

# SCOTT J. RAFFERTY

ATTORNEY AT LAW

1913 WHITECLIFF COURT  
WALNUT CREEK CA 94596

(202)-380-5525  
RAFFERTY@GMAIL.COM

April 14, 2020

President Chris Clark  
Trustees of Folsom-Cordova USD  
c/o Mr. Paul Gant, Counsel  
via Electronic Mail

Dear President Clark and Trustees:

I repeat my hope that the trustees and your families remain in good health.

## COMMENTS ON ITEM VII.

Due to the stay-home order, I will not attend any physical meeting, nor will I advise anyone else to do so. FCUSD is the one of the only school districts in the state still conducting physical meetings. It is not clear that any written remarks will be distributed, considered or even made part of the record.<sup>1</sup> Even if you hold the hearing as promised, you have created conditions that make any public comment unlikely.

## COMMENTS BEFORE CLOSED SESSION

The evidence of Latino voter dilution is overwhelming, as is the history of inequalities within the District. It has been the Board's responsibility, without any petition from us, to create trustee areas for almost two decades. The Governor's order may effectively immunize you, but it neither excuses nor justifies the conduct of unlawful election in November. If you conduct an at-large election in November, you will be violating the oath you took to uphold the laws of this State. Next year, the Board will be called upon to make very difficult choices, reflecting long-term economic and curricular impacts of the coronavirus. If you abandon your commitment to comply with the CVRA, next year's Board will lack the legitimacy of a lawful, democratic election.

It is hard to believe that the Governor would have closed the courts to CVRA claims had he known of the barriers that FCUSD has imposed on participation or of its complete lack of outreach. As detailed in the cure-and-correct letter, FCUSD has rejected transparency, outreach, and collaboration at every opportunity. Consider the

---

<sup>1</sup> Based on the last meeting, it does not appear that they will be posted, which is clearly the best practice. <https://edsources.org/2020/california-school-board-meetings-go-virtual-but-not-without-obstacles/627209>

lack of any reference to the CVRA on the website, the calling and un-calling of special meetings with little notice, your attorney's disparagement of a speaker who is one of the region's most distinguished Latino activists, the blatantly illegal demand that speakers publish their address and phone number. All disrespect the two most fundamental rights of your constituents - to speak before the Board acts and to elect trustees according to the law.

#### COMMENTS ON ITEM IX

Although three trustees appeared to enthuse over trustee areas, it became clear from the start that the administration (and some trustees) never regarded the resolution of intent was anything more than a device to delay and then to frustrate access to the courts. Within a week, your attorney was demanding that the safe harbor be extended for a full 90 days, without regard to the duration of the stay-home order, because he needed an absolute guarantee that plaintiffs could not enforce the CVRA in time for a lawful election in November. As my letter to your attorney of March 24, 2020, we offered to delay hearings and even to discuss a court-approved order authorizing an at-large election in 2020. (It is attached for your convenience, and my clients waive any expectation of settlement confidentiality.) There was no response and no negotiation.

This scheme could never have succeeded had the Board notified the public of their closed-session discussion, so that advocacy for neighborhood elections could be made on the District's You-Tube account. The opportunistic adoption of the resolution of intent has clearly prejudiced my clients and other advocates of trustee areas.

#### COMMENTS ON ITEM X (if hearing is held)

As Dr. Johnson recognizes, community of interest is a traditional criterion for dividing trustee areas. But the principle requires respecting them in a manner than minimizes their division. Compactness is also a desired criterion, not one that can be disregarded in favor of an unstated or impermissible "policy." In each case, Dr. Johnson proposes the opposite of what the law is generally understood to require, deliberately dividing attendance areas and other communities of interest in order to homogenize the districts. He calls the results "non-compact" but "policy-based." This approach deprives economically disadvantaged and chronically underrepresented neighborhoods a dedicated representative. It typically injects just enough white Anglo voters in each district to preserve minority voter dilution and the winner-take-all quality of at-large elections. For example, he divided El Cerrito High's feeder area into three trustee areas, so that El Cerrito could continue to elect three of West Contra Costa

USD's trustees. The county committee rejected his map and the court adopted plaintiff's map with minor accommodations.

The Board should draw trustee areas through a lens of equity – one that empowers the economically disadvantaged and chronically underrepresented neighborhoods. Due to legacies of discrimination, race and ethnicity often correlate with these factors, as well as with communities of interest based on limited English proficiency or immigration status. Race should only be considered in conjunction with these additional socio-economic factors that indicate special need and lack of political influence.

Sincerely,

A handwritten signature in cursive script that reads "Scott Rafferty".

Scott J. Rafferty