES indeed have racially-polarized voting with respect to City Council elections. In essence there is one test in California:

- *Do the voters who are not in the protected class vote in a bloc to defeat the preferred candidates of the protected class?*

This test is significantly broader than the test at the federal level under the Voting Rights Act of 1965.

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<sup>1</sup> *Racially polarized voting exists when voters of different racial or ethnic groups exhibit very different candidate preferences in an election. It means simply that voters of different groups are voting in opposite directions, rather than in a coalition.*

The City of Fort Bragg hired a professional demographer consultant through the National Demographics Corporation (Douglas Johnson, president) to provide demographic and election history profiles, and to examine the claim of “racially-polarized voting” in Fort Bragg City Council elections.

The demographer’s findings provided the following conclusions:

- There is no evidence of racially polarized voting in past elections.
- Dividing the city into five separate districts could not produce a majority bloc of Latinos or any one ethnic group.
- Using surnames is not a reliable way to identify minorities within district lines.
  - For example, Mayor Lee may be grouped with Asians, Portuguese may be grouped with Latinos, and one of the spouses in a mixed Latino/Caucasian marriage will be misidentified.

A Settlement Agreement was drawn up whereby the CCRR agreed to rescind their letter if the City, which had already contracted for a demographic analysis, further agreed to:

1. **Cover candidate statement fees**, making it less expensive for candidates to run for election.
2. **Promote civic engagement** by doing more public outreach to include providing Spanish/English translations for public notices and signs.
3. **Establish a committee** to review electoral systems, with the possibility of forming a charter city, in time to recommend to the City Council ballot initiatives for the 2020 election. (The ERC and this final report fulfills this obligation.)

Specifically, the ERC was asked to take on the following tasks:

- Research and evaluate different electoral systems
- Evaluate options available to both general law and charter cities; opportunities and limitations of each
- Recommend a preferred electoral system

- Recommend the benefits and limitations of a **charter city**, and (if appropriate)
- Suggest a draft charter city ordinance in time for the November 2020 City Council election ballot

**The Elections Review Committee (ERC) was formed** soon after the settlement agreement and met several times between January and July 2019. Members conducted extensive research and interviewed various city representatives and others for more information.

In August 2019, the ERC presented a status report to the City Council, then hosted three public forums at different venues around the city, varying the dates, hours, and days of the week, hoping to accommodate the public interested in the topic.

The forums were publicized on posters and in the Fort Bragg Advocate News in both English and Spanish. A total of eight people attended the three forums, but there was lively discussion and the committee received good feedback on how to proceed with recommendations.

The number of those attending may reflect the concern, or lack thereof, in the public mind of those in Fort Bragg regarding this election issue and the concerns raised by the CCRR.

**Below is a summary of the ERC findings and recommendations for City Council action comparing:**

- (A) Election Options (districting vs. at large), and**
- (B) Electoral Systems (vote counting methods)**

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## A. ELECTION OPTIONS IN FORT BRAGG

- I. **At Large Voting:** The entire city is one voting bloc. All voters can vote on all candidates and get one vote for each available City Council seat. Candidate(s) with the most votes win. This is the current voting system in Ft. Bragg.
- II. **District Voting:** Each “**voting district**” is represented by one seat on the City Council. The city would be divided into five districts based on population only (not based on number of registered voters). Both candidates and voters must reside in that district. Voters can only vote for candidates running in their district.

### **Facts to Consider before making a decision:**

1. Currently no one Councilmember represents the interests of a voting bloc or neighborhood—all Councilmembers decide on city issues as a whole. Is this preferable, or should there be a change?
2. If districting were implemented, each of five districts would have to put up a candidate to run for City Council when the incumbent’s term expires. If no candidate runs for a district, the Mayor appoints a representative to serve. Such appointment requires no further election.
3. Without implementing districts, the City will still be subject and vulnerable to claims of CVRA violation. Plaintiff(s) may collect reasonable attorney’s fees and litigation expenses. So far, no city has prevailed in court fighting CVRA claims.

**The City’s best defense against claims of CVRA violation is to ensure fair elections, avoid dilution, and to be vigilant regarding such issues, particularly racially polarized voting. To this end, the ERC notes the following:**

- a. A professional demographer concluded that there is no evidence of racially-polarized voting, and that it is not possible to develop/establish a district in this city with a majority of Hispanic voters.
- b. The demographer concluded that the highest concentration/percentage of Hispanic voters that could be grouped into any one district in Fort Bragg would be 25%. Obviously, creating a 75% or greater non-Hispanic majority in each district will not remove racial polarization if it exists. See below under “Further Considerations about Districting” for more information.
- c. The City has made recent changes to encourage more diversity for City Council candidates and minority involvement in City government.
  - o Candidate statement fees are covered by the City
  - o City Council and Planning Commission agendas and public hearing notices are now published in both Spanish and English

### **Further Considerations about Districting**

*There is an assumption that districting can create a voting bloc with a majority of Hispanic voters who might want to nominate a Hispanic candidate and win the seat in their district. In many communities that might work. But the opposite seems true in Fort Bragg.*

*For example, the CVRA complaint letter claimed that the Latino or Hispanic Citizen Voting Age Population in Fort Bragg is concentrated in the **southern half of the city**, which they also claimed to be nearly four times greater than it is in the northern half of the City.*

*Even if those claims are true, district voting requires the city to be divided into **five** districts, not two; each district would contain about 1450 residents including children and other non-voting persons.*

*The demographer said the area with the highest potential Hispanic voting bloc is actually in the Northwest fifth of the city near Glass Beach. A voting bloc in the*

*southern half of the city would actually be divided into 15-18% minority voters, each voting for one candidate against an 82% or greater non-Hispanic majority.*

## **B. ELECTORAL SYSTEMS – SHOULD THE CITY CHANGE, AND WHAT IS REQUIRED IN ORDER TO CHANGE?**

The Elections Review Committee studied the three most popular types of electoral systems and how they work.

- A. **Plurality Voting:** The City of Fort Bragg currently uses “Plurality” voting in its at-large approach, where the candidate(s) with the most votes wins.
- B. **Cumulative Voting:** Like plurality voting, voters get as many votes as there are open seats. However, under cumulative voting, voters may cast ALL of their votes for a single nominee when there are multiple openings. The candidate(s) with the most votes wins.
- C. **Ranked Choice Voting (RCV):** Voters rank candidates 1-2-3, etc. according to preference. Winners must have a majority of votes, so basically (if there are more candidates than seats) the last place candidate is eliminated and the 2<sup>nd</sup> rank choice for those voters (voting for the last place candidate as rank 1) is used. If still no majority, the same procedure is repeated until a clear majority is achieved (>50% for 1 opening, >25% for 3 openings, etc.).

### **FALSE ASSUMPTIONS!**

The CCRR Settlement Agreement implies that switching election systems would satisfy the CVRA. This is false, and has been tested in court.<sup>2</sup>

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<sup>2</sup> *The ERC learned of communities such as Santa Clara and Mission Viejo that tried to avoid districting by becoming Charter Cities and switching election systems to Ranked Choice Voting and Cumulative Voting, respectively. However, the court did not agree and forced these communities to form voting districts anyway.*

## RECOMMENDATIONS REGARDING SWITCHING VOTE COUNTING SYSTEMS

If switching election systems will not satisfy the CVRA test, the ERC advises the City Council not to pursue the subject any further for this purpose.

If, however, the City Council or the community wishes to explore running a different election system, not to satisfy the CVRA, but because of desire to establish a more democratic and fair voting method, then the ERC has learned the following:

1. Before the City can run elections using a system other than plurality voting, the City voters will first have to pass a ballot initiative with the proposal to become a **Charter City**, then pass a ballot initiative to switch election systems. (No election is needed to switch to districts.)
  - a. A new City Charter can be brief, only dealing with adopting new election systems. Or it can be more detailed, allowing for other variations of state law as allowed.
2. If the voters pass initiatives for both becoming a Charter City and employing a new system of vote counting (other than plurality), Mendocino County has new voting machines that can handle the changes.
  - a. However, they said the software for employing Ranked Choice Voting, for example, will cost an estimated \$300,000 (the cost can be shared with other communities wishing to use RCV within the County). Note the County cautioned there also will be a 'special handling charge' for a specialist to run the software at each election.

*Note: Regardless of City Council's decision, voters registered in the City of Fort Bragg can propose the charter city ballot initiative, as well as a ballot initiative to change election systems.*

## FINAL RECOMMENDATIONS FROM THE ERC

The ERC commends the City of Fort Bragg for adopting several great policies in their settlement agreement. These and other measures will better ensure fair voting happens in our community. The ERC recommends as follows:

1. **Maintain the Current “At Large” Voting System**: The ERC recommends the City Council **not** change the current “at large” voting system at this time. It has been shown that the City of Fort Bragg population cannot be divided evenly to create even one majority Hispanic voting bloc out of five potential districts. And in fact, forming districts may exacerbate voting fairness by limiting voter choices to one council seat. The ERC recognizes there are many more factors influencing voter choices than race, color, or language, and the City should continue to give voters five choices instead of one.
2. **Maintain the “Plurality” Vote Counting Method Unless Voters Elect to Change**: A new vote counting system would not satisfy the CVRA and two ballot initiatives would have to pass; first to change Fort Bragg to a Charter City, and second to adopt a new voting system (e.g., Cumulative or Ranked Choice Voting). So unless the City Council wants to change for a reason *other* than to satisfy the CVRA, the Council should decline the option to change voting systems and employ more immediate measures to enfranchise Hispanic voters (such as described below).
3. **Periodically Contract with a Demographer**: A professional demographer looked for signs of racially polarized voting in past elections. A new census is planned in 2020. The ERC recommends the City contract with a demographer next year and again at least every 10 years with the U.S. Census. The City should remain vigilant and watch for warning signs of racially polarized voting.
4. **Advertise the New Policy of No Candidate Statement Fees for City Council Candidates**: The ERC acknowledges this will be a **huge step** in leveling the playing field for future City Council candidates in all socio-economic categories. By reducing the fundraising burden for candidates, the

City may draw out more of the population who are without the means to run for office. The ERC recommends this policy be advertised in election years.

5. **Commit to More Public Outreach for Inclusion of All Voters:** The City has agreed to provide more types of forms, publications, and notices in two languages, to increase awareness of City government. This is a great idea toward inclusion and ensures that everyone has the fundamental right to enjoy a fair election process.
  - a. The ERC recommends the best way to empower Latinos to be interested in voting and running for office, is to register more eligible Latino **VOTERS**.
    - The ERC recommends the City Council pursue an agenda to increase local Latino involvement in City elections. Possible activities include setting up a voter registration booth at all Latino public events, reaching out to the Latino Coalition and adding a link to their webpage on the City website during election years, and other outreach measures.