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7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

10 CITY OF BERKELEY,

11 Petitioner/Plaintiff,

12 vs.

13 TIM DUPUIS, in his official capacity as Registrar  
of Voters of the County of Alameda, and  
14 MARK NUMAINVILLE, in his official  
capacity as City Clerk of the City of Berkeley,

15 Respondent/Defendant.  
16

17 MAX ANDERSON, JESSE ARREGUÍN,  
STEFAN ELGSTRAND, PAUL KEALOHA  
18 BLAKE, MATTHEW LEWIS, STEPHANIE  
MIYASHIRO, PHOEBE SORGEN,  
19 ALEJANDRO SOTO-VIGIL, and  
KRISS WORTHINGTON,

20 Real Parties in Interest.  
21

No.: RG14720117

Action Filed: April 3, 2014

**PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR DECLARATORY  
RELIEF**

**ELECTION MATTER –  
IMMEDIATE RELIEF REQUESTED**

The Honorable \_\_\_\_\_  
Dept.: \_\_\_\_\_

**No Filing Fee  
[Gov. Code, § 6103]**

1           Petitioner City of Berkeley petitions this Court pursuant to Code of Civil Procedure  
2 sections 1085 and 1086 for a writ of mandate commanding respondent TIM DUPUIS, Registrar of  
3 Voters of Alameda County, and respondent MARK NUMAINVILLE, City Clerk for the City of  
4 Berkeley, to utilize the redistricting plan approved by the Berkeley City Council in Ordinance  
5 No. 7,320-N.S. for purposes of the November 2014 Municipal Election, even though the plan is subject  
6 to a referendum that has qualified for the November 4, 2014 ballot, in order to avoid violating the  
7 United States and California Constitutions and the Berkeley City Charter, and to provide certainty for  
8 voters, candidates, and elections officials. In addition, petitioner also requests a declaration from this  
9 Court pursuant to section 1060 of the Code of Civil Procedure that (1) the Berkeley City Council  
10 District boundaries adopted in 2002 in Ordinance No. 6,679-N.S. must not be used because they raise  
11 serious constitutional questions under the Equal Protection Clause of the United States and California  
12 Constitutions and fail to comply with the Berkeley City Charter, and (2) that Ordinance No. 7,320-N.S.  
13 must be used for purposes of the November 2014 Municipal Election.

14           By this petition, petitioner alleges:

- 15           1.       Petitioner CITY OF BERKELEY is a charter city located in the County of  
16 Alameda.
- 17           2.       Respondent TIM DUPUIS is the Registrar of Voters of Alameda County and is  
18 sued in his official capacity.
- 19           3.       Respondent MARK NUMAINVILLE is the City Clerk for the City of Berkeley  
20 and is sued in his official capacity.
- 21           4.       Real party in interest MAX ANDERSON is a proponent of the referendum  
22 (“Referendum”) challenging the redistricting plan approved by the Berkeley City Council (“City  
23 Council”) in Ordinance 7,320-N.S. of the City of Berkeley (“City Council-approved Plan”), a true and  
24 correct copy of which is attached hereto as Exhibit A.
- 25           5.       Real party in interest JESSE ARREGUÍN is a proponent of the Referendum  
26 challenging the redistricting plan approved by the City Council in Ordinance 7,320-N.S.
- 27           6.       Real party in interest STEFAN ELGSTRAND is a proponent of the Referendum  
28 challenging the redistricting plan approved by the City Council in Ordinance 7,320-N.S.

1           7.     Real party in interest PAUL KEALOHA BLAKE is a proponent of the  
2 Referendum challenging the redistricting plan approved by the City Council in Ordinance 7,320-N.S.

3           8.     Real party in interest MATTHEW LEWIS is a proponent of the Referendum  
4 challenging the redistricting plan approved by the City Council in Ordinance 7,320-N.S.

5           9.     Real party in interest STEPHANIE MIYASHIRO, is a proponent of the  
6 Referendum challenging the redistricting plan approved by the City Council in Ordinance 7,320-N.S.

7           10.    Real party in interest PHOEBE SORGEN is a proponent of the Referendum  
8 challenging the redistricting plan approved by the City Council in Ordinance 7,320-N.S.

9           11.    Real party in interest ALEJANDRO SOTO-VIGIL is a proponent of the  
10 Referendum challenging the redistricting plan approved by the City Council in Ordinance 7,320-N.S.

11          12.    Real party in interest KRISS WORTHINGTON is a proponent of the  
12 Referendum challenging the redistricting plan approved by the City Council in Ordinance 7,320-N.S.

13          13.    Petitioner is informed and believes, and on that basis alleges, that respondent  
14 NUMAINVILLE believes he has a ministerial duty to direct respondent DUPUIS to use the  
15 redistricting plan approved by the City Council in Ordinance No. 6,679-N.S. following the 2000  
16 census (the "2002 Plan"), a true and correct copy of which is attached hereto as Exhibit B, for City  
17 Council elections in November 2014 because a group of Berkeley voters has collected enough  
18 signatures to qualify a Referendum against the City Council-approved Plan. The Berkeley City  
19 Charter ("Charter") provides that the qualification of the Referendum, which will be submitted to the  
20 voters at the November 2014 Municipal Election, stays the effective date of the City Council-approved  
21 Plan pending the outcome of the Referendum. This petition challenges respondent NUMAINVILLE's  
22 intention to direct respondent DUPUIS to use the boundaries drawn by the 2002 Plan in the  
23 November 2014 election, at which the voters will elect City Councilmembers in four of the City's  
24 eight districts.

25          14.    Petitioner is informed and believes, and on that basis alleges, that respondent  
26 DUPUIS believes he has a ministerial duty to use the 2002 Plan provided to him by respondent  
27 NUMAINVILLE to conduct the November 2014 Municipal Election. This petition challenges  
28

1 respondent DUPUIS's intention to use the boundaries drawn by the 2002 Plan which will be provided  
2 to him by respondent NUMAINVILLE in the November 2014 election.

3 15. The Equal Protection Clause of the United States Constitution requires that local  
4 districts be apportioned as equally as possible, conforming to the "one-person, one-vote" standard set  
5 out in *Reynolds v. Sims* (1964) 377 U.S. 533. (*Bd. of Estimate of City of New York v. Morris* (1989)  
6 489 U.S. 688, 692.) The one-person, one-vote standard is also guaranteed by the California  
7 Constitution. (Cal. Const., art. I, § 7(a).)

8 16. Article V, section 9 of the Charter requires that the district boundaries of the  
9 City Council districts be adjusted following each decennial census. Following the 2010 census, City  
10 staff initiated the decennial redistricting process in 2011.

11 17. On January 17, 2012, the City Council voted to defer the submission of a new  
12 redistricting plan until after the November 2012 election in order to place a Charter amendment on the  
13 November 2012 ballot to establish new criteria for modifying district boundaries. On June 26, 2012, at  
14 its Regular Meeting, the City Council voted to put the Charter amendment on the November 2012  
15 ballot. On November 6, 2012, Berkeley voters approved the Charter amendment, Measure R, by a  
16 margin of 65.92 percent to 34.08 percent, nearly a two-thirds supermajority of City voters. A true and  
17 correct copy of Measure R is attached hereto as Exhibit C.

18 18. Prior to the passage of Measure R, article V, section 9 of the Charter stated that  
19 adjustments to the City Council district boundaries "shall preserve, to the extent possible, the Council  
20 districts originally established herein . . ." Council districts were first drawn under the old article V,  
21 section 9 in 1986.

22 19. Measure R amended article V, section 9 of the Charter to eliminate the  
23 requirement that any adjustments to the City Council boundaries preserve, to the extent possible,  
24 the 1986 districts authorized by the City Council. Measure R also established new criteria for the  
25 formation of City Council districts. Namely, Measure R provided that:

26 the Council shall ensure that the districts continue to be as nearly equal  
27 in population as may be according to the census, taking into  
28 consideration topography, geography, cohesiveness, contiguity, integrity  
and compactness of territory of the districts, as well as existing  
communities of interest as defined in California Constitution

1 Article XXI, section 2(d)(4), and shall utilize easily understood district  
2 boundaries such as major traffic arteries and geographic boundaries to  
the extent they are consistent with communities of interest.

3 Thus, the voters rejected the previous City policy of preserving 1986-era districts to the extent  
4 possible, and commanded that the City Council instead consider other factors, such as existing  
5 communities of interest and easily understood boundaries like major traffic arteries and geographic  
6 boundaries.

7 20. With respect to the timing of decennial redistricting, article V, section 9 of the  
8 Charter states that:

9 [n]o later than December 31st of the third year following the year in  
10 which each decennial federal census is taken, commencing with the 2010  
11 census, the Council shall by ordinance divide the City into eight Council  
districts. Any such redistricting shall become effective as of the next  
12 general election of Councilmembers immediately following the effective  
date of said ordinance.

13 Thus, the Charter requires the City Council to complete the redistricting process by the end of 2013  
and to have new districts in place in time for the 2014 Municipal Election.

14 21. Following the passage of Measure R, the City Council approved a rigorous  
15 process and timeline for adjusting the City Council district boundaries in response to the 2010 census  
16 and in conformity with article V, section 9 of the Charter. The process included two community  
17 meetings, the submission of various plans by members of the public, and numerous City Council  
18 meetings where redistricting was discussed, all of which afforded an opportunity for the public to  
19 provide input to the City Council regarding the plans. The City Council's timeline called for all  
20 redistricting proposals, both from Councilmembers and from members of the public, to be submitted  
21 no later than March 15, 2013. In all, the City Council took up the topic of redistricting on at least ten  
22 occasions, during which time members of the public were given ample opportunity to submit their own  
23 plans and to provide feedback to the City Council on the plans that were presented.

24 22. On July 2, 2013, at a public hearing, after considering the submitted plans and  
25 receiving public input in accordance with the process it developed, the City Council directed staff to  
26 prepare an ordinance for adoption based on a plan submitted by the Berkeley Student District  
27 Campaign ("BSDC"). The BSDC is a coalition of students and community members who supported  
28

1 the drawing of a majority-student district in the City and submitted such a plan to the City Council for  
2 its consideration. In accordance with the March 15, 2013 deadline for the submission of redistricting  
3 proposals, the BSDC submitted its plan on March 13, 2013 in the format established by the City  
4 Council.

5           23. On December 17, 2013, at the City Council's regularly scheduled meeting, the  
6 City Council adopted the BSDC plan, by a vote of 6-to-3, as Ordinance 7,320-N.S. of the City of  
7 Berkeley ("City Council-approved Plan"). The City Council-approved Plan reduced the deviation  
8 from the ideal district population, as calculated using the 2010 census, to less than one percent in all  
9 districts. In addition, the City Council-approved Plan created a district, Council District 7, which  
10 concentrated much of the City's large student population in a single district. Eighty-six percent  
11 (86 percent) of the voters in Council District 7 are student-aged, making it the first majority-student  
12 district in the country, according to the proponents.

13           24. Opponents of the City Council-approved Plan, including the three City  
14 Councilmembers who voted against it,<sup>1</sup> filed a referendum measure ("Referendum") challenging the  
15 City Council-approved Plan and submitted signatures to the Alameda County Registrar of Voters.<sup>2</sup>  
16 These Councilmembers favored a plan that would have created a majority-student district with students  
17 comprising ninety percent (90 percent) of the district's population, four percent more than the student  
18 district included in the City Council-approved Plan. Unlike the City Council-approved Plan, which  
19 was submitted two days before the March 15, 2013 deadline for submission of redistricting proposals,  
20 the plan favored by the three dissenting members of the City Council was not proposed until months  
21 after that date and was not presented to the City Council until September 10, 2013, nearly six months  
22 after the deadline had passed. Consequently, unlike the City Council-approved Plan, the plan favored  
23 by the three dissenting members was not considered during the lengthy public process developed in  
24 response to the passage of Measure R. The City Council voted to reject this plan.

25  
26 <sup>1</sup> The three City Councilmembers who voted against the City Council-approved Plan are Max  
Anderson, Jesse Arreguín, and Kriss Worthington.

27 <sup>2</sup> A true and correct copy of the Referendum petition is attached hereto as Exhibit D.  
28

1           25.     The supporters of the Referendum have not claimed that the City Council-  
2 approved Plan raises constitutional concerns or that it would violate the Berkeley City Charter.  
3 Instead, they contend that their plan is better because it creates a student district comprising more  
4 students (90 percent) than the City Council-approved Plan (86 percent).

5           26.     Article XIV, section 93 of the Charter requires that a proposed referendum  
6 measure be signed by at least 10 percent of the voters who cast a ballot for all candidates for Mayor at  
7 the last general municipal election at which a Mayor was elected in order to be presented to the City  
8 Council. The threshold for sufficiency for the Referendum at issue here is 5,275 valid signatures.

9           27.     On February 3, 2014, respondent DUPUIS verified that the Referendum had  
10 received sufficient signatures to qualify the Referendum. On the following day, respondent  
11 NUMAINVILLE certified the sufficiency of the petition and submitted it to the City Council, which  
12 was required pursuant to article XIV, section 93, to either repeal the Council Plan or submit it to the  
13 voters. Under the same Charter section, the presentation of the Referendum to the City Council stays  
14 the effective date of the City Council-approved Plan pending the outcome of the Referendum.

15           28.     On March 11, 2014, by a vote of 6-to-3, the City Council voted to submit the  
16 Referendum to the voters. The City Council had originally considered the Referendum during its  
17 Regular Meeting of February 25, 2014, but opted to continue the matter until the next meeting, which  
18 occurred on March 11, 2014, so that it could adequately consider the alternatives. Because the  
19 deadline under the City Charter for placing a referendum on the June 2014 ballot was March 7, 2014,  
20 the Referendum was placed on the November 2014 ballot.

21           29.     Berkeley voters will consider the Referendum at the General Election to be held  
22 on November 4, 2014. On the same day, Berkeley voters will elect representatives from City Council  
23 Districts 1, 4, 7, and 8.

24           30.     As a result, respondent NUMAINVILLE is in a bind. A small minority of  
25 Berkeley voters have, by virtue of the qualification of the Referendum, stayed the City Council-  
26 approved Plan, a plan which was approved by a majority of the City Council and which adheres to the  
27 redistricting criteria which were approved by nearly two-thirds of Berkeley voters. The only other City  
28

1 Council-approved boundaries that are available to the City Clerk are the lines approved pursuant to  
2 the 2002 Plan.

3 31. Petitioner is informed and believes, and on that basis alleges, that respondent  
4 NUMAINVILLE intends to direct the Alameda County Registrar of Voters to use the boundaries  
5 drawn by the 2002 Plan for City Council elections in the City of Berkeley for the November 2014  
6 election because the qualification of the Referendum has stayed the effective date of the City Council-  
7 approved Plan.

8 32. Petitioner is informed and believes, and on that basis alleges that respondent  
9 DUPUIS will comply with respondent NUMAINVILLE's direction and conduct the November 2014  
10 Municipal Election using the boundaries drawn by the 2002 Plan.

11 33. The City Council adopted the 2002 Plan in response to the 2000 census. As a  
12 result of changes in population, the 2002 boundaries are now malapportioned. Based on the 2010  
13 census, the ideal district population in each of the City of Berkeley's eight City Council districts  
14 is 14,073. But if the 2002 Plan were used in the 2014 election, the 2002 Plan would have a total  
15 population deviation of 27.8 percent and many of the districts would deviate sharply from the ideal  
16 district population. For instance, Council District 7 is currently overpopulated with a population  
17 of 16,623, a deviation of 18.1 percent from the ideal population. By contrast, Council District 5 is  
18 currently underpopulated with a population of 12,709, a deviation of 9.7 percent. Only one district,  
19 Council District 2, would deviate less than 5 percent from the ideal population. The United States and  
20 the California Supreme Courts have recognized that any population deviation over 10 percent is  
21 constitutionally suspect, while any deviation exceeding 16.4 percent may be "patently  
22 unconstitutional."<sup>3</sup> (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 472-474.) The following chart  
23 illustrates the population deviation numbers of all eight City Council districts under the 2002 Plan:

24

District	Ideal Population	Actual Population	Numerical Deviation	Percentage Deviation
1	14,073	13,080	-993	-7.06

25

26

27 <sup>3</sup> In addressing permissible deviations in redistricting plans, the *Vandermost* court spoke in terms of  
28 deviation from the ideal population. (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 473-474.)



District	Ideal Population	Actual Population	Numerical Deviation	Percentage Deviation
2	14,073	13,381	-692	-4.90
3	14,073	13,024	-1,049	-7.45
4	14,073	15,605	1,532	10.89
5	14,073	12,709	-1,364	-9.69
6	14,073	12,883	-1,190	-8.46
7	14,073	16,623	2,550	18.12
8	14,073	15,275	1,202	8.54

34. By contrast, the City Council-approved Plan materially conforms to the ideal district population revealed by the 2010 census. All eight of the districts drawn by the City Council-approved Plan have populations that are within 1 percent of the ideal population of 14,073 and the total population deviation of the City Council-approved Plan is just 1.5 percent. The most populated district, Council District 5, has a total population of 14,182, a deviation of just 0.77 percent from the ideal. The most underpopulated district, Council District 6, has a total population of 13,966, a deviation of just 0.76 percent from the ideal. The following chart illustrates the population deviation numbers for all eight City Council districts under the City Council-approved Plan:

District	Ideal Population	Actual Population	Numerical Deviation	Percentage Deviation
1	14,073	14,060	-13	-.09
2	14,073	14,026	-47	-.33
3	14,073	14,070	-3	-.02
4	14,073	14,082	9	.06
5	14,073	14,182	109	.77
6	14,073	13,966	-107	-.76
7	14,073	14,079	6	.04
8	14,073	14,115	42	.30

35. The use of the 2002 Plan would violate the “one-person, one-vote” standard of the Equal Protection Clauses of the United States and California Constitutions and would violate article V, section 9 of the Charter, which requires that districts be drawn as nearly equal in population as possible according to the most recent census. The City Council-approved Plan conforms to the requirements of article V, section 9.

36. The 2002 Plan, by contrast, was not drawn to conform to the newly-revised article V, section 9. It was drawn to conform to the superceded version of the Charter section, which required that redistricting plans maintain the 1986-era boundaries as much as possible. In addition to being based on criteria that have become obsolete, the 2002 Plan is based on data that is now obsolete.

1 The 2002 Plan used the now-outdated 2000 census data, as opposed to the City Council-approved Plan,  
2 which used the data generated by the most recent census in 2010.

3 37. For these reasons, the City must use the City Council-approved Plan to conduct  
4 the 2014 election given that the alternative would be to use a 12-year-old map with malapportioned  
5 districts and which fails to comply with the 2012 amendments to the City Charter.

6 38. Code of Civil Procedure section 1086 requires that a “writ must be issued in all  
7 cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law.”

8 Petitioner is informed and believes that respondent NUMAINVILLE intends to direct the use of  
9 the 2002 Plan for the November 2014 elections in the City of Berkeley. Petitioner is further informed  
10 and believes that respondent DUPUIS will comply with this direction and use the boundaries provided  
11 by respondent NUMAINVILLE to conduct the 2014 election. Consequently, there is no plain, speedy,  
12 or adequate legal remedy in the ordinary course of law for preventing the use of a district map which  
13 violates article V, section 9 of the Charter and raises serious questions under the Equal Protection  
14 Clauses of the United States and California Constitutions.

15 39. The rights of the voters of the City of Berkeley will be irreparably injured if  
16 the 2002 Plan is used during the 2014 election because they will be denied the equally apportioned  
17 districts guaranteed to them by the Charter and the “one-person, one-vote” standard set out by the  
18 United States Constitution. The City Council-approved Plan satisfies the “one-person, one-vote”  
19 standard and the newly adopted redistricting criteria that were overwhelmingly approved by voters  
20 through passage of the Charter amendment. Furthermore, the City Council-approved Plan, unlike the  
21 plan favored by the three dissenting Councilmembers, is the product of a thoughtful public process that  
22 was designed by the City Council in order to effectuate the new redistricting criteria and satisfies the  
23 Charter-conferred requirement that new boundaries be in place for the 2014 Municipal Election. Use  
24 of the 2002 Plan at the 2014 election would subordinate the preferences expressed by nearly two-thirds  
25 of Berkeley voters who voted in favor of the Charter amendment and two-thirds of their elected  
26 representatives who voted in favor of the City Council-approved Plan to the desires of a small group of  
27 voters who signed the Referendum and the three City Councilmembers who oppose the plan.  
28 Moreover, it would subordinate the more specific provisions of article V, section 9 of the Charter,

1 which specifically address redistricting, to the more general Charter provisions relating to referenda  
2 contained in article XIV, section 93 of the Charter. Lastly, use of the 2002 Plan would leave the City  
3 vulnerable to a legal challenge by a citizen that the redistricting plan being used by the City violates  
4 the Equal Protection Clauses of the federal and California Constitutions and the Berkeley City Charter,  
5 an action which could lead to further disruption, uncertainty, and costs.

6 40. The California Supreme Court, on two occasions, has been confronted by a  
7 referendum which stayed the effective date of a redistricting plan adopted by the designated  
8 redistricting body. On both occasions, the Court ordered that the plan adopted by the designated  
9 redistricting body be used for elections in the interim period before the referendum was decided.  
10 (*Vandermost, supra*, 53 Cal.4th 421; *Assembly v. Deukmejian* (1982) 30 Cal.3d 638.) Petitioner seeks  
11 the same relief here.

12 41. Petitioner City of Berkeley has a beneficial interest in ensuring that its voters  
13 have certainty in preparing for the November elections, that its elections are conducted in conformity  
14 with its Charter, and that they are conducted in conformity with the United States and California  
15 Constitutions.

16 42. An actual controversy exists over the boundaries to be used in conducting City  
17 Council elections in the City of Berkeley in November 2014. In the absence of an order from this  
18 Court, respondent NUMAINVILLE will direct respondent DUPUIS to use the 2002 Plan in the  
19 November 2014 election. Petitioner believes that use of the 2002 Plan would violate article V,  
20 section 9 of the Berkeley City Charter and the Equal Protection Clauses of the United States and  
21 California Constitutions.

22 43. Petitioner desires a judicial declaration that the 2002 Plan, as applied to the  
23 current population of the City of Berkeley as reported by the 2010 census, raises serious constitutional  
24 questions under the Equal Protection Clauses of the United States and California Constitutions and  
25 violates the Berkeley City Charter, and that the boundaries drawn by the City Council-approved Plan  
26 must be used for City Council elections in the City of Berkeley in November 2014. The declaration is  
27 necessary at this time so that City and County elections officials have clarity and certainty as they  
28

1 begin to prepare to conduct these elections, and so that candidates and voters may begin to prepare for  
2 their campaigns for these offices.

3 44. Issuance of the writ will further the goal of providing certainty to elections  
4 officials who are beginning to conduct pre-election activities relating to the November 2014 election  
5 and will not substantially interfere with the conduct of the 2014 election. The Alameda County  
6 Registrar of Voters needs to know which boundaries to use for the November election by April 30,  
7 2014, which affords sufficient time to consider the relief sought by the Petitioner.

8 **FIRST CAUSE OF ACTION**

9 **(Writ of Mandate – Code of Civil Procedure, §§ 1085, 1086)**

10 45. Petitioner realleges and incorporates by reference as if fully set forth herein the  
11 allegations contained in paragraphs 1 through 44 above.

12 46. Code of Civil Procedure sections 1085 and 1086 permit a court to issue a writ of  
13 mandate to compel the performance of an act which the law specifically enjoins, as a duty resulting  
14 from an office. Use of the 2002 Plan for City Council elections in the City of Berkeley in 2014 would  
15 violate article V, section 9 of the Berkeley City Charter and raise serious questions under the Equal  
16 Protection Clauses of the United States and California Constitutions.

17 47. Petitioner does not have a plain, speedy, and adequate remedy in the course of  
18 the law because, in the absence of a writ, respondent NUMAINVILLE will instruct respondent  
19 DUPUIS to use the boundaries drawn by the 2002 Plan for the 2014 election.

20 **SECOND CAUSE OF ACTION**

21 **Declaratory Relief**

22 48. Petitioner realleges and incorporates by reference as if fully set forth herein the  
23 allegations contained in paragraphs 1 through 47 above.

24 49. An actual controversy exists over the boundaries to be used in City Council  
25 elections in the City of Berkeley in the November 2014 election. Respondent NUMAINVILLE  
26 intends to direct respondent DUPUIS to use the boundaries drawn by the 2002 Plan for the 2014  
27 election. Petitioner contends that the use of such districts, as applied to the City's current population,  
28 would raise serious constitutional questions under the Equal Protection Clauses of the United States

1 and California Constitutions and violate article V, section 9 of the Berkeley City Charter, and that the  
2 City Council-approved Plan must be used for the 2014 election.

3 WHEREFORE, petitioner prays:

4 1. That this Court issue a writ prohibiting respondents NUMAINVILLE and  
5 DUPUIS from using the 2002 Plan as boundaries for the 2014 Municipal Election in the City of  
6 Berkeley, and directing respondents to use the City Council-approved Plan for the 2014 election.

7 2. For a declaration from this Court that the boundaries drawn by the 2002 Plan, as  
8 applied to the current population of the City of Berkeley as reported by the 2010 census, raise serious  
9 constitutional questions under the Equal Protection Clauses of the United States and California  
10 Constitutions, and fail to comply with article V, section 9 of the Berkeley City Charter, and that  
11 Ordinance 7,320-N.S. of the City of Berkeley must be used for City Council elections in the City of  
12 Berkeley pending the outcome of a referendum petition against the ordinance; and

13 3. For such other and further relief as the Court deems just and equitable.

14 Dated: April 3, 2014

Respectfully submitted,

15 James C. Harrison  
16 Margaret R. Prinzing  
17 Harry Berezin  
18 REMCHO, JOHANSEN & PURCELL, LLP

19 By  \_\_\_\_\_  
James C. Harrison

Attorneys for Petitioner/Plaintiff City of Berkeley

21 (00218190-10)

# **EXHIBIT A**

ORDINANCE NO. 7,320-N.S.

AUTHORIZING THE ADJUSTMENT OF BERKELEY CITY COUNCIL DISTRICT BOUNDARIES PURSUANT TO SECTION 9, ARTICLE V OF THE BERKELEY CITY CHARTER, TO EQUALIZE POPULATION IN THE DISTRICTS AS A RESULT OF POPULATION CHANGES REFLECTED IN THE 2010 DECENNIAL FEDERAL CENSUS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. Purpose.

In order that the eight City Council Districts shall continue to be nearly equal in population as may be according to said 2010 Decennial Federal Census, the City Council Districts are hereby adjusted as set forth in Section 2.

Section 2. District Boundaries.

**FIRST COUNCIL DISTRICT** shall comprise all of that portion of the City of Berkeley included in the following 2010 Census Tract and Block numbers:

**Tract 421800**

**Blocks as follows:**

2006	2012	2013	2014	2015	2016	2017	2020	2021	2022
2023									

**Tract 421900**

**Blocks as follows:**

1002	1003	1004	1005	1006	1007	1008	1009	1010	1011
2001	2003	2004	2005	2006	2007	2008	2009	2010	2011
2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
2022	2023	2024	2025	2026	3000	3001	3002	3003	3004
3005	3006	3007	3008	3009	3010	3011	3012	3013	3014
3015	3016	4000	4001	4002	4003	4004	4005	4006	4007
4008	4009	4010	4011	4012	4013	4014	4015	4016	4017
4018	4019	4020	4021	4022	4023				

**Tract 422000**

**Blocks as follows:**

1000	1001	1002	1004	1005	1006	1010	1011	1012	1013
1018	1019	2000	2001	2002	2003	2004	2005	2006	2007
2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
2038	2039	2040	2041	2042	2043	2044	2045	2046	2047
2048	2049	2050	2051	2052	2053	2054	2055	2056	2057
2058	2059	2060	2061	2062	2063	2064	2065	2066	2067
2068	2069	2070	2071	2072	2073	2074	2075	2076	2077
2078	2079	2080	2081						

**Tract 422100**

**Blocks as follows:**

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	1018	1019
1020	1021	1022	1023	1024	1025	2000	2001	2002	2003
2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
2034									

**Tract 422200**

**Blocks as follows:**

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	1017	1018	1019
1020	1021	1022	1023	1024	1025	1026	1027	1028	1029
1030	1031	1032	1033	1034	1035	1036	2000	2001	2002
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
2013	2014	2015	2016	2017	2018	2019	3000	3001	3002
3003	3004	3005	3006	3007	3008	3009	3010	3011	3012
3013	3014	3015	3016	3017					

**Tract 422300**

**Blocks as follows:**

1000	1001	1002	1003	1004	1005	1006	1007	1008	1009
1010	1011	1012	1013	1014	1015	1016	2000	2001	2002
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
2013	2014	2015	3000	3001	3002	3003	3004	3005	3006
3007	3008	3009	3010	3011	3012	3013	3014	3015	

**Tract 422400**

**Blocks as follows:**

3001	3002	3003	3004	3005
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The foregoing list of Census Blocks in the FIRST COUNCIL DISTRICT is generally located within a boundary line commencing on the point at the intersection of University Avenue and Martin Luther King Jr. Way, thence northerly, along Martin Luther King Jr. Way to the intersection of Martin Luther King Jr. Way and Francisco Street; thence easterly, along Francisco Street to the intersection of Francisco Street and Milvia Street; thence northerly, along Milvia Street to the intersection of Milvia Street and Cedar Street; thence westerly, along Cedar Street to the intersection of Cedar Street and McGee Avenue; thence northerly, along McGee Avenue to the intersection of McGee Avenue and Rose Street; thence westerly, along Rose Street to the intersection of Rose Street and Sacramento Street; thence northerly, along Sacramento Street to the intersection of Sacramento Street and Ada Street; thence westerly, along Ada Street to the intersection of Ada Street and Ordway Street; thence northerly, along Ordway Street