

From: Jason Torchinsky
Sent: Thursday, May 31, 2018 1:09 PM
To: Cerreto, Tony
Subject: Comments on the former Mayor's comments

Tony,

You have asked for my opinion on the former Mayor's public comments suggesting that the Village approach DOJ now, and seek to extend the consent decree to cover the March 2019 election, and then use those election results and the 2020 census data to explore moving to a staggered term cumulative voting system in future elections.

For the following reasons, I recommend that the Village proceed with the local law and referendum as proposed.

First, the former Mayor's proposal necessarily extends for at least three years the issue of resolving the Village's election structure. This uncertainty in structure is generally not conducive to long term planning for incumbent officeholders or prospective candidates.

Second, delaying a final decision for another three years will lead to increased legal costs for the Village. If DOJ were amenable to a consent decree, court filings would need to be drafted and filed, responses to any objections would need to be drafted and filed, and the Village would need representation at one or more hearings before the United States District Court.

Third, there is no guarantee that DOJ would be amenable to a consent decree providing for yet another election under a cumulative voting system. There are some election lawyers who believe that the only permissible remedy under Section 2 of the VRA is a districted election, and given that we have no record of Section 2 cases being resolved under Attorney General Sessions, we do not know what the current DOJ leadership's position is on this critical question. If DOJ objected to cumulative voting or the intervenor objected to cumulative voting by consent decree, the District Court could well order a districted system for the March 2019 elections.

If the local law as proposed fails the referendum, then I think the Village would have no choice but to approach DOJ about alternative options – including a consent decree permitting cumulative voting. As the board meets today, the citizen recommendation process has been completed, the Village's own expert has opined that staggered terms at the current board size would violate the Voting Rights Act, and the Village has several federal court rulings concluding that at-large elections violate the Voting Rights Act. All of this leads me to the conclusion that the Board should act to bring this whole matter to a close by adopting the local law and setting it for referendum.

If the Board wanted to explore changing the election day to June or November, that is permissible under state law as Mr. DerOhannesian explained. But, that would have to be done pursuant to the state law procedures for doing so.

Please do not hesitate to contact me if you have any further questions.

Sincerely,

Jason Torchinsky

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