

**Solomon  
Ward**  
Attorneys at Law

Solomon  
Ward  
Seidenwurm &  
Smith, LLP



Wells Fargo Plaza  
401 B Street, Suite 1200  
San Diego, California 92101  
(t) 619.231.0303  
(f) 619.231-4755  
www.swsslaw.com

Daniel E. Gardenswartz  
Managing Partner  
dgardenswartz@swsslaw.com  
(f) 619.615.7922

May 22, 2017

**VIA EMAIL**

Bill Wells  
[bwells@cityofelcajon.us](mailto:bwells@cityofelcajon.us)

Steve Goble  
[sgobel@cityofelcajon.us](mailto:sgobel@cityofelcajon.us)

Gary Kendrick  
[gary.p.kendrick@gmail.com](mailto:gary.p.kendrick@gmail.com)

Bob McClellan  
[mcclellan6@cox.net](mailto:mcclellan6@cox.net)

Re: Implementation of Measure S

Dear Council Members:

I write on behalf of your colleague, Ben Kalasho, with respect to the impending decision by the El Cajon City Council (the "Council") to select the district map boundaries as part of the new amendments to the City's Charter.

As you know, Measure S amended the City's Charter to create specific districts for council members (excluding the mayor) and the task at hand is now to approve the initial boundaries for the four districts, which as a City Attorney's impartial analysis correctly observes, must be "in compliance with state and federal voting rights laws."

In addition to those voting rights laws, I also draw your attention to California Labor Code sections 1101 and 1102, which among other things prevents any employer in the state of California (including the City of El Cajon) from adopting or enforcing any rule, regulation, or policy that would either tend to control or direct the political activities or affiliations of its employees (Section 1101), or to influence or attempt to influence any employees to follow or refrain from adopting any particular course or line of political action or political activity. (Section 1102). Moreover, under the Equal Protection guarantee of the California Constitution, a state actor such as a local agency may not arbitrarily or invidiously discriminate in its employment decisions. See e.g., *GLS Ass'n. v. Pac. Tel. & Tel. Co.*, 24 Cal.3d 458, 467-68 (1979).

With these legal protections in mind, we have serious concerns over the maps that are presently under consideration before the Council and in particular the reasons why the maps currently under consideration have been selected. Specifically, I understand that the City's constituents have submitted approximately 163 maps prior to the April 18, 2017 deadline. Of that total, 147 maps contemplated separate districts for Mr. Kendrick and Mr. Kalasho (over

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90%). Yet of maps that remain viable out of that total, only two have separate districts for Mr. Kalasho and Mr. Kendrick (Ecook1 & NDC Green), while the majority of the maps under present consideration combine those Council Members into one district, which naturally jeopardizes their long term tenure as members of the Council. Furthermore, my office is aware of additional, circumstantial evidence to suggest that there may have been discussions and/or collusion among certain members to insure that this feature is not retained in the final map selection, raising both Brown Act issues and a host of other concerns as specifically identified below. To that end, it may become necessary as part of our own investigation into this matter to make a Public Request for Records between and/or among each of you and various other staffers and City employees, which will include all emails, text messages, telephone communications and other evidence of written, electronic or oral communications, including both business and personal devices.

The U.S. Supreme Court has yet to rule on whether partisanship alone can be considered to be an unlawful reason for the gerrymandering of a particular district, although at least one case has found that to be an unlawful basis under the totality of the circumstances. See, *Cox v. Larious*, 542 US 947, 950 (2004). California law as articulated in the above referenced Labor Code, among other things, expressly prohibits discrimination by an employer on the basis of political affiliation, irrespective the present ambiguity under the Federal Voting Rights Act. Moreover, any discrimination against a particular individual, or efforts to marginalize a particular voting bloc, on the basis of a protected class, likewise violates the Federal Voting Rights Act as well as the Equal Protection clauses under both the U.S. and California Constitutions.

At the present time Mr. Kalasho is particularly concerned that the particular maps that have already been selected and that are under consideration may have been and/or will be selected based on an effort to marginalize Mr. Kalasho's political affiliation or those minority voters within El Cajon that overwhelmingly voted for him in his last election cycle. In an effort to avoid potential litigation over this issue (which will assuredly include injunctive relief together with the right to recover fees and costs by a prevailing plaintiff), I am writing you this letter. I will also look forward to meeting each of you at the upcoming Council meeting on May 23, 2017 to hear your views on this matter and to ensure that the final implementation of Measure S is done in full compliance with all Federal, State and local law.

In light of the potential dispute between Mr. Kalasho, on the one hand, and certain other members of the Council and/or the City, on the other, I also write to ensure that all evidence is preserved, and to give you notice not to destroy, conceal or alter any paper or electronic files or other data generated and/or stored on any Council Member, City, or any of their respective

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agents' computers and storage media. This demand to preserve evidence includes all discussions between and among Council Members and their agents and other third parties with respect to any decisions regarding the screening process, basis for, and ultimate selection of any particular map or maps as part of your implementation of Measure S. All emails, text messages, social media, notes, minutes, letters, understandings, payments, and related materials should be expressly preserved.

Please be guided accordingly.

Sincerely yours,

A handwritten signature in black ink, appearing to read "DEG" followed by a flourish and the text "for DEG".

Daniel E. Gardenswartz  
Managing Partner  
Solomon Ward Seidenwurm & Smith, LLP

DEG:jml  
P:01117901:56475.002

cc: Ben Kalasho ([benkalasho@gmail.com](mailto:benkalasho@gmail.com))  
Morgan Foley, City Attorney ([mfoley@cityofelcajon.us](mailto:mfoley@cityofelcajon.us))