



[PDF] Written Public Comment for the Record – May 28, 2026 District Elections Hearing – Marc Warshaw

From Marc Warshaw <accounts@warshaw.net>
Date Sun 5/24/2026 11:05 PM
To City Council <citycouncil@cityofcapitola.gov>
Cc Gautho, Julia <jGautho@cityofcapitola.gov>

1 attachment (108 KB)

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Mayor Morgan, Vice Mayor Jensen, and Council Members Clarke, Orbach, and Westman:

I am a 22-year Capitola resident and will be attending the May 28th public hearing on the proposed transition to district-based elections. I am submitting the attached written comment in advance so that it may be included in the official record of that hearing and distributed with the agenda packet.

I intend to speak during public comment, but given the importance and permanence of the decision before the Council, I wanted to ensure that my full analysis and specific requests are documented in writing prior to the hearing.

My comment raises three concerns: the absence of any mandatory legal requirement compelling this transition; the financial structure and track record of the law firm whose demand letter initiated this process; and the significant — and very recent — change in federal constitutional law created by the Supreme Court's April 29, 2026 decision in *Louisiana v. Callais*, which has not yet been assessed for its impact on the City's legal position under the CVRA.

I respectfully request that the attached written comment be entered in full into the official record and that the City Attorney be prepared to address, on the record at the May 28th hearing, whether a legal opinion specifically analyzing the impact of *Louisiana v. Callais* on the City's CVRA obligations has been prepared.

My full comment is attached.

Respectfully,

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Written Comment for the Official Record

City of Capitola — Public Hearing on District-Based Elections

May 28, 2026

Submitted by: Marc Warshaw **Address:** 813 Capitola Avenue, Capitola, CA 95010-2179
Phone: (831) 521-7477 **Email:** marc@warshaw.net **Date:** May 28, 2026

RE: Opposition to Proposed Transition from At-Large to District-Based City Council Elections — Request for Independent Legal Review Prior to Any Further Action

To the Mayor and Members of the Capitola City Council:

I am a 22 year resident of Capitola and submit this written comment for inclusion in the official record of the May 28, 2026 public hearing on the proposed transition to district-based city council elections. I respectfully request that this comment be entered in full into the record and that the City Clerk confirm receipt.

I write in opposition to proceeding with this transition at this time, and in support of an immediate pause pending independent legal review. My objections are based on three grounds: (1) the absence of any genuine legal mandate compelling this action; (2) the nature and financial motivation of the entity driving the process; and (3) a material and very recent change in federal constitutional law that has not yet been assessed for its impact on the City's legal position.

I. THERE IS NO MANDATORY LEGAL REQUIREMENT COMPELLING THIS TRANSITION

The City Council and City staff have characterized this process as necessary to “comply” with California state law. That characterization is misleading and should be corrected for the record.

The California Voting Rights Act of 2001 (Cal. Elections Code §§ 14025–14032) does not automatically require any city to adopt district-based elections. The CVRA prohibits at-large election systems that impair the ability of a protected class to elect candidates of its choice. It creates a cause of action — a basis for a lawsuit — but it does not mandate a particular election structure absent a court finding or negotiated resolution following actual litigation.

As of the date of this hearing, the City of Capitola has not been sued under the CVRA. No court has made any finding that Capitola's at-large election system has impaired the voting rights of any protected class. No government agency has issued any directive requiring this change. What the City has received is a demand letter from a private law firm.

The distinction matters enormously. A demand letter is not a court order. It is not a statute. It is not a regulatory directive. It is a legal threat from a private party with a financial stake in the outcome. The City's decision to frame compliance with that letter as compliance with

“state law” conflates these categories in a way that does not serve the public interest or the accuracy of the record.

II. THE ENTITY DRIVING THIS PROCESS HAS A DOCUMENTED FINANCIAL INTEREST IN THE OUTCOME

The demand letter was sent by Shenkman & Hughes, a Malibu-based law firm that has made issuing such letters to California cities its primary business practice since 2011. The firm’s model is straightforward: cities that comply voluntarily pay the firm \$30,000 in statutory fees; cities that litigate face potentially millions in legal costs and have, to date, never prevailed in a CVRA lawsuit.

Several aspects of this pattern merit the Council’s attention:

Scale and targeting: The firm has sent hundreds of such demand letters across California, including to very small cities well below the population thresholds at which civil rights organizations with genuine community ties typically bring such actions.

MALDEF’s own standard: The Mexican American Legal Defense and Educational Fund — the nation’s leading Latino civil rights legal organization — has publicly stated that it does not bring these actions against cities with populations below 50,000. Capitola’s population is approximately 10,000. The gap between MALDEF’s threshold and Shenkman & Hughes’ targeting of Capitola is not incidental; it reflects a difference in mission and accountability.

Out-of-area clients: In documented cases in other cities, Shenkman & Hughes has identified out-of-state organizations — including a Texas-based group — as the named client in its demand letters, with no local residents as parties. The Council should request full disclosure of who, specifically, is the named client in the Capitola demand letter and what local standing that client possesses.

Financial structure: By accepting this transition and paying the \$30,000 statutory fee, the City rewards the business model regardless of whether any genuine civil rights violation has occurred or been demonstrated. The Council should weigh whether that outcome serves Capitola’s residents or the interests of a private legal practice.

Councilmember Clarke’s observation at the April special session — that this represents “the overreach of an attorney from somewhere else making us do something we don’t like” — was an accurate characterization. It should inform the Council’s deliberation, not be set aside as a preliminary sentiment.

III. A MATERIAL CHANGE IN FEDERAL CONSTITUTIONAL LAW REQUIRES INDEPENDENT LEGAL REVIEW BEFORE ANY FURTHER ACTION

This is the most urgent ground for the Council’s reconsideration, and the one most directly relevant to the timing of this hearing.

On April 29, 2026 — less than four weeks before this hearing — the United States Supreme Court issued its decision in *Louisiana v. Callais*, 608 U.S. __ (2026). The decision was issued by a 6-3 majority, with Justice Alito writing for the Court. Its implications for the CVRA are significant and have not yet been assessed in the context of this proceeding.

What the Court held: The Court struck down Louisiana’s 2024 congressional redistricting map — a map that had been drawn specifically to comply with Section 2 of the federal Voting Rights Act by creating a second majority-Black congressional district. The Court held that the map constituted an unconstitutional racial gerrymander under the Equal Protection Clause of the Fourteenth Amendment. The majority held that drawing electoral districts based on racial composition and statistical analysis, without a demonstrated showing of explicit and intentional racial discrimination, cannot be justified as a Section 2 remedy and itself violates the Constitution.

The new standard: The Court substantially narrowed the operative test under Section 2 of the federal VRA. Under *Callais*, it is insufficient to point to statistical evidence of racially polarized voting outcomes. A plaintiff (or a government entity drawing districts in response to a lawsuit threat) must now demonstrate that the existing electoral arrangement was the product of intentional discrimination — a significantly higher and more demanding standard than the purely statistical approach that has driven CVRA enforcement to date.

The direct relevance to the CVRA: The California Voting Rights Act was explicitly designed to expand beyond the federal VRA by eliminating the requirement of geographic compactness and, critically, by permitting liability based on statistical disparity alone — without requiring proof of intent. This is precisely the mechanism *Callais* has placed in constitutional doubt. Legal analysts, election law scholars, and municipal law practitioners have already written in the weeks since *Callais* that the CVRA’s core enforcement mechanism may now be in direct conflict with the constitutional standard the Supreme Court has articulated.

To be clear: *Callais* did not explicitly strike down the CVRA. The CVRA is a state law, and the Supreme Court’s ruling addressed the federal VRA. But federal constitutional standards — Equal Protection, the Fourteenth Amendment — apply to state laws as well. If the CVRA’s enforcement mechanism requires cities to create race-conscious electoral districts based on statistical disparity alone, and if *Callais* holds that such race-conscious district creation without proof of intentional discrimination is itself unconstitutional, the CVRA faces a serious preemption and constitutional challenge for which there is no current controlling authority.

The risk of proceeding now: By finalizing a district structure and map before this constitutional question is resolved, the City of Capitola may:

- Create electoral districts that are themselves vulnerable to challenge as unconstitutional racial gerrymanders under *Callais*;
- Commit the City to a permanent structural change based on a legal framework that may no longer be constitutionally sound;
- Incur significant costs — consultant fees, legal fees, administrative costs — in reliance on a legal premise that is now materially in question; and
- Foreclose the option of raising *Callais* as a defense against the Shenkman & Hughes demand, which the City has not yet done.

No responsible legal advisor — with full awareness of *Callais* — should be counseling this City to proceed on the current timeline without first addressing these questions. The Council should ask its City Attorney, on the record at this hearing, whether a legal opinion

specifically addressing the impact of *Louisiana v. Callais* on the City's CVRA exposure has been prepared, and if not, why not.

IV. THE PROPOSED CHANGE RAISES GENUINE CONCERNS ABOUT DEMOCRATIC REPRESENTATION IN A CITY OF CAPITOLA'S SIZE

Independent of the legal questions, the Council should consider whether district elections actually serve the representational interests of Capitola's residents — including its Latino residents.

Capitola is a geographically compact city of approximately 10,000 residents. Under the proposed four-district structure, each district would contain roughly 2,500 residents. Under a five-district structure, each district would contain approximately 2,000 residents — meaning a candidate could realistically win a seat with approximately 300 votes. The reduction in the electorate voting for each seat is not a marginal change; it is a fundamental restructuring of the community's relationship to its elected government.

Currently, every registered voter in Capitola has a voice in the selection of every council member. District elections would reduce each voter's direct influence to one seat out of five. In a city without sharply defined, geographically distinct neighborhoods — and where community identity has historically been citywide rather than ward-based — it is not self-evident that this fragmentation serves the democratic interests of any group of residents, including Latino residents whose population is distributed across the city.

The Council should also note that no Latino candidate has been shown to have been denied a seat on the Council as a result of the at-large system. The demand letter's claims of dilution are statistical and theoretical, not demonstrated through documented instances of qualified Latino candidates losing races they should have won.

V. REQUESTED ACTIONS

For the foregoing reasons, I respectfully request that the City Council take the following actions:

1. **Pause all further steps in this transition process** pending completion of an independent legal review specifically addressing the impact of *Louisiana v. Callais* on the City's obligations and legal exposure under the CVRA.
2. **Commission independent outside counsel** — counsel with no prior relationship to the Shenkman & Hughes demand process and no institutional interest in a particular outcome — to provide a written opinion on whether, in light of *Callais*, the CVRA's enforcement mechanism remains constitutionally sound and whether compliance with the Shenkman & Hughes demand letter is legally required.
3. **Require full public disclosure** of the identity and local standing of the named client in the Shenkman & Hughes demand letter.
4. **Direct the City Attorney** to appear at the next public hearing and state on the record whether a legal opinion addressing *Louisiana v. Callais* has been prepared, and if so, to make that opinion available to the public.

5. **Consider alternative measures** that may address any genuine representational concerns without permanently restructuring the City's election system — including enhanced community outreach, support for candidate recruitment in underrepresented communities, and other reforms short of district elections.

The residents of Capitola are entitled to know that a decision of this permanence and consequence is being made on solid, current, and independently verified legal footing — not on a timetable driven by the financial interests of a private law firm, and not on legal assumptions that a recent Supreme Court ruling may have rendered obsolete.

I respectfully urge the Council to pause, seek independent counsel, and act in the genuine interest of all Capitola residents.

Respectfully submitted,

A handwritten signature in black ink that reads "Marc Warshaw". The signature is written in a cursive, flowing style.

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