



2/16/2016

**E1a**

## City of San Juan Capistrano Agenda Report

TO: Honorable Mayor and Members of the City Council

FROM: Jeffrey Ballinger, City Attorney *mm for SB*  
Ben Siegel, City Manager *BS*

DATE: February 16, 2016

SUBJECT: Authorize Staff to Commence Process to Transition from At-Large Elections to By-District Elections Consisting of Either Five Districts or Four Districts and an Elected Mayor for the November 8, 2016 Municipal Election; and Authorize the City Manager to Enter into Agreement with National Demographics Corporation

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### RECOMMENDATION:

By motion,

That the City Council:

- 1) Authorize staff to commence the process to transition from at-large elections to by-district elections for the November 8, 2016 election, consisting of either five (5) districts or four (4) districts and an elected Mayor; and,
- 2) Bring back to the City Council for approval a mapping process that includes no less than three (3) community forums; and,
- 3) Authorize the City Manager to enter into an Agreement with National Demographics Corporation to provide demographic services in connection with the establishment of by-district elections in an amount not to exceed \$50,000.

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### EXECUTIVE SUMMARY:

The City Council, upon receipt of correspondence from Shenkman & Hughes, dated December 16, 2015, and after consultation with the City Attorney, has determined that it is in the City of San Juan Capistrano's best interest to transition the City Council's election process from at-large elections to by-district elections for the November 8, 2016, Municipal Election. Under a recent amendment to the California Government Code, the City Council has authority to adopt an ordinance requiring that the City Council be elected by district, or by district with an elective mayor, without submitting the ordinance to the voters for approval, if the ordinance is enacted in furtherance of the purposes of the California Voting Rights Act (Elections Code §§ 14025, *et seq.*; hereinafter the "CVRA").

Staff is recommending that the City Council authorize staff to commence the process of transitioning the council election process to by-district elections, including establishing a process for determining the district boundaries, which includes no less than three (3) public forums to engage the voters of the city in the district boundary mapping process. Additionally, staff is requesting that the City Manager be authorized to enter into an Agreement with National Demographics Corporation, in an amount not-to-exceed \$50,000, in order to assist staff in establishing and implementing a community engagement process, providing demographic support, and preparing district maps to be presented to the City Council for consideration.

DISCUSSION/ANALYSIS:

The members of the City Council are currently elected through an at-large election system, which means that the electors from the entire city vote for the council members. In December 22, 2015, the City Council received correspondence from Shenkman & Hughes, alleging that the City of San Juan Capistrano's at-large election system has resulted in "racially polarized" voting, which is defined in the CVRA as, "voting in which there is a difference...in the choice of candidates of other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate." Elections Code § 14026(e). The correspondence further stated, among other things, that if the City Council did not voluntarily change its election system to a by-district system, a lawsuit would be filed against the City under the CVRA. In a by-district election system, the City Council candidate must reside within an election district that is a divisible part of the City and is elected only by voters residing within that election district. Although the City Council had agendized the matter in closed session and representatives from Shenkman & Hughes were aware that the matter was under review by the City Attorney, on January 27, 2016, an action was filed against the City by Shenkman & Hughes on behalf of the Southwest Voter Registration Education Project and two (2) individual residents alleging that the City's at-large election system violates the CVRA.

According to recent census data Latinos comprise roughly 40% of the population of San Juan Capistrano. Additionally, for at least the last five (5) elections cycles, no Latino has been elected to the San Juan Capistrano City Council. While not dispositive, these facts are relevant to determining whether racially polarized voting exists.

There have been a number of cities throughout the state, including in Orange County, faced with similar claims of racially polarized voting in violation of the CVRA, and threats of litigation if the city does not voluntarily change its election system from an at-large system to a by-district election system. Given the low threshold which must be met in order to establish a valid claim under the CVRA and the cost to the city of defending such actions, most cities have elected to initiate the process to change from an at-large to a by-district election system in order to avoid costly litigation.

Prior to January, a city could not change its election system from at-large to by-district elections without approval by the voters of the city. Effective January 1, 2016, however, Government Code § 34886 authorizes a City Council of a city with a population of less than 100,000 people to adopt an ordinance that requires the city council to be elected by district or by district with an elective mayor without being required to submit the ordinance to the voters for approval, provided that the ordinance include a declaration that the change in the voting method is being made in furtherance of the purposes of the CVRA. If the City transitions to a by-district election system, that transition cannot result in reducing the term of any incumbent City Council member. (Government Code §34873). Thus, the transition process will include not only the drawing and establishment of district boundaries, but also the sequencing of the elections so that an incumbent's term is not adversely affected.

After discussing the letter from Shenkman & Hughes in closed session with the City Attorney, the City Council directed that the City Attorney bring this matter back to the City Council for consideration in open session. The City Council may choose one of the following options:

- 1) Direct the staff to commence the process to change the City Council election system from at-large to by-district elections for the November 8, 2016, Municipal Election, with the creation of five (5) districts;
- 2) Direct the staff to commence the process to change the City Council election system from at large to by-district elections for the November 8, 2016, Municipal Election with the creation of four (4) districts with an elective Mayor; or
- 3) Take no action to change the city council election system.

If the City Council determines to take either options 1 or 2 above, staff recommends that the process of creating the district maps to present to the City Council for approval include no less than three community forums so that the voters of the City can have meaningful input in the district mapping process. Once a mapping process is developed, staff can bring that process back to the City Council for approval.

Staff also recommends that the City Manager be authorized to enter into an Agreement with National Demographics Corporation ("NDC") to assist the City in the transition process. NDC has substantial experience in assisting cities throughout the state with the transition from at-large to by-district elections. Closer to home, NDC assisted the Capistrano Unified School District in moving from at-large to by-district elections, and, therefore, is very familiar with the demographics of the City. Attached to this staff report is the Curriculum Vitae of NDC President Douglas Johnson (Attachment 1), who would be primarily responsible for working with staff and the City Attorney on this process.

Although Mr. Johnson estimates that the cost to assist with the districting process could run close to \$39,000, depending on the process ultimately selected by the City Council, staff is recommending that the City Manager be authorized to enter into an Agreement with NDC for an amount not-to-exceed \$50,000 to account for any contingencies in the work to be performed.

ATTACHMENTS:

Attachment 1 - Curriculum Vitae of Douglas Johnson, National Demographics Corporation.

## Douglas Mark Johnson

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### Employment

President, National Demographics Corporation, 2006 – present.  
Senior Analyst, National Demographics Corporation, 2001 – 2006.  
Fellow, Rose Institute of State and Local Government, 2001 – present.  
Project Manager and Senior Manager at three internet startup companies, 1999 - 2001.  
U.S. Representative Stephen Horn, Legislative Director and System Manager. 1993 – 1997.  
Coro Foundation, Fellowship in Public Affairs. 1992 – 1993.  
Rose Institute for State and Local Government, Student Manager. 1989 – 1992.

### Education

Claremont Graduate University, Ph.D. in Political Science, 2015. Dissertation: "Independent Redistricting Commissions: Hopes and Lessons Learned."  
UCLA Anderson Graduate School of Management, MBA, 1999.  
Claremont McKenna College, BA in Government (Political Science), 1992.

### Academic Honors

Graduated Cum Laude from Claremont McKenna College.  
Phi Beta Kappa. Philip Roland Prize for Excellence in Public Policy.

### Publications and Articles

Christian Science Monitor "Let the public help draw voting districts," October 25, 2013.  
New York Times, "The Case for Open Primaries," February 19, 2009.  
Los Angeles Times Opinion Articles:  
"A neighbor's help on redistricting" June 24, 2007.  
"A Trojan horse primary for the GOP" February 25, 2007.  
"Where a porn palace stood" (article on redevelopment), July 30, 2006.  
Fresno Bee Opinion Article: "The Poison Handshake" June 15, 2004.  
Redistricting in America. Rose Institute of State and Local Government, 2010.  
Restoring the Competitive Edge: California's Need for Redistricting Reform and the Likely Impact of Proposition 77. Rose Institute of State and Local Government, 2005.  
"Competitive Districts in California" Rose Institute of State and Local Government, 2005.  
Latinos and Redistricting: "Californios For Fair Representation" and California Redistricting in the 1980s. Rose Institute of State and Local Government, 1991.

### Speaker or Panelist

California School Board Association Annual Education Conference panelist: "The California Voting Rights Act: What Board Members Must Know." December 4, 2015.  
Associated Cities of California – Orange County, Keynote Speaker, Newly Elected Officials' Reception and Dinner, "The California Voting Rights Act," January 29, 2015.  
California League of Cities, City Manager Department, 2015 Department Meeting: "Opportunity to Engage Residents: The California Voting Rights Act." January 29, 2015.  
California League of Cities, City Clerk Department, 2014 Annual Meeting: "Whose Line Is It Anyway: Making the transition from at-large to by-district elections." September 3, 2014.  
National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2007 Spring Forum, "The Arizona Independent Redistricting Commissions' experiences with the first-ever independent redistricting."  
National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2008 Spring Forum, "Communities of Interest In Redistricting: A Practical Guide."

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National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2009 Fall Forum, "The Key to Successful Redistricting."  
National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2010 Spring Forum, "Communities of Interest in Redistricting: A key to drawing 2011 plans (and for their defense)."  
National Conference of State Legislatures, Redistricting and Elections Standing Committee: 2011 Winter Forum, "Citizen Voting Age Data from a line-drawer's viewpoint."  
Luncheon Keynote Speaker, Santa Barbara's Channel Cities Club, "California's next experiment: independent, public redistricting," January 18, 2011.  
Annual Conference, Arizona League of Cities and Towns, Presenter at "Redistricting Law and the Voting Rights Act: What It Means for Your City or Town in 2011," August 25, 2010.  
Redistricting, The 2010 Census, and Your Budget, Sponsored by the Rose Institute of State and Local Government, California League of Cities, October 15, 2009.  
Arizona Election Law 2010 Continuing Legal Education Conference, "Communities of interest and technology in redistricting," sponsored by the Arizona State Bar Association, March 2010  
California's New Independent Redistricting Commission, sponsored by the Irvine Foundation and the California Redistricting Collaborative, December 15, 2009  
Tribal Association of Sovereign Indian Nations (TASIN) Legislative Day 2009, "The 2010 Census and 2011 Redistricting in California," December 2, 2009.  
California School Board Association, "Litigation Issues and the California Voting Rights Act," December 4, 2009.  
California Latino School Boards Association, "Introduction to the California Voting Rights Act," August 20, 2009.  
Building a National Reform Movement, Salt Lake City, Utah, 2006, conference on redistricting reform hosted by the League of Women Voters, Campaign Legal Center, and The Council for Excellence in Government  
Texas Tech University, "A Symposium on Redistricting," May, 2006  
California League of Cities, "Introduction to the California Voting Rights Act."  
Voices of Reform, a project of the Commonwealth Club of San Francisco: multiple forums on redistricting and / or term limits, 2006 – 2007  
Classroom speaker at Pepperdine University, the University of La Verne, Pomona College and Claremont McKenna College

### **Racial Bloc Voting Consulting**

Extensive experience with all racial bloc voting statistical methods: homogeneous precinct analysis, Ordinary Least Squares (OLS) regression, Weighted OLS, Seemingly Unrelated Regression (SUR) and EZI ecological inference analysis.

Attorney-client privilege bars the listing of most of NDC's specific clients, but NDC has performed racial bloc voting analysis for clients of the following law firms:

Law firm of Nielsen, Merksamer, Parrinello, Gross & Leoni:

- Compiled and analyzed data for over **120 different jurisdictions** facing voting rights litigation;

Law firm of Lozano, Smith:

- Performed/performing analysis of racial bloc voting in 4 separate jurisdictions.

Law firm of Atkinson, Andelson, Loya, Ruud & Romo:

- Performed/performing on analysis of racial bloc voting in 3 separate jurisdictions.

Law firm of Dooley, Herr & Peltzer

- Performed racial bloc voting analysis of 7 elections in 4 different election years. Also advised attorneys on rebuttal of plaintiff's racial bloc voting analysis.

# Douglas Mark Johnson

## Districting/Redistricting Clients

### States

Arizona Independent Redistricting Commission  
Florida State Senate  
New Jersey Redistricting Commission

### Counties

Kings	San Bernardino	Yuma
Los Angeles	San Diego	
Merced	San Mateo	

### Cities

Alhambra	Hemet	Peoria
Anaheim	Highland	Reedley
Bellflower	King City	Riverbank
Buckeye	Los Banos	San Diego
Buena Park	Madera	Sanger
Ceres	Meniffee	Santa Barbara
Compton	Merced	Stockton
Corona	Mesa	Surprise
Elk Grove	Modesto	Tulare
Escondido	Moreno Valley	Turlock
Firebaugh	Oakland	Visalia
Fowler	Palmdale	Whittier
Fullerton	Parlier	Wildomar
Glendale	Pasadena	

### Community College Districts

Antelope Valley	Rancho Santiago
Central Arizona College	San Diego
Cuesta	Santa Clarita
Glendale	Sierra
Grossmont-Cuyamaca	Southwestern
MiraCosta	

### Water, Irrigation & Conservation Districts

Alta Irrigation	San Bernardino Water
Fresno Irrigation	Santa Clara Valley Water
Imperial Irrigation District	Three Valleys Municipal Water
Mojave Water Agency	Upper San Gabriel Valley
Palmdale Water	Western Municipal Water
Rowland Water	Winton Water

### County Offices of Education

Fresno County	San Luis Obispo County
San Diego County	Tulare County
San Joaquin County	Tuolumne County

## Douglas Mark Johnson

### School Districts

Alpine Union	Firebaugh-Las Deltas Unified	Pacific Union
Alpine Union Elementary	Fresno Unified	Panama Buena Vista
Alta Vista	Fullerton Union High	Pasadena Unified
Bakersfield City Schools	Glendale Unified	Pixley Union
Bonsall Union Elementary	Greenfield	Pleasant View
Borrego Springs Unified	Grossmont Union High	Pomona Unified
Buena Park Elementary	Hughson Unified	Porterville
Burton Elementary	Jamul-Dulzura Union Elementary	Poway Unified
Cajon Valley Union	Julian Union Elementary	Ramona Unified
Cajon Valley Union Elementary	Julian Union High	Rancho Santa Fe Elementary
Calistoga Joint Unified	Kerman Unified	Richland School District
Capistrano Unified	Kern High	Riverbank
Capistrano Unified School District	Keyes Union	Riverdale Unified
Cardiff Elementary	Kings Canyon Unified School District	Salida Union
Carlsbad Unified	Kings River	San Dieguito Union High
Caruthers	Kingsburg Elementary	San Marcos Unified
Cayucas	Kingsburg High	San Pasqual Union Elementary
Centinela Valley	La Mesa-Spring Valley	San Ysidro Elementary
Central Unified	Lake Elsinore	Santee Elementary
Centralia Elementary	Lakeside Union Elementary	Selma Unified
Chula Vista Elementary	Lakeside Union School	Solana Beach Elementary
Chula Vista Elementary	Lancaster Elementary	South Bay Union
Clay Elementary	Lemon Grove Elementary	Spencer Valley Elementary
Clovis Unified	Lindsay Unified	Strathmore Elementary
Coalinga-Huron	Lucia Mar	Sundale Union Elementary
Coronado Unified	Madera Unified	Sweetwater Union High
Dehesa Elementary	Magnolia Elementary	Tulare City Elementary
Del Mar Union Elementary	Merced Union High School District	Tulare City High
Dinuba Unified	Modesto City Schools	Tulelake
Eastern Sierra Unified	Modoc Unified	Turlock Unified
Eastside Union Elementary	Monson Soltana	Twin Rivers Unified
Elk Grove Unified	Morgan Hill Unified	Vallecitos Elementary
Encinitas Union Elementary	Mountain Empire Unified	Valley Center Pauma Unified
Escalon Unified	Napa Valley Unified	Visalia Unified
Escondido Union Elementary	National Elementary	Vista Unified
Escondido Union High	Newhall Elementary	Walnut Valley Water
Exeter Elementary	Newman Crows Landing	Warner Unified
Exeter High	Oak Grove Elementary School District	Washington Union
Exeter Unified	Oceanside Unified	Waterford Union
Fallbrook Union Elementary		Whittier Union High
Fallbrook Union High		Woodlake Union



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### Other Special Districts

Jurupa Community Service District

Kings River Conservation District

Tulare Health Care District

Westside Community Health Care District