



VOTERS Choose

REFORMING THE TUSTIN CITY COUNCIL'S ELECTORAL RULES

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Executive Summary

In this report, Voters Choose proposes a bold and pragmatic solution to confront the impending threat of mandated, costly changes to Tustin's electoral system. The proposal is cost-effective and satisfies the framework of the California Voting Rights Act (CVRA) on the people's terms, not a court's. In the past decade, cities across Southern California like Tustin, including Buena Park, Costa Mesa, and Garden Grove, have already succumbed to abandon at-large elections, and adopt ineffective district models. Even in localities that comply with demand letters from these outsiders, the city or school district must reimburse an author up to \$30,000 for research on racial polarization in electoral patterns. The Tustin Unified School District fell victim to these unnecessary expenses in 2016 and now operates under a district-based system that ultimately is worse for Tustin's residents. Thus, the law has forced cities into lackluster compromises at the expense of their financial health and their residents.

But Tustin can do things in a different and better way that represents its citizens. Voters Choose has an electoral reform that optimizes representation for Tustin geographically, where representatives are accountable to an area; ideologically, where representatives respond to their constituents' interests; and descriptively, where representatives themselves represent the demographics of the community. Rank and Add Voting allows individual voters to rank a set of candidates (1st, 2nd, 3rd, etc.), at which point each ranking gets a point value (1st=1 point, 2nd=1/2 point, 3rd=1/3 point, etc.) and the sums determine the winner. All of this can be achieved in an easy, affordable way; no other system improves the quality of elections and ensures the city council can maintain the public's confidence for years to come. In short, it balances key priorities of a government, which includes representing the voices of minorities, but also giving moderates the chance to win broad, popular majorities. The Rank and Add system proposed here yields results that satisfy both current laws and fair representation of voters' nuanced preferences through elegant simplicity.

Background Information: The Problem

A. Tustin's Electoral Context

Like many Orange County city councils, Tustin elects its representatives with a variation of the Block Voting System. Simply put, this system elects multiple representatives (in Tustin's case, 3 each presidential cycle and 2 each midterm election) to a governing body, where voters can "check-mark" as many candidates as are the number of seats up for election.¹ It uses at-large campaigning to encourage candidates to appeal to the whole community, and still allows people to vote for individual candidates in order to make elections non-partisan.

Block Voting served two key purposes for its first adopters. First, as noted, it allowed them to make elections nonpartisan. At the same time, it also achieved a race-motivated goal for many of them because, in lieu of party candidates in district-based elections, they could curate a "Good Government" slate for majority-white cities.² These slates made it easy to ignore the political minority's voice, often African-American; if half plus one of the population check-marked five candidates into office consistently, there was not much the other half minus one could do.³

Although Tustin's candidates today do not operate on such a nefarious incentive, the fact that any political majority can employ this strategy can make Block Voting ideologically, descriptively and (potentially) geographically unrepresentative. As long as liberals and conservatives live in different parts of a city and look different from each other, slates can carve out a winning majority and ignore other groups. Then, if the political majority shifts, a council could change from operating with close to an unanimously-conservative council to a liberal one. Also, any independent, non-slate candidate has to corral his or her supporters to "bullet vote" (only check-mark his or her name) to have a fighting chance. This strategic voting is unfair to those voters' choices, because the system (not their preferences) prevents them from voting for other, ideologically-similar candidates they like. It is also unfair to candidates, who lack a clear path to victory when there are innumerable ways for extremists or "partisans" to game the system. That is why this model is under siege across the state, and why cities who keep it face challenging times ahead.

¹ Reynolds et. al., 44.

² Davidson and Korbel, 989.

³ See George Pillsbury, "The Bias of At-Large Elections: How It Works." Nonprofit VOTE, August 16, 2017, accessed October 5, 2018. <https://www.nonprofitvote.org/bias-large-elections-works/>.

B. Lawsuits under the California Voting Rights Act

With racial disenfranchisement in mind, the California legislature proposed a solution in the California Voting Rights Act of 2001 (CVRA). This law bans the use of at-large elections when “protected classes” have low impact on electoral outcomes. In its place, communities have to use a by- or from-district trustee model, where individuals run respectively within or from specific areas to represent them.⁴ The Tustin School Board recently underwent this process and, even though they complied with the complaining attorney’s demands, they still had to reimburse him \$30,000 to avoid a multi-million dollar lawsuit.⁵

Throughout Southern California, cities have changed their electoral system under this duress, or have failed to defend themselves from these suits. In all these communities, local ethnic minorities outnumbered a white plurality or minority population, and plaintiffs won cases on the argument that the governing bodies were not reflective of that fact. Examples include Anaheim, Palmdale, and Garden Grove, and all changed to by-district electoral systems.⁶ Even when minorities have won office in a particular year, courts still have the precedent to rule that Block Voting is systematically unfair and change the system anyway.⁷

Tustin, too, is a majority-minority city: as of 2018, the non-Hispanic white population counted for 29.8% of the city, while Hispanics alone accounted for 41.3%, Asian residents for 22.4%, and Black residents for another 2.4%.⁸ Therefore, while Tustin has previously had minority representation that mirrors the city’s demographics, the CVRA will enable plaintiffs to change Block Voting systems, irrespective of its history.

The failure of these lawsuits and demands is both their inability to produce any more than minimal substantive change for minorities in cities and their effect of producing a worse system, compared to Block Voting. Voters Choose does not aim to benefit from suits or threats thereof, but rather proposes reforms as a way to avoid them. It is our organization's interest to

⁴ For more of a thorough explanation, see A.B. 182, Sess. of 2015 (Alejo. 2015), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB182

⁵Susan Christian Goulding, “Tustin Unified approves by-area elections of school board members,” The Orange County Register, May 16, 2017, <https://www.ocregister.com/2017/05/16/tustin-unified-approves-by-area-elections-of-school-board-members/>

⁶ Chris Haire, “Local voting in historic upheaval as cities change how officials are elected,” The Orange County Register, October 23, 2016, <https://www.ocregister.com/2016/10/23/local-voting-in-historic-upheaval-as-cities-change-how-officials-are-elected/>

⁷ *Ruiz v. City of Santa Maria*, 160 F.3d 543 (1998).

⁸ “Race and Ethnicity in Tustin, California (City),” <https://statisticalatlas.com/place/California/Tustin/Race-and-Ethnicity>

educate and advocate for better voting and representation for the communities we serve.

Districted elections give spurious benefits over Block Voting, at best. Districts can incentivize elected officials to prioritize their districts' concerns over the city's in order to improve geographic representation. If an ethnic minority primarily lives in one area of a community, like the old segregated South, that group can receive better descriptive representation,⁹ although it becomes harder for districted councilmembers to work together on city-wide issues. Otherwise, many groups are not be sufficiently concentrated to benefit from districts, which, especially in California, include Asian and Hispanic Americans, women, and young people.¹⁰ Tustin's minority populations fit this model, because, even with some level of racial concentration, there are substantial percentages which live outside those areas.¹¹

It is thus more likely that voters will have fewer candidate choices in their districts, because a single-seat contest promotes two-party or -faction competitions, and that their ballots will fail to elect their preferred candidate, wasting votes.¹² Candidates, even minorities, without significant resources and attention will struggle to capture a majority in each of their districts; and incumbents who choose this option risk alienating themselves from their constituencies. For these reasons, we find this arrangement a solution Tustin would be better off avoiding.

If Tustin wants to avoid the cost of a suit and the net negatives of district-based elections, it will need to adopt new voting rules. Reform is feasible, and this proposal recommends a change that exceeds the representational goals of the CVRA where Tustin's voters choose with a much-clearer voice.

⁹ David Lublin and Shaun Bowler, "Representation of Ethnic Minorities," Oxford Handbooks Online., Sep. 2017, 6. (Oxford, U.K.: Oxford University Press, 2015). DOI: 10.1093/oxfordhb/978190258658.013.26

¹⁰ Ibid.

¹¹ "Race and Ethnicity in Tustin, California (City)," <https://statisticalatlas.com/place/California/Tustin/Race-and-Ethnicity>

¹² Gary W. Cox, "Strategic Voting in Single-Member Single-Ballot Systems," in *Making Votes Count: Strategic Coordination in the World's Electoral Systems* (Cambridge: Cambridge University Press, 1997), 76.

The Solution: Rank and Add Voting

Our analysis finds that three electoral principles matter most for Tustin, a diverse but politically-moderate city.¹³ First, an electoral system must promote geographic representation by giving independent candidates a real chance of victory; slates can draw their candidates from the same communities that support them. Second, it must ensure that all parts of Tustin are represented—in other words, that the 50%+ ideological majority should have three or more seats on the council consistently, but that the rest of the population should always have an elected representative, too. Third, to create descriptive representation, minority candidates need the flexibility to aggregate support from their communities, no matter where they live in the city. We hold that the Rank and Add system best fits these criteria.

A. The Borda Count Family

Voters Choose prefers the Borda Count (BC) family, especially Rank and Add, for combining the best of these principles in a simple, easy-to-use format. A weighted ranked-choice voting category, BC systems allow voters to order the candidates standing for election and assigns each of the rankings (1st, 2nd, 3rd, etc.) a point value.¹⁴ Figure 1 outlines the typical ways that governing bodies structure the points:

Figure 1: Rank and Add Voting Typology (N=Total Preferences)

Ranking	Standard #1	Standard #2	Rank and Add Voting
1	N	N-1	1
2	5	4	1/2
3	4	3	1/3
4	3	2	1/4
5	2	1	1/5
N	1	0	1/N

¹³ Martin Wisckol and Susan C. Goulding, "Long-conservative Tustin now tilts Democrat." Orange County Register, August 16, 2016, <https://www.ocregister.com/2016/08/16/long-conservative-tustin-now-tilts-democrat/>.

¹⁴ William Poundstone, *Gaming the Vote: Why Elections Aren't Fair (and What We Can Do about It)*, 1st ed. (New York: Hill and Wang, 2008), 140.

We will note that, despite the differences, all of them produce similar outcomes most of the time, provided that the number of rankings remain fairly small (under 10). Otherwise, since the standard types are equally-spaced apart, they resemble the Block Voting method (e.g. when the 1 ranking is (26/25) times more valuable). With that said, it is important that voters have the option to rank multiple candidates, or else everyone is not much better off from First Past the Post.

One common property to all these Borda Count variations is that they give voters the most- comprehensive voice in elections. Scholars report that BC elections tend to produce victories for the “most widely supported candidate, or the most broadly acceptable option...[i.e.] the least unpopular.”¹⁵ That means that a voter’s rankings are more likely to correspond to the candidates who end up winning seats; and that is because each point value, no matter the system, is fixed to a ranking in advance. Broadly-palatable candidates also tend to be centrists in these systems, so a positive byproduct is that the democratic voice in this system makes a functioning, stable government easier and more likely.¹⁶ It also means that more people are represented by their elected officials, which improves satisfaction with the outcome and trust in the government, and that officials will be more accountable, which means this solution is positive for the democratic majority. Citizens will be able to continue electing the candidates they preferred before the reform, but under rules that are more representative.

In addition, BC levels the playing field for independent candidates, past and present. As we found, slates have a built-in advantage in most electoral systems, because candidates within slates have an incentive not to compete with each other. In Block Voting, for example, it does not matter how popular each candidate in a slate is because check-marks equal one point. The best strategy, therefore, is to ask the slate’s base to support every candidate to guarantee them all victory.

In Borda Count, by contrast, all the rankings count at once and have different values, so even if candidates decide to partner, there is a benefit to 1) being the most popular and 2) earning lower rankings from voters outside the partnership’s base. When elections are about aggregating voter preferences and not a percentage of voters’ support, as these benefits indicate, we expect

¹⁵Benjamin Reilly, “Social Choice in the South Seas: Electoral Innovation and the Borda Count in the Pacific Island Countries,” *International Political Science Review* 23, no. 4 (October 2002): 361, <https://doi.org/10.1177/0192512102023004002>.

¹⁶ Reilly, 361.

that candidates will still have an opportunity to run as an independent, if they so choose. This is helpful for minority representation, because independent candidates that may vary by geography and identity now have a fairer shot at victory; but also gives a democratic majority more of a voice, because it can use the ballot to craft its own “slate” of preferred candidates.

B. Examples

Several case studies in diverse societies prove that all Borda Count methods can work in societies similar to Tustin. Three countries use it for at least some part of their national elections: Kiribati, Nauru, and Slovenia. Kiribati and Slovenia both use the Standard #1 method for tabulating, while Nauru uses the Rank and Add method.¹⁷ In Kiribati, members of the I-Kiribati parliament use the Standard #1 of Borda Count to select the four candidates that voters will pick from to become president (a complicated system, to be sure). Slovenia uses the first standard again for the election of two seats reserved for the country's Hungarian and Italian ethnic minorities,¹⁸ signaling their belief that Rank and Add Voting provides better descriptive Representation and consensus-based politics. In addition, a major new Spanish party, Ahora Madrid, utilizes the Rank and Add method for all their primary candidates.¹⁹

Nauru seemed to us the most similar case to Tustin's political dynamic. A small island country in the Pacific Ocean, Nauru uses the Rank and Add method to select multiple candidates for multiple seats, like an at-large city council race. There, they have seen the election of moderate candidates under this system and have had “democratic longevity with a high degree of social pluralism” (i.e. a large number of competing groups and factions).²⁰

In the US, Borda Count is primarily practiced in non-governmental organizations. Today, variants of BC determine the winner of the Heisman Trophy, the MLB MVP Award, and even the Associated Press's College Football rankings.²¹ Significantly, with Voters Choose's advocacy, Harvard College's student government, the Undergraduate Council (UC), implemented the Rank and Add method for its legislative and presidential elections this past fall,

¹⁷ Reilly, 367; Jon Fraenkel and Bernard Grofman, “The Borda Count and Its Real-World Alternatives: Comparing Scoring Rules in Nauru and Slovenia,” *Australian Journal of Political Science* 49, no. 2 (April 3, 2014): 202, <https://doi.org/10.1080/10361146.2014.900530>.

¹⁸ Fraenkel and Grofman, “The Borda Count and Its Real-World Alternatives,” 196.

¹⁹ Cecilia Nicolini and Quinton Mayne. 2019, Feb. “Disrupting the Party: A case study of Ahora Madrid.” Accessed March 2019.

²⁰ Reilly, 369; Fraenkel and Grofman, “The Borda Count and Its Real-World Alternatives,” 198.

²¹ “Borda's Method: A Scoring System.” Lecture. Accessed March 2018. [https://www3.nd.edu/~apilking/Math10170/Information/Lectures/Lecture-2.Borda Method.pdf](https://www3.nd.edu/~apilking/Math10170/Information/Lectures/Lecture-2.Borda%20Method.pdf).

replacing (respectively) STV and AV contests.²² Turnout markedly increased, and 43% female and 57% ethnic minority representation corresponded well to a majority-minority school.²³ Students were only allowed to rank three candidates, but many still chose to rank multiple candidates, leading the head of the Harvard Open Data Project commented that “strategic voting is not happening” with Rank and Add in the 2018 UC presidential elections.²⁴

These results lead us to believe that we can expect more voter participation and engagement in a Tustin Borda Count election, especially under the Rank and Add method. The absence of strategic voting indicated that voters typically have a variety of preferences that are not married to parties or slates. Rank and Add gives voters the flexibility to associate with candidates who might carry another label or identity, but with whom they can align on at least some policy issues. The Harvard elections signal that this will result in ideological and descriptive Representation for Tustin minorities; because female and minority candidates won in record numbers through these broadly-palatable channels.

In this section, we sought to demonstrate that, on the basis of Representation in its various forms, Tustin would have better elections in the future with a Rank and Add model. We will now discuss and attempt to address concerns you and the City might have about implementation, including financial, legal, and usage information.

²² Jonah S. Berger, “Undergraduate Council Adopts New Voting Method for Elections,” *The Harvard Crimson*, September 10, 2018, <http://www.thecrimson.com/article/2018/9/10/uc-voting-system/>.

²³ *Ibid.*

²⁴ Jonah S. Berger, “Harvard Open Data Project Predicts Palaniappan and Huesa Will Win UC Race,” *The Harvard Crimson*, November 15, 2018, <http://www.thecrimson.com/article/2018/11/15/2018-open-data-project-uc/>.

Implementation

A. Financial Information

We have done our part to research what it might cost to implement Rank and Add for future city council elections. First, research suggests that other ranked-type elections have not cost cities significantly more to administer in the short- or long-term, compared to at-large or district elections.²⁵ While there was an increase in expenses of about \$0.42 per voter on average across RCV cities during the first electoral cycle of implementation, cities saved about \$0.20 per voter on average each electoral cycle thereafter (because they reduced the number of run-off and off-cycle elections). We expect implementation costs to be even less for Tustin. First because a points process, unlike the transfer methods, do not require sophisticated software. Second, as Neal Kelley, from the OC Registrar of Voters, attested that the county is looking to change voting machines, giving the City a window of opportunity to make this electoral reform even more cost-effective. Much of these costs are variable, but we anticipate short-term expenses of around \$12,500-\$17,500, including the change in machines and community education costs, and then potential savings of \$2,000-\$5,000 each succeeding election. As we will also discuss, the city council will likely need to put this initiative forward to the voters, at which point the reform could cost an additional one-time \$5,000-\$7,000 administration fee.

At the same time, we urge you to weigh these against the concrete financial costs of inaction. Should Tustin ignore electoral reform altogether, it is likely that proponents of the CVRA will try to forcibly change its elections, as we mentioned occurred with Tustin's school board and with other OC cities. In addition to the \$30,000 reimbursement fee, there could also be unanticipated costs that arise from printing two types of ballots each election cycle (if Tustin decides to stagger candidates as it currently does), and the City will probably need to run another education campaign, too, so people understand why and how the system is changing. This is all to say that Rank and Add, for all the benefits it brings to Representation, is not a more-costly proposal.

We will also note that the City could save most on Rank and Add's hypothetical costs by deciding to run all of its 5 seats fully at large, which would save \$20,000-\$30,000 every four years. In Block Voting elections, there is a justified hesitation towards running elections fully at-large, both because slates can be unrepresentative for broad swaths of the public and can be

²⁵ Christopher Rhode, "The Cost of Ranked Choice Voting," The Ranked Choice Voting Resource Center (2014): 2, <https://esra.wisc.edu/papers/Rhode.pdf>.

unstable, too, for they may need to shift ideologically at any time drastically to maintain the public's support. Rank and Add removes these concerns, because, as we mentioned, slates are less advantageous, and because there is a unique moderating tendency in the system; so, the more seats there are up for election, the more representative elections become and the more stability in governance they bring.

B. Legal Information

The clearest way we see the City adopting a Borda Count electoral model is to adopt an Article II charter for Tustin's by-laws. A charter version of Article II would allow the City to amend its electoral laws exclusively and align with the State on all other issues, which keeps the political scope of this proposal purposefully narrow. The California Constitution says that cities can adopt these charters in two steps. First, a governing body (in this case, the Tustin City Council) proposes a charter, and then the public approves it by majority vote, like any other city measure.²⁶ If the City undertakes deliberations this year, it could likely put a measure up for a vote by the 2020 primary election.

Should the public decide to adopt the proposal, we expect that the city will not face any further legal obstacles. According to Electoral Law Professor Nicholas Stephanopoulos at Harvard Law School, and confirmed by our research, the existing body of cases against other ranked-choice voting systems have never overturned a government's or populace's decision to implement election reform in their community. Court precedent also suggests that Article II charters are completely legal ways to experiment with better forms of representation.²⁷

C. Usage Information

Up until now, we have discussed Borda Count mostly in the common benefits it brings. When deciding between each of the Borda Count options, though, each system makes different assumptions that can swing races at the margins. The lowest-sum and standard methods produce similar results, because the distance between each preference remains the same; each assume that voters have an equal and linear differential between preferences (10-9=2-1). While this is a very proportional system between votes and seats, this system grows unruly as races grow larger; as the number of rankings

²⁶ California Constitution, Article XI, Section 3(b).

²⁷ *Cawdrey v. Redondo Beach*, Court of Appeal, Second District, Division 3, <https://caselaw.findlaw.com/ca-court-of-appeal/1772269.html>

available to voters increase, a first-place ranking becomes less and less meaningful compared to the second, and the more the system resembles Block Voting. By contrast, the Dowdall method produces different results because there is not an equal difference between each preference ($1 - \frac{1}{2} \neq \frac{1}{2} - \frac{1}{3}$).²⁸ There, preferences exponentially decrease, so that one needs at least 2 “2” rankings to overcome a “1,” but the values are more constant and less affected by the number of seats or candidates in the contest.

If the City Council decides to move a Rank and Add proposal to the voters, Voters Choose can offer its advice and support throughout the process. We have informational statements on hand, and we will gladly develop more so that Tustin’s residents can understand the basic procedure and the deeper value of representation this system will provide. In that process, we could support the establishment of community presentations; our team leaders and volunteers can field questions and act as a resource.

²⁸ Reilly, 17.

Recommendations

As a team, our research committee sought to share the current state of electoral reform in Tustin to demonstrate that electoral reform is a net benefit for the City under a Rank and Add method. Of the systems we described, all similar in outcomes and in costs, we recommend that the Tustin City Council adopt Rank and Add method for future at-large city council races. While all Borda Count sets would give voters more satisfaction with the outcome and more representation in all forms, our Rank and Add method will best accommodate an increase in voter and candidate participation in future elections. That is because, unlike the standard methods, the 1 ranking is consistently more meaningful than other rankings in Rank and Add, no matter how many rankings are allowed. It would still be valuable to get lower-placed rankings, so this allows independent candidates to run; but this makes the first 5-7 rankings most important and should thus make elections more stable and predictable for the City. In case the City needs to set rankings in advance, the Rank and Add method as practiced at Harvard works in a representative way, so we recommend that the City allow at least 5 rankings each election so that voters can make full use of the system. Then, our subsidiary recommendation is that the City adopt this electoral system in a four-year cycle to achieve cost savings, more representation, and more stability in government.

We are publishing this report in the spirit of democracy and to foster a debate among the citizens and elected officials of Tustin. Our hope is that the evidence presented in the proposal clarifies the current threats to Tustin's elections and provides evidence to why Rank and Add is the solution for our city.

Appendix: Other Electoral Reforms

Two other, sub-optimal electoral reforms deserve mention, because they have operated legally within the CVRA and demonstrate that Rank and Add can exist alongside district-based elections. This discussion indicates the ultimate shortcomings of these other systems.

The first is called the Alternative Vote (AV)—it allows voters to rank candidates (like the Rank and Add)—but counts all the ballots in a series of rounds. It is currently used in San Francisco and Oakland for single-seat elections but could apply city-wide in what is called the Single Transferable Vote (STV).²⁹ These systems try to create ideological representation by guaranteeing a voter that, if their first-placed candidate is not elected, their vote will apply to latter-ranked candidates in later rounds.³⁰

When these transfers eliminate candidates, though, they also eliminate the ballots of voters who only voted for them, a phenomenon called “ballot exhaustion.”³¹ This makes it challenging for independent candidates to run because there is no easy path to ensure 2nd and 3rd rankings will benefit them, as opposed to a slate of candidates, who can instruct voters to align their preferences in a certain way to guarantee a fully-useful transferring. As in Block Voting, these slates can dampen the ability to achieve all forms of Representation in a city council.

The other is called Cumulative Voting, which allows voters to distribute a set number of points among candidates and serves another alternative after a district court recently ordered Mission Viejo to begin using it.³² Like the CVRA's district voting, it was offered as a solution to minority underrepresentation in the city and can undermine ideological Representation in the process. As the main advocate admitted, and UCI Irvine Professor Donald Saari confirmed, a voting bloc on the political extreme gains an advantage with this system, because they can put all their points behind a candidate- a form of bullet voting.³³ As Block Voting over-represents the majority, Cumulative Voting does so for minority populations.

²⁹ Craig M. Burnett and Vladimir Kogan, “Ballot (and voter) “exhaustion” under Instant Runoff Voting: An examination of four ranked-choice elections,” *Electoral Studies*, vol. 37. (Elsevier, 2015), 44-45.

³⁰ Burnett and Kogan, 42.

³¹ Burnett and Kogan, 42.

³² Alicia Robinson, “Mission Viejo will go its own way with new ‘cumulative voting’ system.” *Orange County Register*, July 30, 2018, <https://www.ocregister.com/2018/07/30/mission-viejo-will-go-its-own-way-with-new-cumulative-voting-system/>.

³³Ibid.