

Report for Phase I:

Alternative Governance Options for Consideration, Future Village of Port Chester Board of Trustee Elections

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Executive Summary

My assessment of governance alternatives that are likely to provide Hispanics with an opportunity to elect candidates of choice is preliminary at this stage and will require additional research to draw more definitive conclusions. In this first phase of the project, I have simply compared the percentage Hispanic of the electorate to the thresholds of exclusion associated with each of the possible alternatives. (The threshold of exclusion is a mathematical calculation indicating the percentage of the electorate that a minority group must exceed to be guaranteed a seat on a governing board). My tentative conclusions regarding various options are as follows:

At-large electoral system: While a traditional at-large electoral system would not provide Hispanics with an opportunity to elect candidates of choice, modifying the at-large system with cumulative voting (as is currently the case), as well as limited voting (with the vote limited to one) or ranked choice voting, would offer Hispanics an opportunity to elect their preferred candidates. The number of seats in the modified at-large system could increase, remain the same, or decrease to five seats, and possibly even to four seats and still provide Hispanics with an opportunity to elect candidates of choice.

Districted or mixed electoral system: The impact of a districted or mixed electoral system is difficult to determine without actually drawing some illustrative districts. It was possible to draw one solidly Hispanic district in a six-district map when this was attempted ten years ago. With the increase in Hispanic population, it will certainly be possible to draw at least one such district now as well. If a mixed system were to be adopted and the number of districts to be drawn were fewer than six, it would require a drawing exercise to determine how many districts would have to be incorporated into the system in order to ensure that at least one district would provide Hispanic voters with an opportunity to elect their preferred candidate.

Staggered terms: Staggering trustee terms in a manner that would mean that less than four seats were up for election (for example, staggering the terms so that two members were up every year, as was the case prior to 2010) would mean that Hispanic voters would no longer meet the threshold of exclusion, at least not without moving to a districted or mixed electoral system. However, if the number of trustees were increased from six to eight, it is possible that terms could be staggered, but only by electing four members each across two cycles.

Election date: Moving the trustee elections to November would only increase the Hispanic proportion of the electorate if the elections were held in presidential election years and this would require extending trustee terms of office from three years to four years. This is because, in elections held in even years when federal and state offices other than the president were on the ticket, Hispanic turnout is lower (and about comparable to what it is currently in trustee elections). Hispanic turnout in elections held in November during odd-years is lower still.

This tentative assessment of governance alternatives will be elaborated upon once additional research has been completed. I will be conducting an analysis of voting patterns by race/ethnicity in phase II of the project which will provide me with more information on the level of Hispanic cohesiveness and the degree of white crossover voting for Hispanic-preferred candidates that might generally be expected. In phase III, I will be drawing illustrative minority districts to determine what districted and mixed system configurations are likely to provide Hispanics with an opportunity to elect their preferred candidates.

I. Introduction

As part of a consent agreement signed in 2009, the Village of Port Chester maintained its at-large system for electing its six-member Board of Trustees but modified it with cumulative voting. Prior to the decree, the Village elected the six trustees in staggered three-year terms, with two members running every two years in a traditional at-large system. In order to provide Hispanics with the opportunity to elect their preferred candidate (or candidates), the staggered terms were eliminated and voters were given six votes that they could spread over six candidates or cumulate on a smaller number of candidates, or even “plump” all six votes on a single candidate. This change was accompanied by a voter education program that, based on an exit poll conducted during the first election to use cumulative voting, was successful. As a result of this change in the voting rules, the first Latino member of the Board, Luis Marino, was elected in the June 2010 contest and re-elected in March 2013 and March 2016.

The consent decree expired in June 2016 and the Board is now faced with the decision of whether to retain the current voting system – an at-large electoral system modified with cumulative voting – or adopt another electoral system. In at least some respects, the relevant conditions have changed since the court approved the cumulative voting system as an appropriate remedy for the Voting Rights Act violation it held existed. The Hispanic population has grown markedly. In 2000, Hispanics constituted 46.2 percent of the total population, 43.4 percent of the voting age population and 21.9 percent of the citizen voting age population.¹ According to the 2010 census, Hispanics comprised slightly over 59 percent of the total population and 56.7 percent of the voting age population. The American Community Survey, the

¹ United States v. Village of Port Chester, 704 F. Supp. 2d 411, 419-420. Plaintiff’s expert demographer estimated the Hispanic citizen voting age population to be 27.5 percent in 2006.

only source of citizenship data now produced by the U.S. Census, estimates that as of about 2015, 40.7 percent of the citizen voting age population of the Village of Port Chester was Hispanic (and 63.8 percent of the total population and 60.9 of the voting age population was Hispanic). Table 1 reports the results of the 2010 decennial census as well as the most recent ACS estimates.²

Table 1: Total and Hispanic population figures for Village of Port Chester

| | 2010 census | | | | American Community Survey (2011-15) | | | | | |
|--------------------|------------------|------|-----------------------|------|-------------------------------------|------|-----------------------|------|-------------------------------|------|
| | Total population | | Voting age population | | Total population | | Voting age population | | Citizen voting age population | |
| | # | % | # | % | # | % | # | % | # | % |
| Total | 8967 | | 22422 | | 29405 | | 22865 | | 13705 | |
| Non-Hispanic white | 9155 | 31.6 | 7733 | 34.5 | 8560 | 29.1 | 7200 | 31.5 | 6645 | 48.5 |
| Non-Hispanic black | 1541 | 5.3 | 1189 | 5.3 | 1480 | 5.0 | 1300 | 5.7 | 1180 | 8.6 |
| Hispanic | 17193 | 59.4 | 12705 | 56.7 | 18750 | 63.8 | 13925 | 60.9 | 5580 | 40.7 |

Hispanic voter registration has also increased, albeit not to the extent that the Hispanic population has increased.³ Our analysis indicates that Hispanics now comprise nearly 29 percent of the registered voters in the Village Port Chester. (The comparable percentage in 2006 was 20.0 percent, according to the author’s calculation as presented to the court in *United States v. Village of Port Chester*.) Table 2 shows the gradual increase in Hispanic registration since 2008.

² Because the decennial census does not collect data on citizenship, Hispanic citizen voting age population was derived from the American Community Survey (ACS), an annual Census Bureau survey that collects racial/ethnic data, citizenship information and a host of other demographic, social and economic data. The most recent five-year ACS CVAP data for the Village of Port Chester, ACS11-15, was used. (The ACS estimates for race, ethnicity and citizenship are reported for pooled five-year time periods for smaller jurisdictions such as the Village of Port Chester rather than for a specific year.)

³ Hispanic registration and turnout percentages are based on a Spanish surname analysis of the voter registration and sign-in lists. The turnout data for 2010 and 2011 is still in the process of being verified and should be considered preliminary at this stage.

When recent registration is considered, the percentage is much higher: slightly over 43 percent of those who have registered to vote in the last five years have been Hispanics.

Table 2: Percentage of registered voters that were Hispanic, 2008-2017

| Election year | Date of election | Percentage of registered voters that were Hispanic |
|---------------|------------------|----------------------------------------------------|
| 2008 | 5-Feb | 22.1% |
| 2010 | 16-Mar | 24.4% |
| 2010 | 2-Nov | 24.6% |
| 2011 | 15-Mar | 24.7% |
| 2011 | 13-Sep | 25.1% |
| 2011 | 8-Nov | 25.2% |
| 2012 | 24-Apr | 25.6% |
| 2012 | 26-Jun | 25.7% |
| 2012 | 6-Nov | 26.1% |
| 2013 | 19-Mar | 26.4% |
| 2013 | 10-Sep | 26.6% |
| 2013 | 5-Nov | 26.6% |
| 2014 | 9-Sep | 26.9% |
| 2014 | 4-Nov | 27.0% |
| 2015 | 18-Mar | 27.0% |
| 2015 | 10-Sep | 27.1% |
| 2015 | 3-Nov | 27.2% |
| 2016 | 15-Mar | 27.5% |
| 2016 | 19-Apr | 27.6% |
| 2016 | 8-Nov | 28.6% |
| 2017 | 21-Mar | 28.8% |
| 2017 | 12-Sep | 28.8% |
| 2017 | 7-Nov | 28.8% |

Hispanic turnout in recent elections has also grown, but the percentage of the electorate that is Hispanic varies considerably depending on when in the cycle the election is held and what offices are on the ballot. Hispanic turnout in Trustee elections since cumulative voting was introduced has increased considerably: Hispanics comprised 17.2 percent of the voters in March 2010, 16.9 percent in March 2013, and 23.8 percent in March 2016. (This author calculated the percentage Hispanic of the electorate to be 9.7 percent in 2004, 10.4 percent in 2005 and 11.3 percent in 2006 as presented to the court in *United States v. Village of Port Chester*.) However, their percentage of the electorate in March elections that do not include trustee candidates (2011, 2013, 2015, and 2017) is much lower. Hispanic turnout is the highest in even-year

November elections that include presidential elections – the percentage Hispanic of the electorate was 24.2 percent in 2012 and 28.3 percent in 2016. It is not as high in even-year November elections that included federal and state offices other than the president – 19.5 percent in 2010 and 19.8 percent in 2014.⁴ Table 3 lists the percentage of the electorate that was Hispanic in recent elections.

Table 3: Percentage of voters that were Hispanic in recent elections

| Year | Date of election | Percentage of electorate that were Hispanic |
|---------------------------------------------------------------------------|------------------|---------------------------------------------|
| <i>Village Election: Board of Trustees (3 year term)</i> | | |
| 2010 | 16-Mar | 17.2% |
| 2013 | 19-Mar | 16.9% |
| 2016 | 15-Mar | 23.8% |
| <i>Village Election: Mayor (2 year term)</i> | | |
| 2011 | 15-Mar | 14.1% |
| 2013 | 19-Mar | 16.9% |
| 2015 | 18-Mar | 16.4% |
| 2017 | 21-Mar | 10.3% |
| <i>November General Election: federal and state elections, even years</i> | | |
| 2010 | 2-Nov | 19.5% |
| 2012 | 6-Nov | 24.2% |
| 2014 | 4-Nov | 19.8% |
| 2016 | 8-Nov | 28.3% |

A complete table listing the proportion Hispanic of registered voters and voters can be found in the **Appendix** to this report.

⁴ The Hispanic percentage of the electorate was as high, or nearly as high, in the U.S. presidential primaries held in February 2008 (27.2 percent and April 2016 (28.2 percent) as in the even-year November elections of 2012 and 2016. It was significantly lower in odd-year November elections. See Appendix.

One other important change since 2006 is that a Latino candidate has consistently been elected to serve on the Board since 2010. Prior to 2010, no Latino candidate had ever been elected to the Board of Trustees, or to any Port Chester office. Of course, the election of a Latino does not mean that voting is no longer ethnically polarized.⁵ An analysis of voting patterns by ethnicity in recent Village elections will have to be carried out to determine this. What it does mean is that the cumulative voting system is likely to have performed as envisioned: it has provided minority voters with an opportunity to elect a candidate of choice to the Board of Trustees.

This report explores alternative governance options for the Board of Trustees to consider in light of these changing factors. It focuses on the advantages and disadvantages of each of the options and what the implication of adopting any of these would be for providing minority voters with the opportunity to elect their preferred candidates.

II. At-large electoral systems

Prior to the adoption of the cumulative system now in place, the Village of Port Chester had a traditional at-large electoral system. In an at-large system, all of the voters in the jurisdiction vote for all of the seats up for election,⁶ casting as many votes as there are seats to fill but casting no more than one vote for each candidate. The candidates elected do not represent specific geographic districts within the jurisdiction.

The concept of at-large elections was originally put forward by Progressives who, around the turn of the 20th century, argued that taking city government out of the hands of local leaders and centralizing it under the control of businessmen would bring such business-like principles as efficiency and cost consciousness to government and would abolish the corrupt political machines that were running many cities. While corrupt political machines may no longer be a significant concern, there are still a number of advantages associated with at-large election systems:

- Because *voters* have an opportunity to vote for several candidates, they are more likely to have voted for at least one of the winning candidates. This may lead voters to feel more “represented” by the governing council.

⁵ The Court in *United States v. Village of Port Chester* (704 F. Supp. 2d. 411) found voting to be polarized, with Hispanic and non-Hispanic voters preferring different candidates and non-Hispanic voters generally voting as a bloc to defeat Hispanic-preferred candidates.

⁶ In some at-large systems, candidates run for designated seats (or posts) rather than compete against all of the candidates. While all voters cast votes for all of the posts/designated seats to be filled, candidates compete against only those running for the same designated seat.

- Because the pool of *candidates* is jurisdiction-wide (no potential candidates are deterred from running by district residence requirements), better qualified individuals may run for office.
- *Officeholders* may be more likely to speak for and work on behalf of the jurisdiction as a whole, rather than focusing on the demands of constituents of a single geographically-defined district.⁷

The major disadvantage associated with at-large elections is that, minus special voting rules, they can completely block minority groups within the jurisdiction from electing any of their preferred representatives. This is because in an at-large system 50 plus one percent of voters control 100 percent of seats. Even when a cohesive minority voting bloc makes up as much as 45 percent, even 49 percent, of the electorate, an at-large structure will reliably deliver all of the seats to the majority. The tendency for at-large electoral systems to consistently deny minority voters an opportunity to elect their candidates of choice to office is well-documented and has been widely accepted by scholars, voting rights advocates and the courts.

The Voting Rights Act prohibits electoral structures that dilute the voting power of minorities who might otherwise have an opportunity to elect their representatives of choice. In December 2006, the Department of Justice filed a complaint against the Village of Port Chester alleging that its winner-take-all at-large system of electing members of the Board of Trustees diluted the voting strength of Port Chester's Hispanic citizens in violation of Section 2 of the Voting Rights Act. The Court agreed and, in January 2008, requested remedial plans from the parties. The Department of Justice advocated dividing the Village into six electoral districts, with Hispanics composing a majority of the citizen voting age population in one of the districts. This is generally the remedy adopted for ensuring compliance with the Voting Rights Act by jurisdictions with an at-large election system, a sizable minority population and voting polarized on racial or ethnic lines.

III. Districted electoral systems

Districted election systems elect representatives to the governing board from geographical subdivisions called districts or wards. One of the principal advantages of a districted election system is that it facilitates the election of minority-preferred candidates so long as the minority group is sufficiently large and geographically compact to comprise a majority in at least one of the districts. This is the reason most jurisdictions switch from at-large to district elections after a court has found a violation of Section 2 of the Voting Rights Act.

⁷ While officeholders elected at-large do not serve a specific geographic subdivision, they may still be serving a specific functional or a policy constituency (for example, a group that is pro- or anti-growth or a downtown business group).

Increasing the opportunity for minority representation is not the only reason for adopting a districted election system. Other advantages of this type of system include:

- Districts provide *voters* with an easily identifiable 'ombudsman' to whom they can turn for assistance with jurisdiction-related problems.
- Because *voters* can identify a specific individual as their representative, they can more easily hold this representative more accountable – supporting or voting against this candidate depending on his or her perceived service to voters or stand on issues important to voters.
- District elections may reduce the cost of running for public office and therefore broaden the pool of *candidates* beyond those with the financial resources or connections needed to conduct a jurisdiction-wide campaign.
- *Officeholders* elected under a district system may be more responsive to citizen preferences.⁸

One major disadvantage associated with districting schemes is the need to redraw the district boundaries every ten years. Redistricting can be a time-consuming and very contentious process.

Another disadvantage to a districted electoral system is that only minority groups that are geographically concentrated and sufficiently large to form the majority of the voters in at least one of the districts can benefit from a districted election system. If minorities are dispersed relatively evenly throughout the jurisdiction, drawing a district in which they comprise a majority may not be possible. Furthermore, districts are redrawn only every ten years – if the minority population shifts or increases substantially before this, or voting becomes less polarized along racial lines than when the districts were drawn, then districts may actually be less effective at providing minorities with the ability to elect their candidates of choice.

IV. Mixed electoral systems

In *mixed* election systems, some number of candidates are elected at-large and the others are elected from geographic districts. Having a combination of council members elected at-

⁸ For example, Langbein, Crewson and Brasher (1996) found that board members elected by districts were more responsive to their constituents' preferences when making land-use decisions. They studied how elected officials made decisions about LULUs (locally undesirable land uses) and "pork" projects like parks that all constituents would like to have located near them and found that councils elected from districts were more likely than at-large councils to respond to the preferences of geographically concentrated groups.

large and by district offers the advantages of both electoral systems, with members elected at-large focusing on jurisdiction-wide concerns and members elected from districts ensuring geographical, and possibly minority, representation on the governing board. However, this combination will only guarantee minority representation if minority voters are sufficiently large and geographically compact to comprise a majority in one or more of the necessarily larger districts. (If some members are elected at-large, fewer districts will be drawn, and these districts will have to be geographically larger and include more people.) For this reason, any decision about the impact of a mixed systems on the opportunity of minority voters to elect their candidates of choice must focus on the district component of the system.

Drawing districts does not insulate a jurisdiction from being sued under the Voting Rights Act. Mixed electoral systems are particularly vulnerable to challenge as the larger districts they necessarily require make it more difficult to provide minorities with an opportunity to elect their candidates of choice.⁹

V. Modified at-large elections: cumulative, limited and ranked choice voting

Despite the court's usual reliance on districting systems to remedy a minority voting rights violation, districts are not the only means of providing racial and language minorities with effective electoral opportunities. There are several voting schemes that can be adopted in the context of an at-large election system that can reduce the propensity of these systems to dilute minority votes. These voting schemes avoid the disadvantages of districted election systems, and permit voters to form "voluntary districts" among those with whom they share a "community of interest" that may not be geographically defined and may shift from election to election. In addition, these modifications allow all minority voters, not simply those who live in majority minority electoral districts, to have an opportunity to elect minority-preferred candidates. These voting schemes include cumulative voting, limited voting and ranked choice voting.

The major disadvantage associated with these voting systems is that they require minority voters to be very cohesive in support of their preferred candidate. If the minority community is not sufficiently organized to vote strategically or to limit the number of candidates they run, the minority-preferred candidate(s) may not win office.

The court in *United States v. Village of Port Chester* is not the only court that has accepted an alternative voting scheme as a remedy to a voting rights violation – courts have recognized cumulative and limiting voting as viable remedies in a number of cases and more than a few jurisdictions have entered into consent decrees that have established one of these voting schemes. For example, suits brought on behalf of Hispanics in Alamogordo, New Mexico, Native

⁹ An example of a jurisdiction with a mixed city council election system that was sued under the Voting Rights Act and lost is Euclid, Ohio. *United States v. City of Euclid*, 523 F. Supp. 2d 641 (N.D. Ohio 2007).

Americans in Sisseton, South Dakota, and African Americans in the massive *Dillard v. Crenshaw County* litigation all resulted in the adoption of limited or cumulative voting systems.¹⁰

A. Limited voting

In a limited voting system, voters have fewer votes to cast than there are seats to be filled. For example, in an election with six open seats, voters might be permitted to cast one, two or three votes, but they cannot cast six votes. (Votes can be limited to as few as one to as many as one less than the number of seats to be filled.) The candidates with the most votes secure the seats – in this example, the top six vote getters would win the six open seats.

Limited voting provides minority voters with an opportunity to elect candidates in an at-large setting by reducing the ability of a cohesive majority (or plurality) to win every seat. The more limited the vote is compared to the number of seats to be filled, the smaller the minority group can be and still have an opportunity to elect at least one candidate of their choice.

Limited voting has been used at various times in a number of cities, including New York, Indianapolis, Boston and Philadelphia for primary or general elections to the city council. Today, Hartford and several other Connecticut cities and counties use limited voting. In addition, as noted above, limited voting was adopted as a remedy by several local governments to resolve voting rights challenges.

The advantages of limited voting, compared to other schemes to modify at-large elections to provide minority voters with an opportunity to elect their candidates of choice, are that it is the simplest alternative voting scheme to understand and the easiest alternative voting scheme for election officials to administer.

B. Cumulative voting

Unlike limited voting, cumulative voting allows voters to cast as many votes as there are seats to be filled. However, while traditional voting in an at-large election gives each voter only

¹⁰ Stipulated Findings of Fact and Conclusions of Law, *Vega v. City of Alamogordo, NM*, No. 86-0061-C (D.N.M. Mar. 2, 1987) (cumulative voting); *Buckanaga v. Sisseton Indep. Sch. Dist.*, No. 84-01025 (D.S.D. Oct. 26, 1988) (cumulative voting); *Dillard v. Crenshaw County*, 831 F.2d 246 (11th Cir. 1987). Other examples include: *United States v. Euclid City School Bd.*, 632 F.Supp.2d 740 (N.D. Ohio 2009), limited voting; Consent Judgment and Decree, *United States v. Town of Lake Park, Florida*, No. 09-80507 (S.D. Fla. Oct. 26, 2009), limited voting; Agreed Settlement and Release of Claims, *Reynoso v. Amarillo Indep. Sch. Dist.*, No. 98-00186 (N.D. Tex. May 17, 1999), cumulative voting; *Moore v. Beaufort County*, 936 F.2d 159, 164 (4th Cir. 1991), limited voting; *Dillard v. Town of Cuba*, 708 F. Supp. 1244 (M.D. Ala. 1988), limited voting; *Dillard v. Chilton County Bd. of Educ.*, 699 F. Supp. 870 (M.D. Ala. 1988), cumulative voting; No. 84-01025 (D.S.D. Oct. 26, 1988), cumulative voting; Amended Final Consent Decree and Full Resolution of Action exh. B, *Banks v. City of Peoria*, No. 87-02371 (C.D. Ill. Aug. 10, 1988), cumulative voting.

one vote per seat, this voting scheme allows voters to cumulative their votes on fewer candidates than there are seats to be filled. For example, in a jurisdiction with six seats up for election, a traditional voting structure would allow a voter to cast one vote for each of the six seats. A cumulative voting structure allows the voter to allocate those six votes in any manner he wishes: he could cast one vote each for six different candidates, he could cast all six of his votes for a single candidate (a practice known as “plumping”), or he could allocate three votes to one candidate and three to another, or any other combination of six votes across his preferred candidates. As is the case with limited voting, the winning candidates are the top overall vote-getters.

Cumulative voting allows minority voters to concentrate their votes effectively, increasing their ability to elect their preferred candidate (or candidates, depending on the relative size of the minority group). For example, a cohesive minority group comprising only 15 percent of the electorate would be able to elect their preferred candidate to a six-member council if minority voters cast all six of their votes for that candidate.

While some local governments have switched to cumulative voting unprompted, a number of jurisdictions, like the Village of Port Chester, have opted to adopt cumulative voting in response to minority vote dilution challenges. Other examples include the previously mentioned Alamogordo, New Mexico, and Sisseton, South Dakota, as well as numerous cities in Alabama and Texas.

In addition to ensuring minority voters have an opportunity to elect their candidates of choice in an at-large elections setting, the primary advantage of cumulative voting is that it does not limit the number of votes a voter can cast to less than the number of seats to be filled – if there are six seats to be filled, for example, every voter is given six votes.

C. Ranked choice voting

A third, far less common, voting scheme that can be employed in an at-large election system to provide minority voters with an opportunity to elect candidates of choice is ranked choice voting, also known as preference voting.¹¹ Simple versions of this system are used by several major sports leagues to select MVPs,¹² and by the Academy of Motion Picture Arts and

¹¹ Ranked choice voting can also be used for single-seat elections, where it is more commonly known as instant-runoff voting.

¹² For example, voters select the Heisman trophy winner in college football by ranking a first-place, a runner-up and a third-place finisher. Candidates get three points for a first-place vote, two for a second and one for a third. The points are tallied, and the winner is the candidate with the most points. The Hart trophy for the most valuable professional hockey player is awarded based on members of the Professional Hockey Writers' Association ranking their top five candidates on a 10-7-5-3-1 point(s) system. Again, the player with the most points wins.

Sciences to choose Oscar winners.¹³ It is currently used to elect council members in Cambridge, MA, Minneapolis, MN and a number of cities in California (for example, Berkeley, Oakland, and San Francisco).

As in a one-vote limited system, every voter is allocated a single vote in a ranked choice system. However, under ranked choice voting, voters can indicate more than simply their first choice among the candidates. They can rank candidates to reflect their relative preferences – that is, they can rank their first choice as “1,” their second choice as “2,” their third choice as “3,” and so on until they no longer wish to distinguish among the remaining candidates.

Candidates are rank ordered so that votes that would be “wasted” on one candidate can be transferred to other candidates. A vote is wasted in one of two ways: a vote cast for a losing candidate is wasted, and a vote cast for a candidate over and above what that candidate needs to win is also wasted. Preference voting allows wasted votes to be transferred to other candidates and is designed to increase the proportion of voters whose vote will ultimately contribute to the election of a candidate.

Determining the winning candidates in a ranked choice system is more complicated than it is in a limited or cumulative voting system. The winning candidates are those whose vote total equal or exceed the threshold of victory, usually based on the *Droop quota*. The Droop quota is obtained by adding one to the quotient obtained when the total number of votes cast in an election is divided by one plus the number of seats to be filled. For example, if there are six seats to be filled and 2,800 votes are cast, the quota will be 401 ($2800/(6 + 1)$ plus 1).

To determine winners, ballots are counted in a series of rounds. In round one, first-choices are counted and any candidate who reaches the threshold of victory, or Droop quota, is elected. In the next round, “surplus” votes – those votes over and above the threshold obtained by the first-round winning candidates – are transferred to the second choices of voters. If not all seats are filled at this point, then the candidate with the fewest votes is eliminated, and ballots cast for

¹³ According to *The Economist* (January 21, 2015), members of the Academy nominate candidates and PricewaterhouseCoopers, the accountancy firm responsible for tallying the votes, counts the nominations as follows:

All the first-choice ballots for each film are counted, with those above a certain threshold securing a nomination. The lowest-scoring film is then eliminated and its second-choice ballots assigned to the remaining films. The process continues until five films are over the threshold (with the exception of the best-picture category, which can have as many as ten nominees on the shortlist). If a film receives a particularly large number of nominations, so that further votes for it are in effect wasted, a trickle-down process kicks in, and subsequent ballots are redistributed to the next highest choices using a fractional weighting scheme. Once the shortlists are announced in each category, Academy members are sent a second ballot, and simply pick their favourite in each category.

that candidate are transferred to the candidate listed next by each voter who chose this candidate as their first choice. These rounds continue until all the seats are filled.

While transferring the votes of a defeated candidate is relatively simple – all of that candidate’s votes are transferred to the next most preferred candidates – transferring surplus votes is more complex. The fairest method is to redistribute the surplus votes proportionally: each remaining candidate (not already elected or eliminated) is given a share of the surplus votes equal to the proportion of the ballots on which he or she was the next choice of voters. To accomplish this accurately and efficiently, specially tailored software is usually required.

In a ranked choice voting system, if minority voters are cohesive and rank their preferred candidate or candidates as first or second on the list, these candidates are very likely to win seats on the governing council. Other advantages offered by ranked choice voting, when compared to limited and cumulative voting, are that (1) it is more conducive to allowing intragroup competition (so long as minority voters rank the same limited set of candidates as very high) and, on the other hand, (2) it encourages coalition-building among groups in the hopes that allied group members will rank aligned candidates highly enough to elect candidates of both groups to office.

The disadvantage of this system is its complexity. While the ballot looks very similar to that used for cumulative voting (see Figure 1), a voter education program will no doubt be required to ensure that voters understand the importance of ranking candidates.

Figure 1: Sample ranked choice ballot¹⁴

| City Council | | | | | | |
|----------------------------------------------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Rank up to 6 candidates. Mark no more than 1 oval in each column. | First choice | Second choice | Third choice | Fourth choice | Fifth choice | Sixth choice |
| | 1st | 2nd | 3rd | 4th | 5th | 6th |
| Valarie Altman Orange Party | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| George Hovis Yellow Party | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Althea Sharp Purple Party | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Mary Tawa Lime Party | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Joe Li Tan Party | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Phil Wilkie Independent | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

¹⁴ http://www.fairvote.org/rcv#how_rcv_works

From an election official’s perspective, there is no question that counting votes in a ranked choice system is complex. In a jurisdiction the size of Port Chester, ballot-counting software would have to be purchased to accommodate its use.

VI. Evaluating minority opportunities: the threshold of exclusion

The three voting schemes described above have the potential to translate minority preferences to seats on the governing body without the need to draw district lines. However, the opportunity provided depends on the size of the minority group as well as the number of seats to be filled and the number of votes each voter can cast. The “threshold of exclusion” is the percentage of the electorate that a group must exceed to be guaranteed a seat given the number of votes each voter can cast and the number of seats to be elected. It is based on the assumption that minority voters are cohesive and voters in the majority group (1) cast all of their available votes, (2) cast no votes for minority-preferred candidates (that is, voting is quite racially/ethnically polarized), and (3) concentrate their votes entirely on a number of candidates equal to the number of seats to be filled, dividing their votes equally across these candidates.¹⁵

The formula for calculating the threshold of exclusion for limited voting, is

$$\frac{\text{(Number of votes)}}{\text{(Number of votes) + (Number of seats)}}$$

$$\text{(Number of votes) + (Number of seats)}$$

If the vote is limited to two, and there are six seats, for example, the threshold is .25, or 25 percent. So, in an election with 2,800 voters, if 700 plus one voters all voted for at least one of the candidates, that candidate would be elected to one of the six seats (with 701 votes). If the other 2,100 minus one voters spread their two votes across six candidates evenly (the worst case scenario), then these six candidates would each receive slightly less than 700 votes. If voters give more votes to one of the six candidates, then the sixth candidate would receive far less than 700 votes and the minority-preferred candidate, with 701 votes, would still be elected.

The more limited the vote, the lower the threshold of exclusion. If the vote is limited to one, and there are six seats to be filled, the threshold drops to .143, or 14.3 percent. Thus, in an election with 2,800 voters, if 400 plus one voters all voted for the same candidate, then that candidate must be elected to one of the six seats (with 401 votes).

The formula for calculating the threshold of exclusion for cumulative voting is the same as that for limited voting when the vote is limited to one:

¹⁵ From the perspective of minority voters, these assumptions constitute the “worst case scenario” – majority voters are casting their votes as strategically as possible to defeat minority-preferred candidates.

1

$$1 + (\text{Number of seats})$$

This threshold is based on the assumption that all minority voters will vote perfectly cohesively and cumulate all of their votes on their preferred candidate. The threshold decreases with the number of seats to be filled. In a six-seat cumulative voting context, the threshold is 14.3 percent. Like the example above, if 400 plus one voters all cumulated their six votes on a single candidate, that candidate would receive 2,406 votes. The other 2,400 voters minus one, distributing their six votes across six candidates evenly, would give each of these six candidates slightly less than 2,400 votes each. However, if minority voters deviated from this and gave some of their votes to other candidates, the minority preferred candidate would not win a seat if majority voters do not disperse their votes over more than six candidates.

The threshold for winning two seats in a cumulative voting system is double the percentage required to win one seat. Using the example above, 28.6 percent of the voters could vote strategically to win two seats on the six-seat council using cumulative voting: they would need to divide their six votes equally between the two candidates (or if half of the votes would have to plump for one of the candidates and the other half for the other candidate).

The threshold of exclusion for rank choice voting using the Droop quota is the same as the threshold for cumulative voting (and limiting voting with a limit of one vote).

Table 4 presents the “threshold of exclusion” for different numbers of seats, under each of the voting schemes discussed.

Table 4: Threshold of exclusion¹⁶

| Seats | Cumulative Voting and Ranked Choice Voting | Limited Voting | | |
|-------|--------------------------------------------------|----------------|---------|---------|
| | | 1 vote | 2 votes | 3 votes |
| 2 | 33.3 | 33.3 | | |
| 3 | 25.0 | 25.0 | 40.0 | |
| 4 | 20.0 | 20.0 | 33.3 | 42.9 |
| 5 | 16.7 | 16.7 | 28.6 | 37.5 |

¹⁶ Mark E. Rush & Richard L. Engstrom, *Fair and Effective Representation? Debating Electoral Reform and Minority Rights[?]*, 2001.

| Seats | Cumulative Voting and Ranked Choice Voting | Limited Voting | | |
|-------|--------------------------------------------------|----------------|---------|---------|
| | | 1 vote | 2 votes | 3 votes |
| 6 | 14.3 | 14.3 | 25.0 | 33.3 |
| 7 | 12.5 | 12.5 | 22.2 | 30.0 |
| 8 | 11.1 | 11.1 | 20.0 | 27.3 |

In a districted system, the threshold of exclusion for any one district is 50 percent plus one voter: if a cohesive bloc of voters exceeds fifty percent within any given district, the preferred candidate of these voters will win that district’s seat. Determining the likelihood of more than one minority-preferred candidate being elected is simply a matter of counting the number of districts in which minorities will constitute a majority of the voters.

A very important point to make is that the threshold of exclusion is based on the percentage the minority group must exceed in the electorate – not simply in the population. Of course, if the minority group turns out to vote in percentages comparable to the majority group, then the minority percentage of the voting age or citizen voting age population will be the same as the minority percentage of the electorate. However, if minority turnout falls below that of majority turnout, minority voters will not be able to elect their preferred candidates if the threshold is calculated on the basis of population, at least if voting is polarized along racial or ethnic lines. The percentage of eligible Hispanics who turn out to vote in Port Chester is much lower than the percentage of non-Hispanic whites who turn out to vote. This differential in turnout must be taken into account when fashioning an electoral system that provides minority voters with an opportunity to elect their preferred candidates.

Because turnout tends to vary depending on when in the *election cycle* an election is held, and what offices are on the ballot, the election date must be considered when ascertaining the threshold of exclusion. Holding local elections in a month other than November might be preferred as voters may be more likely to focus on local as opposed to state or national issues if the elections are not conducted at the same time. However, turnout – especially minority turnout – tends to be lower in non-November elections. As noted above (Table 3), this is true of voting in Port Chester: Hispanic turnout is highest in November elections when there is a vote for president on the ballot. The percentage of the electorate that is Hispanic in March elections is lower, especially when only the mayor is up for election.

VII. Staggered terms

Staggering the terms of the governing board is designed to promote continuity and experience in governance. It guarantees there will not be a wholesale turnover of the governing council following an election. However, courts have recognized that staggered terms may enhance the discriminatory effect of certain voting systems.¹⁷ This is because a staggered election structure limits the number of seats to be filled in any single election. As a result, it increases the threshold of exclusion in an at-large system modified by an alternative voting scheme. For example, if there is a six-member governing board but the terms are staggered such that only three members are elected per election, the threshold of exclusion in a cumulative system (as well as a ranked choice system and a limited system with the vote limited to one) is 25.0 percent, and not 14.3 percent as it would if all six members were up for election at the same time. If the terms were staggered such that only two members were elected per election (as was the case in the Village of Port Chester prior to 2010), the threshold of exclusion is even higher: 33.3 percent.

In a districted electoral system, however, staggered terms make no difference to the electoral opportunity of minority voters. For example, if six seats have been allocated across six single-member districts, with one or two districts created to provide minorities with the opportunity to elect their candidate of choice, then it does not matter when in the cycle the election for that district is held, at least if differential turnout has been taken into account in assigning election dates.

VIII. Minority cohesion and white bloc voting

The threshold of exclusion identifies the percentage of voters that a minority group sharing the same candidate preference must exceed in order to elect that candidate with no assistance at all from other voters. If the behavior of voters in the majority deviates in any way from this worst-case assumption, then the minority group may be smaller or less cohesive and still have a realistic opportunity to elect a candidate of choice using one of the three alternative voting schemes described. In fact, with sufficient crossover voting on the part of the majority, even a traditional at-large electoral system will elect minority-preferred candidates. Majority crossover also impacts the election results in a districted system – districts that are less than majority minority can consistently elect minority-preferred candidates if some majority voters support the minority-preferred candidate.

On the other hand, deviations from perfect cohesion among minority voters will have a detrimental impact on their ability to elect their preferred candidates, even when they meet the

¹⁷ The Court in *United States v. Village of Port Chester* found that Port Chester's practice of holding local elections "off-cycle" in March and staggering its trustee elections combined to enhance the opportunity for discrimination against the Hispanic voting population (704 F. Supp. 2d 411, 444). The Village eliminated staggered terms and the cumulative system adopted had the effect of increasing Hispanic turnout in March elections that included the Board of trustee on the ballot. However, Hispanic turnout remains low in March elections that do not include this office on the ballot.

threshold of exclusion. For example, in a cumulative voting system with six seats and a minority percentage of 14.3 percent (400 plus one voters), if ten of these voters fail to cumulate all of their votes on the minority-preferred candidate, but all of voters in the majority group vote perfectly strategically across six non-preferred candidates, the majority-preferred candidates will all receive at least 2399 votes, while the minority-preferred candidate will only receive 2,340 votes. In a districted election system in which minority voters comprise 50 percent of the voters in one of the districts, but fail to coalesce behind a single candidate, the candidate preferred by most of the minority voters will not be elected. *For this reason, it is important to gauge the expected degree of minority cohesion and majority bloc voting to ensure the threshold accurately reflects the percentage minority needed to elect a candidate to office.*

IX. Tentative conclusion

The following discussion of governance alternatives that are likely to provide Hispanics with an opportunity to elect candidates of choice is preliminary and will require additional research – I have not yet conducted a racial bloc voting analysis or drawn illustrative districts. At this stage, I have simply compared the percentage Hispanic of the electorate to threshold of exclusion values (accepting the assumptions on which these values are calculated, including that Hispanics are perfectly cohesive and voting is perfectly polarized).

Given the percentage of the electorate that was Hispanic in recent trustee elections (17.2 percent in 2010, 16.9 percent in 2013, and 23.8 percent in 2016), Hispanics would exceed the threshold of exclusion in a six-seat, five-seat, and possibly a four-seat cumulative, ranked choice, or limited to one voting system. This means that the current system has proved successful at remedying the voting rights violation determined by the court to exist. It also means that it could be substituted with a ranked choice or limited voting system so long as the vote was limited to one. (If the vote limit was increased to more than one in a limited system, Hispanics would fail to meet the threshold.) It also means that the number of trustees could be decreased slightly if this was deemed desirable.

Staggering trustee terms in a manner that would mean that less than four seats were up for election (for example, staggering the terms so that two members were up every year, as was the case prior to 2010) would mean that Hispanic voters would no longer meet the threshold of exclusion, at least not without moving to a districted or mixed electoral system. However, if the number of trustees were increased from six to eight, it is possible that terms could be staggered, but only by electing four members each across two cycles.

Moving the trustee elections to November would only increase the Hispanic proportion of the electorate if the elections were held in presidential election years (the Hispanic percentage of the electorate was 24.2 percent in 2012 and 28.3 percent in 2016) and this would require extending trustee terms of office from three years to four years. This is because, in elections held in even years when federal and state offices other than the president were on the ticket, Hispanic turnout is lower (and about comparable to what it is currently in trustee elections).

Hispanic turnout in elections held in November during odd-years is lower still. However, Hispanic turnout could conceivably increase regardless of when the Board of Trustee elections were conducted, because Hispanic turnout did increase for March trustee elections when cumulative voting was introduced.

The impact of a districting or mixed electoral system is difficult to determine without actually drawing some illustrative districts. It was possible to draw one solidly Hispanic district in a six-district map when plaintiffs proposed a districted electoral system as part of the voting rights litigation in 2006-2009: Modified Plan A presented a district that had a Hispanic voting age population of 77.27 percent and an estimated Hispanic citizen voting age population of 56.27 percent.¹⁸ No doubt, with the increase in Hispanic population, it would be possible to draw at least one such district now as well. If a mixed system were to be adopted and the number of districts to be drawn were less than six, it would require a drawing exercise to determine how many districts would have to be incorporated into the system in order to ensure that at least one district would provide Hispanic voters with an opportunity to elect their preferred candidate.

This assessment of governance alternatives will be elaborated upon once additional research has been completed. An analysis of voting patterns will allow more definitive conclusions about the level of Hispanic cohesiveness and the degree of white crossover voting for Hispanic-preferred candidates that might generally be expected. Drawing illustrative minority districts in at least a six-district (districted systems) and a four-district (mixed system) setting will help provide answers as to what districting configurations are likely to provide Hispanic voters with an opportunity to elect their candidates of choice and what configurations will not.

¹⁸ United States v. Village of Port Chester, 704 F. Supp. 2d 411, 425.