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January 15, 2020

VIA CERTIFIED MAIL

Dr. Rosanna Mucetti
Superintendent
Ms. Robin Jankiewicz
Clerk
Napa Valley Unified School District
2425 Jefferson Street
Napa, CA 94558

Re: Considering a Transition to By-District Elections at Napa Valley USD

Dear Dr. Mucetti and Ms. Jankiewicz:

I represent residents of City of Napa, including members of the Napa County Progressive Alliance, in their petition that the city restore district elections. For most of the city's recent history, there have been no Latinos on its council. By contrast, Latinos have often been overrepresented on this Board. I am very selective about the cases I accept regarding enforcement of the California Voting Rights Act (CVRA), and NVUSD was not the highest priority.

On closer examination, I believe the Board should seriously consider this transition. I understand that county registrar John Tuteur told the Board of Supervisors that he would discuss it with you and see it is on your agenda for a meeting tomorrow night.

Napa Valley Unified School District (NVUSD) is unusual in several respects. Until 2014, most trustees had long tenure. Two areas still have 20-year incumbents. The other areas have turned over at least once, including Area 1, which has had four different trustees in six years, and Area 2, which has had four trustees since 2012. With one exception, however, all of the incoming trustees have been either appointed by the Board or appointed in lieu of election due to the lack of contestants. Not only is the Board ethnically diverse, but it currently includes at least one attorney and investment bankers – professional backgrounds that many school boards lack.

The absence of elections is curious, because the district has faced controversies and challenges, including unbalanced growth and the closure of schools, which often prompt candidates to contest incumbents. Different trustee areas experience different conditions, needs, and equitable claims. Although Board members are geographically dispersed, they might assess the extent to which they actually understand and represent voter opinion in the absence of campaigns and elections. The lack of contests may reflect (and may also cause) disengagement of the taxpaying public from the district, which may make it more difficult to generate support for future bonds or parcel taxes.

So there may be a pragmatic case, independent of the racial composition of the Board, to consider elections in which trustees would be elected by the voters in each of the areas, instead of by all the voters in the district. This would lower the costs of campaigning and possibly increase interest in running.

NVUSD's trustee areas were likely drawn before 2010. Because the voters at-large elect trustees under the "from district" method of election, the Education Code does not specify that they be redistricted after each census. The population variance between areas 4 and 5 was 83%, based on 2010 data. Even assuming that it is constitutional to provide such unequal opportunities for candidates from different parts of the district, it would improve representation and equity to reapportion the areas.

Area	2010 population	variance from ideal
1	11,148	-32%
2	19,008	16%
3	15,563	-5%
4	24,526	50%
5	11,005	-33%
6	12,870	-21%
7	20,274	24%

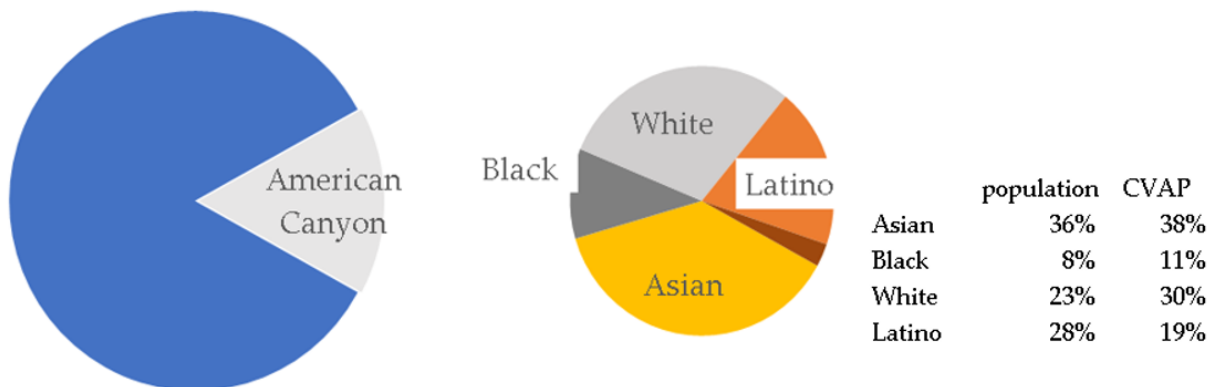
There are three additional factors to consider, all of which relate to the City of Napa, which must complete the transition to district elections this year. The first is the potential for economies and increased public input if the two jurisdictions work together. The second is the potential to avoid voter confusion and to simplify election administration if both jurisdictions implement in November 2020.¹ Finally, there is the interest of the Napa Progressive Alliance, my client in the City of Napa, to make sure that any resistance to implementation by NVUSD this year does not impugn the merits of its petition to the City, which I attach. Therefore, this letter outlines important demographic and electoral differences between the two jurisdictions.

THE FEDERAL VOTING RIGHTS ACT PROBABLY DOES NOT APPLY TO NVUSD,
BUT THAT COULD CHANGE NEXT MONTH.

In City of Napa, my clients have focused on demonstration voting behavior that is polarized between Latinos and the rest of the electorate. But in reviewing NVUSD, it came to my attention that there may be a potential trustee area in which a majority of eligible voters in Asian. American Canyon doubled in population from 2000 to 2010,

¹ Since Napa County uses Voter's Choice Act, it is not necessary to reprecinct. However, errors in the printing and distribution of ballots can be more serious and more difficult to correct, since everyone gets a mail ballot. This problem was demonstrated when the Madera County registrar sent the wrong ballot type to some voters and refused to certify a Madera USD trustee.

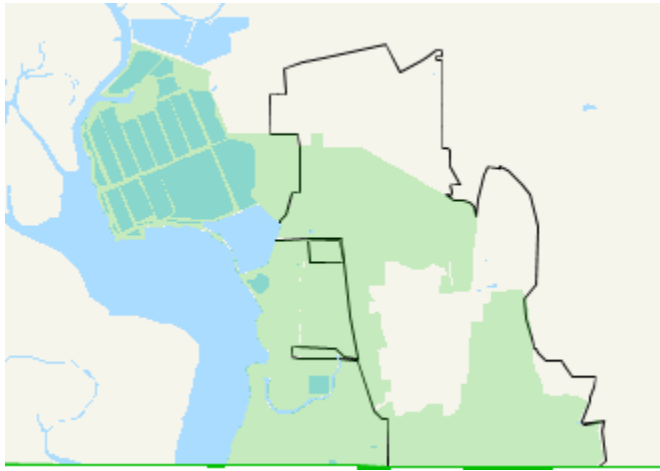
but has increased only 4% from 2010 to July 2018. American Canyon has lower Latino and white population shares than the rest of NVUSD, but a significant African-American and Asian, largely Filipino, populations. Within the city limits of American Canyon, the Asian (mostly Filipino) population is 36%, but the share of eligible voters is higher. American Canyon has more population than a trustee area requires, so a trustee area within the city and its environs could have a higher CVAP. Within the city limits, Asian CVAP has been increasing at almost 2% a year.



To establish that at-large voting violates Section 2 of the federal Voting Rights Act of 1965, 52 U.S.C. 10302(c), the demonstration district must be “reasonably compact” and have a majority of eligible voters (CVAP) from a protected group. Some courts have allowed “coalition” districts (where multiple groups constitute the required majority) and some have accepted near-majorities.² But many courts apply the midpoint estimate of census survey data as a bright line test, despite relatively large measures of error. I have not yet identified a potential trustee area with an Asian CVAP in excess of 47.2%. If supported by further review, this could indicate that there is no federal liability.

² The actual remedial district may consider political and neighborhood factors and be less than a strict majority.

POTENTIAL ASIAN MAJORITY TRUSTEE AREA IN AMERICAN CANYON

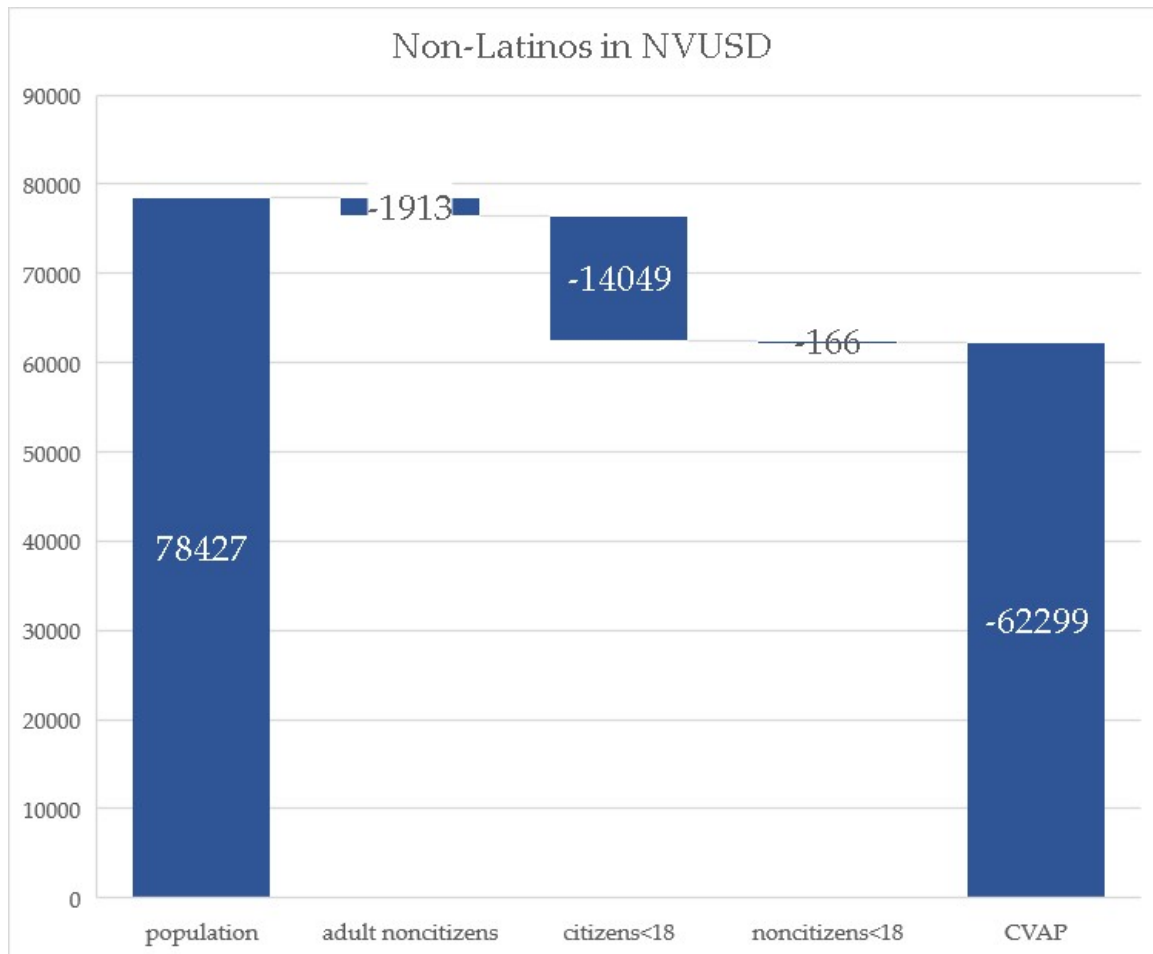
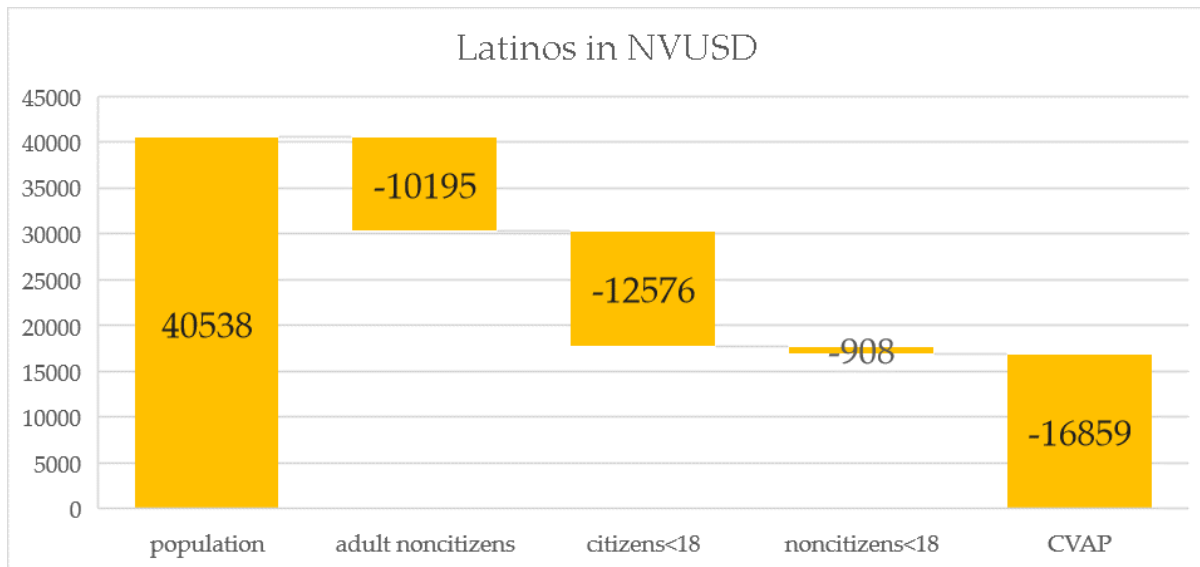


My initial review used block-level data synthesized by the California Legislature's redistricting database. These data are authenticated by the University of California, but it is not possible to calculate measures of error because they combine different datasets. As noted, Asian CVAP has been increasing at almost 2% a year for several years. Thus, either due to continued growth or due to sampling and disaggregation error, it may be that when the 2014-2018 ACS data are published early in February 2020, it will indicate the possibility of a majority Asian trustee area.

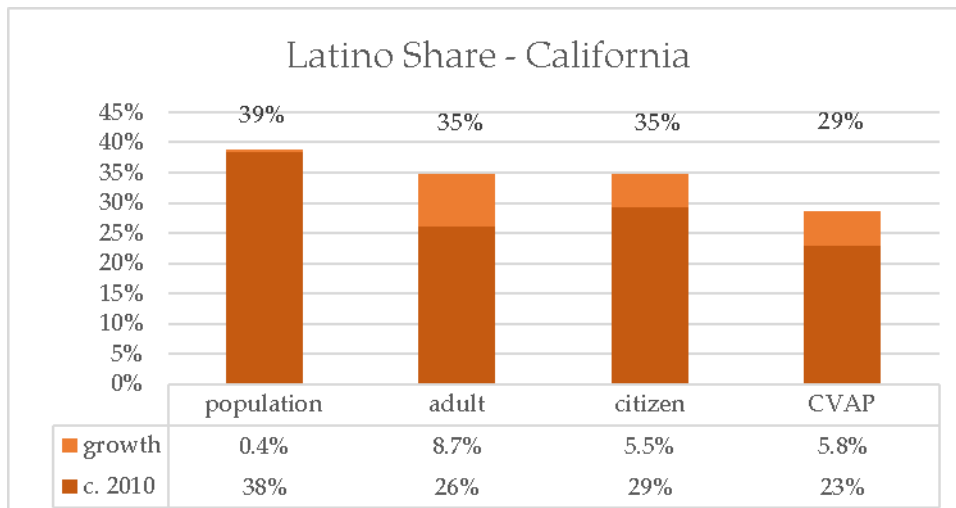
NVUSD's VOTING POPULATION IS BECOMING MORE LATINO, BUT TO A LESSER DEGREE THAN THE CITY OF NAPA OR THE STATE OVERALL.

According to the census survey tabulation (which may differ from your enumeration), your total enrollment has not grown since 2010.³ Latino enrollment has increased from 9015 to 9380, so its share has gone from 50% to 52%. Within NVUSD, 34% of Latinos are under 18 (compared to 18% of non-Latinos). Almost all of these young Latinos are citizens. By contrast, over 25% of the adult Latinos are not citizens, a rate even higher than the statewide average.

³ The latest survey figures are from 2013-2017. In the case of steady change, these data may resemble the conditions in 2015.

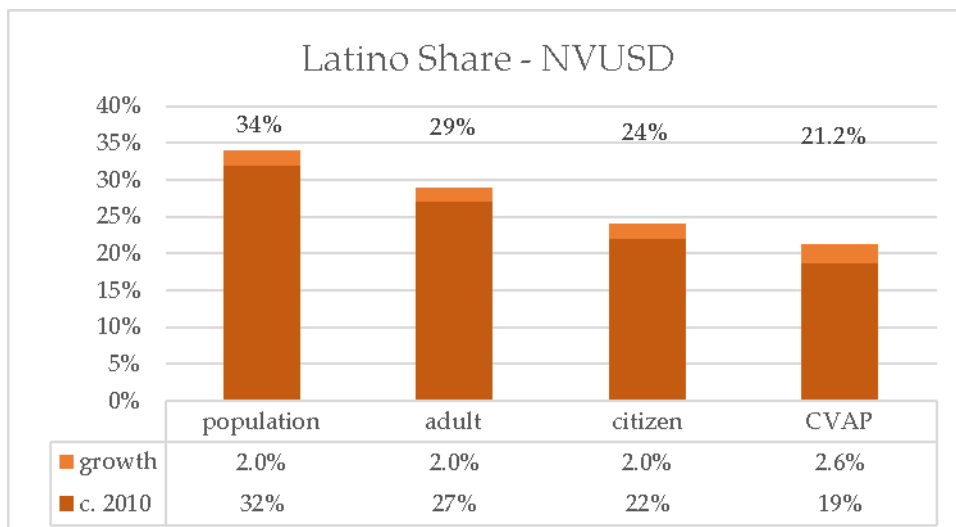


But the impact of young Latino citizens pales compared to the rest of the State. As they have turned 18, the Latino share of the adult population grew by 9% from 2010 to 2015, causing the Latino share of citizens of voting age (Latino CVAP) to increase from 23% to 29% statewide.



In NVUSD, the Latino population share was smaller at the time of the census and has grown less.

These two factors – fewer young Latinos and the high rate of noncitizenship among Latino adults combine to make the the shift of Latino CVAP within NVUSD about half that of the state as a whole. The District’s median age is older (40 v. 35), and the age gap is increasing for both whites and Latinos. The Latino share of CVAP within NVUSD will likely continue to grow, but more slowly than in the rest of the state.



NVUSD’s demographics also differ from those of the City of Napa, where most of its Latino population is concentrated. The City has an even higher percentage of Latino population than the State. But because the age and adult noncitizenship rates

among Latinos resemble those of the District, its Latino CVAP of 25% lies halfway between NVUSD and California.

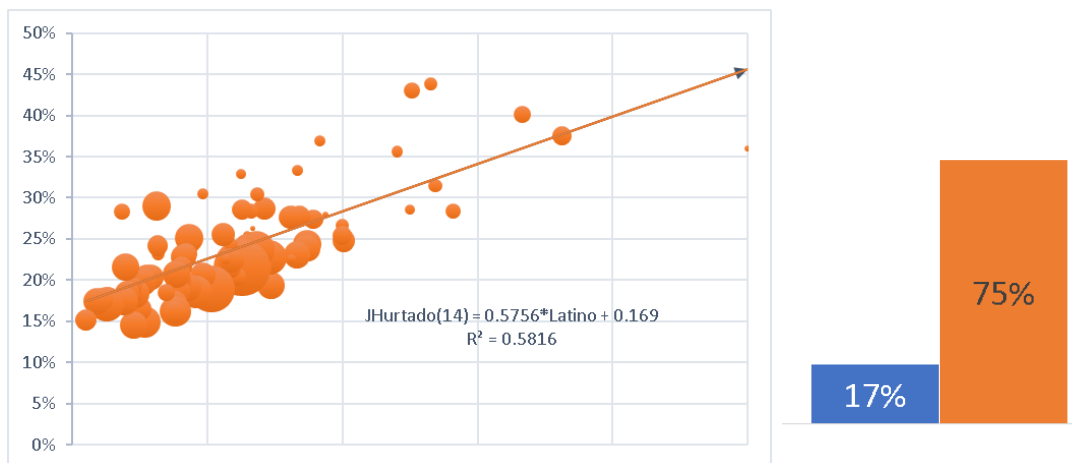
THERE IS RACIALLY POLARIZED VOTING IN NVUSD

Section 14028(b) provides

The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.

Since the values and needs of different racial and ethnic groups vary, it is not surprising that “racially polarized voting” is a near-universal phenomenon. As we showed the City of Napa, your trustee Jose Hurtado performed exceptionally well among Latino voters when he ran for City Council in 2014, winning 75% of the Latino vote across the district. But because of the at-large system, he placed third for two seats.

JOSE HURTADO – 2014 Council Election – 58% Latino vote differential



NVUSD had a 50% larger population in 2010 than the City of Napa, so I performed separate analyses to determine if the Latino population voted differently from the rest of the electorate within NVUSD. I examined the results for two questions on the 2016 ballot of particular concern to Latino voters. Both cases were consistent with similar analyses for the City of Napa, but with somewhat larger differentials.

Proposition 51 in 2016, which authorized \$9 billion in bonds for K-12 education and community colleges. In this case, a linear regression model of voting in the City of Napa suggests that 41% of Anglos, but 86% of Latinos, supported the measure. Proposition 51 passed with 55% of the statewide vote. Such a dramatic differential on a bond measure is compelling evidence that Latino electors are casting well-informed votes reflecting values of their community that differ from those of the non-Latino electorate.

Senator Ricardo Lara sponsored Proposition 58 to repeal most elements of Proposition 227 (1998), which effectively banned bilingual education. The proposition passed overwhelmingly (74% yes) in most parts of the state and by a similar margin (72%) among non-Latino voters in the NVUSD. An examination of high-Latino precincts, however, suggests Latino support in excess of 95%.

PROCEDURAL AND SUBSTANTIVE ISSUES IN REDISTRICTING

As the map in Exhibit 1 illustrates, the trustee areas are out of proportion. Trustee Area 1 is underpopulated, even though it includes more than half the land area. Since two-thirds of the NVUSD's population is in the City of Napa, most trustee areas will necessarily include some portion of the City of Napa. Because five trustees live in the City of Napa, creating population balanced districts may be disruptive.

	% by population	% by area	pop/sq mi
1 Jankiewicz	10%	54%	74
2 Gracia	16%	2%	3222
3 Watter	13%	4%	1390
block split with 4	0%	2%	43
4 Schunk	21%	14%	610
5 Martin	10%	12%	336
uninhabited block split between 5 and 6	0%	8%	0
6 Gonzalez-Mares	11%	1%	3785
7 Hurtado	18%	5%	1469

Neither City of Napa nor NVUSD can create a majority Latino constituency. It is therefore appropriate to consider Latino ethnicity only as one of a number of communities of interest, and not the predominate factor in designing districts. Although it is beyond the scope of this letter to provide details of the datasets that have been helpful in similar jurisdictions, you may wish to consider density, land use designations, school assignments, municipalities and neighborhoods, natural and constructed barriers, and police beats. Communities of interests are often defined by common shopping facilities, libraries, parks, and schools where neighbors congregate. You should also consider areas with high levels of unemployment, lower per capita income, limited English proficiency, limited education, areas with group quarters and rental properties, and immigrant communities.

More nuanced data is required to identify the actual community, but some of these factors do correlate with Latino CVAP. A Latino trustee area with a concentration of immigrants and people too young to vote also means that those Latinos who are

eligible can represent the needs and values of those in their households and neighborhood who are not eligible. The assignment of a dedicated trustee on the basis of population can equalize the influence of the neediest communities.

Exhibit 2 provides some details of the areas in which eligible Latino voters are concentrated. Three shades of orange indicate census blocks in which a high percentage of those eligible to vote are Latino.

	# of blocks	sq miles	2010 pop	CVAP-L	% of CVAP-L
50-100%	99	4.3	8647	2,848	21%
30-50%	204	17.7	22195	5,165	38%
20-30%	233	18.6	23524	3,658	27%
	1654	239.5		1,971	14%
				13,642	

21% of Latino voters live in blocks in which Latino voters are a majority and much of the population is ineligible to vote. It is significant that these blocks are less than two percent of the area of NVUSD, mostly in the densest parts of City of Napa. Many of the incumbent trustees live in proximity to these areas.

The Education Code does not specify criteria for mapping trustee areas, other than they must be relatively equal in population once by district voting is implemented. Section 5019.5 requires that districts use data validated by the Department of Finance, but it does not revise census data at any geographic level that would be useful. In the absence of unusually unbalanced growth, it is normal to use enumeration data from the previous census. Section 1002 of the Education Code sets out traditional redistricting criteria – topography, geography, cohesiveness, contiguity, integrity, compactness, and communities of interest – but the provision specifically applies only to the County Board of Education. The FAIR MAPS Act provides additional guidance for charter cities, which will apply to the City of Napa.

Elections Code, Section 10010 provides for a series of five hearings. Normally, these occur over a period of 90 days during which a potential plaintiff is barred from going to state court. NVUSD would have several additional steps. Its map must be approved by the County Committee on School District Organization, which must occur 120 days before the election. Section 5019(d). Every other jurisdiction has a statutory exception from voter approval when districting is done to comply with the California Voting Rights Act, but school districts must seek a waiver or place a ballot question.

The FAIR MAPS Act will require City of Napa to conduct four more hearings during the 2021 redistricting process. NVUSD faces no such requirement, so it may use normal public hearing processes to revise the boundaries in light of the census. The proliferation of districted jurisdictions, and the demands of the new law on cities and counties, may be a strong reason to complete the transition this year. It will be difficult, and probably expensive, to obtain a demographer for five hearings in 2021.

NOTICE OF POSSIBLE VIOLATION

As noted above, the Bay Area Voting Rights Initiative is representing minority voters in the City of Napa, as well as the Napa Progressive Alliance. The Napa Progressive Alliance has an interest in assuring that the consideration of trustee area elections by NVUSD does not call into question the imperative that the City of Napa complete the process this year. NVUSD is a relatively large district that will benefit from implementing trustee areas, especially if they lead to greater voter engagement in contested elections. It also needs to rebalance the trustee areas to equalize the distribution of board members, even if it continues to vote at-large. However, since Latinos already serve on the Board of NVUSD, immediate implementation is not as high a priority.

We are interested in discussing alternative approaches to decide whether and how to make this transition. However, as the deadline for implementation in November 2020 approaches, and particularly since you have agendaized the item, it is not unlikely that another potential plaintiff might begin the process. Sometimes these letters do not provide actual evidence or outline the interests of the protected group in the process, but they are still entitled to collect slightly more than \$30,000 once you proceed. To the extent that such a letter has not been sent before this letter is posted, our priority may allow for a broader discussion of options. Under AB 2121, I cannot significantly extend the safe harbor period if someone files a notice of intent to go to court, but they would have to do so quite soon. It may, however, be a deterrent that they would not collect \$30,000 without going to court in the event that you comply, assuming we have priority.

If you proceed, we intend to support the process, beyond the provision of the evidence provided in this letter. I am not entitled to any compensation if you decide not to proceed, but expect to advocate that you do so. Typically, I incur time and expenses substantially in excess of the statutory cap.

CONCLUSION

Redistricting your trustee areas, and allowing each area to elect its own trustee, will make the Board more fully representative of and engaged with the communities that NVUSD serves. This is a long-term reform that does not reflect any inadequacy by incumbent board members, but which will strengthen the connection between the District and the communities that it serves.

Sincerely,

A handwritten signature in black ink, reading "Scott J. Rafferty". The signature is written in a cursive, flowing style.

Scott J. Rafferty

Attachment: Petition that City of Napa Restore District Elections

Exhibit 1: Current Trustee Areas and Incumbents

Exhibit 2: Concentrations of Latino Voters

EXHIBIT 1 – CURRENT TRUSTEE AREAS AND INCUMBENTS

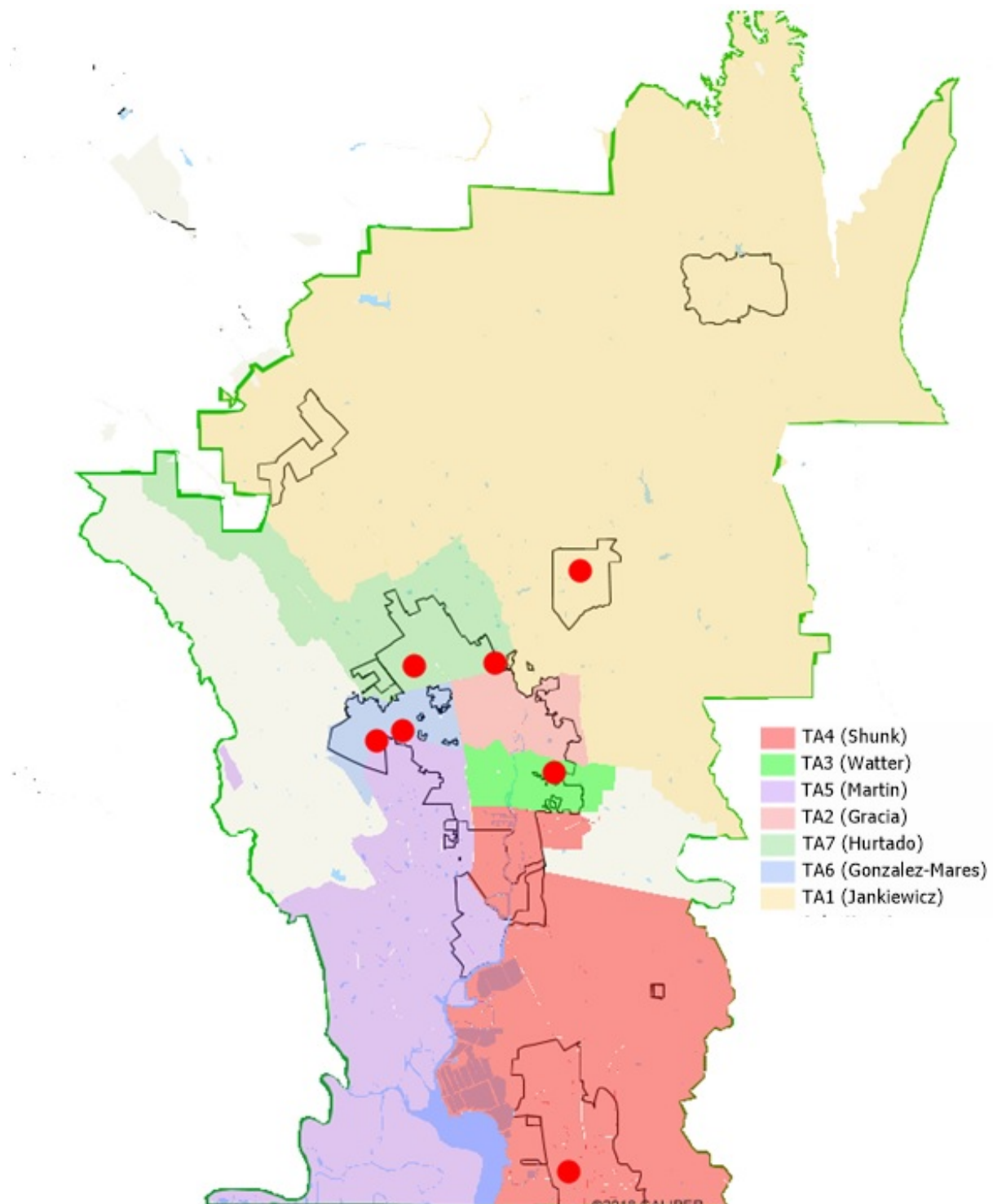
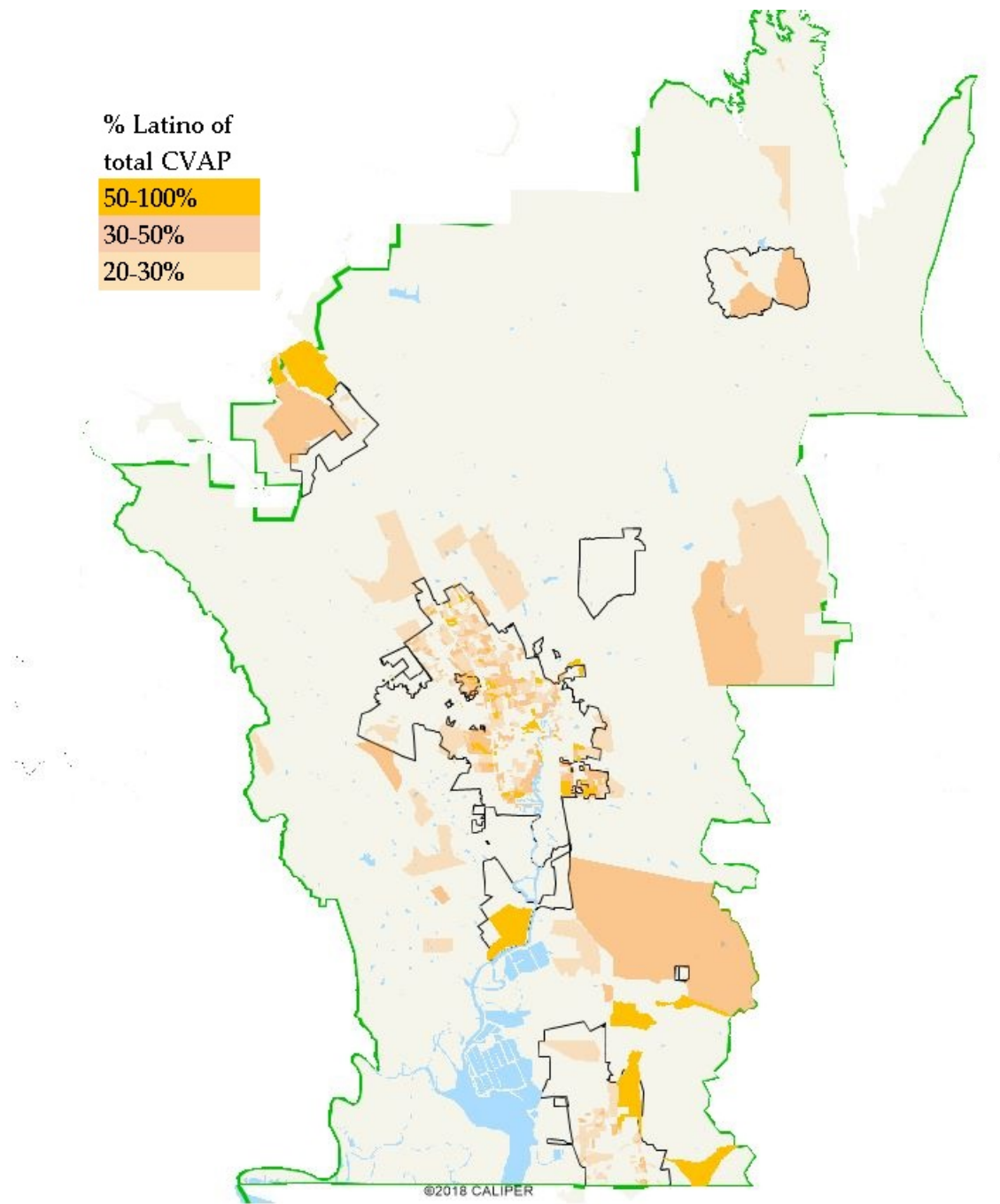


EXHIBIT 2 – CONCENTRATIONS OF LATINO VOTERS



SCOTT J. RAFFERTY

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December 27, 2019

VIA CERTIFIED MAIL 70191120000027864170
received December 31, 2019

Ms. Tiffany Carranza
Clerk, City of Napa
955 School Street
P.O. Box 660
Napa, CA 94559

Re: Petition to Restore Election of the City Council by District

Dear Ms. Carranza:

Residents of City of Napa, including members of the Napa County Progressive Alliance, have requested that I represent them in this petition, which asks the City Council to restore district elections, as originally specified in the City's freehold charter of 1903.¹ We give notice of our belief, supported by evidence, that Latino electors within the City have different electoral preferences than those who are not Latino, as demonstrated in the returns for ballot questions and contests for office. Therefore, the use of at-large voting dilutes the electoral influence of Latinos as a community, in violation of the California Voting Rights Act (CVRA), [Elections Code Section 14047](#). In other jurisdictions, the restoration of district elections has enjoyed widespread support from voters of all ethnicities.

More than two-thirds of the cities with population comparable to Napa have already abandoned at-large elections.² Neighborhood-based elections have proven to be more competitive, enabling voters of all races to choose among grass-roots candidates who may not be able to mount campaigns across a city with almost 80,000 residents. Napa will elect councilmembers who are more representative of the values and specific needs of each of its neighborhoods. Residents of Central and Downtown Napa, as well as other neighborhoods, will finally have a neighbor on the Council, whom they may encounter on the street or in their grocery stores. A more representative Council will increase voter turnout in communities that have been politically marginalized and enable Napa to recruit a new generation of leaders for voters to promote to county, state and federal office.

Beginning implementation in 2020 is essential because the participation of Latino

¹ These residents have joined the Bay Area Voting Rights Initiative, ("BAVRI"), an unincorporated association, which will designate individual plaintiffs in the event that litigation is necessary, including one or more Latino electors of the City.

² Of the 99 cities in California that as large as Napa, no more than 15 will elect at-large councilmembers in 2020 and thereafter. No more than 10 of the 34 cities with populations between 70,000 and 100,000 remain at-large.

communities is highest during the presidential general election. This is a particularly opportune year because there will be two open seats, since both incumbents are running for mayor.³ The two future districts that do not elect councilmembers in 2020 can be revised prior to the 2022 election, preferably by a citizens' redistricting commission.

The genius of representative democracy is that it brings to the legislative body the full diversity of a city's values, needs, and insights. Each part of the community can convey their values and proposals through a dedicated delegate. Negotiation among representatives from each area within the jurisdiction encourages compromise and innovation. At-large, by contrast, creates an unending competition among five people each of whom has exactly the same job – convincing every voter that he or she has the best answer on every question for the entire city. Under this system, moneyed special interests are sometimes able to install a slate. There are cases in which the cost and complexity of a citywide challenge has entrenched a set of allied incumbents for decades. The at-large system is also vulnerable to polarization, especially when multiple special interests run competing slates. Another risk is that the lack of accountability to small neighborhood constituencies will cause members to neglect the mechanics of meeting local needs; some at-large councils become preoccupied with ideological issues.

The legislature intended the low threshold for CVRA relief to create a strong presumption in favor of truly local elections, in part to counterbalance the effect of uniform legislation in a state as large and diverse as California. District elections are now the norm in most of our state.

This petition attempts to assist the City Council with a process that has an accelerated timeframe, but can be complex. In an effort to eliminate any controversy, it provides detailed evidence of the voting pattern that requires the transition to district elections under state law. It provides an approximate timeframe, suggests procedures for community outreach that have been successful elsewhere, and identifies issues that may arise. This petition focuses on historical factors, current conditions, and future requirements that are specific to the City of Napa.

I. A BRIEF HISTORY OF DISTRICT ELECTIONS

For 350 years, America has succeeded in large part because it respects the needs of diverse communities. Ensuring that ethnic neighborhoods are represented in local government has been an important way in which we have integrated generations of immigrants. For that reason, multi-member constituencies have been an anomaly in

³ https://napavalleyregister.com/news/local/napa-councilmember-doris-gentry-declares-candidacy-for-mayor-in-election/article_c068c1df-3230-53a6-af04-6b095f5cbb4b.html

American democracy. When Madison and Hamilton proposed that the House of Representatives should include delegates elected individually from districts, their arguments relied on almost a century of experience in local government.⁴ Hamilton attributed New York's success in integrating Irish and German immigrants during the 1600s to the fact that each ethnic neighborhood had democratic representation on the city council. New York not only provided the model for Congress, but by the time of the Revolution, most colonial legislatures, as well as the legislative bodies for cities and counties, adopted single member constituencies. As local executive positions, such as mayor, surveyor, assessor, auditor, and tax collector, emerged, they were elected at large.

A century ago, California's Republican Governor Hiram Johnson, began promoting at-large election for cities and even counties.⁵ During the first decade of the 20th Century, California's population grew by 60%, fueled largely by European immigration into the state's cities. The Republican Party dominated the state, holding all congressional seats until 1910. In contrast to the colonial New York, at-large elections sought to limit the influence of the newcomers by eliminating single-member constituencies. Another target was the Californios who had served on the Los Angeles City Council for over 70 years. Since the county at-large had a substantial Anglo majority, the change removed every Latino and ensured that every member elected during the at-large era was Anglo.

The elimination of single-member districts became the centerpiece of a nation-wide program to reform municipal government. Johnson's "Progressive" movement attempted to make local elections nonpartisan, limiting the ability of political parties to vet the qualifications of executive city officers. They implemented what they called the "short ballot," in which at-large councilmembers appointed professionals to positions that elected officials had previously performed. Finally, the Progressives encouraged a practice they called "electoral preemption." When a councilmember decided not to seek reelection, he was expected to resign in time for his colleagues to appoint a

⁴ In The Federalist Papers, both Madison and Hamilton advocate for single-member constituencies based on the system of city and county government prevalent in New York other mid-Atlantic states. In their view, representative democracy required as diverse group of delegates as possible to represent "so many parts, interests, and classes" of citizens. *e.g.*, [Federalist No. 51](#) (diversity of interests); Federalist No. 10 (each representative chosen by constituents); Federalist No. 6. New York City's charter of 1683 *established a council of six aldermen, one per ward. New York's counties adopted supervisorial districts in 1691, a practice that other mid-Atlantic states followed decades before the revolution. City government itself had been an American innovation. Until the Great Reform Act of 1832, unelected county officials provided most local government in Britain.

⁵ Most states require counties to have districted supervisors, but Johnson's 1914 inaugural address committed to leave this to each county to decide. Until the CVRA, counties as large as San Mateo elected supervisors at-large.

member of the local establishment, who usually succeeded in defending the seat.⁶

In California, the combined effect of these practices was to allow Republican majorities installed early in the 20th century to survive decades of demographic change and political realignment. When the state began recording party registration in 1922, Republicans outnumbered Democrats three-to-one. By 1954, 60% of registered voters were Democrats. Yet, at the time of the 1955 municipal elections, 68 percent of councilmembers in California's 28 largest cities were still registered Republicans, as were 80 percent of large city mayors.⁷

While some of Governor Johnson's reforms have shown enduring merit, his objective was to perpetuate a power structure that was almost exclusively native white men. (Women were not yet entitled to vote.) His movement never intended to empower immigrants or minorities. He successfully campaigned to eliminate voting by noncitizens in the eight states that still permitted it.⁸ (California never permitted non-citizens to vote.) Japanese comprised 15% of the population in 1890, but Johnson ran for Senate on a platform supported Japanese exclusion. As Senator, he was the leading advocate for the Immigration Act of 1922, which placed strict quotas on immigration from all countries outside Western Europe.

The 1965 Voting Rights Act recognized how these Progressive-era reforms entrenched incumbents and marginalized minority influence. Bay Area congressman Don Edwards was one of the Act's leading advocates. In 1975, he convinced Congress to expand its protection to language minorities, including Asians and Latinos in California, New York, Massachusetts and other states outside the South. Congressman Edwards also complained that southern jurisdictions were using at-large voting to dilute the influence of newly enfranchised African-Americans.⁹ Congress responded in 1982 by amending Section 2 to require federal and state courts to strike down any device, including at-large elections, that was discriminatory in its effects on voters belonged to "protected groups," *i.e.*, racial or language minorities. The courts established a bright line standard – to require the elimination of at-large elections, there had to be a district in which the protected group comprised a majority of adult citizens.¹⁰

⁶ Blair and Flournoy, Legislative Bodies in California at 74 (1967).

⁷ Lee, Politics of Nonpartisanship at 56-57 (1960).

⁸ Walton, et al. The African-American Electorate: A Statistical History (2012), Table 2-18, Statistical Review of the Black Electorate. Eleven additional states had allowed non-citizens to vote, but abolished it between 1895 and the Progressive initiative of 1910.

⁹ The Shameful Blight: The Survival of Racial Discrimination in Voting, (1975) After the 1965 Act enabled African-Americans to register and gain majority control in a legislative district, the district would be consolidated into a larger area controlled by whites, which would elect multiple legislators on a winner-take-all basis.

¹⁰ In Thornburg v. Gingles, 478 U.S. 30 (1986) the Supreme Court interpreted the statute to require a

As of 1965, 63 percent of American cities with current populations over 250,000 elected all their councilmembers at-large. Today, only Cincinnati and Columbus do. In California, however, at-large councils continued to be the rule, rather than the exception.

The “majority-minority” district requirement makes the federal Voting Rights Act difficult to apply in California. Because Asians, Latinos, and African-Americans often live in the same areas, it is common that none of these protected groups can demonstrate a majority district, even though the ability of any of these groups to elect candidates of its choice was still diluted by the at-large system. In 2002, the Legislature responded by enacting the California Voting Rights Act (CVRA), which dispensed with the requirement of a majority-minority district. The dilution of minority influence, as demonstrated by “racially polarized voting,” is sufficient under state law to require a jurisdiction to create districts. Since we have not identified a district in The City of Napa in which a majority of adult citizens are Latino, and do not allege intentional discrimination, we propose addressing the transition under state law. This enables a collaborative process (A.B. 350) that avoids litigation.

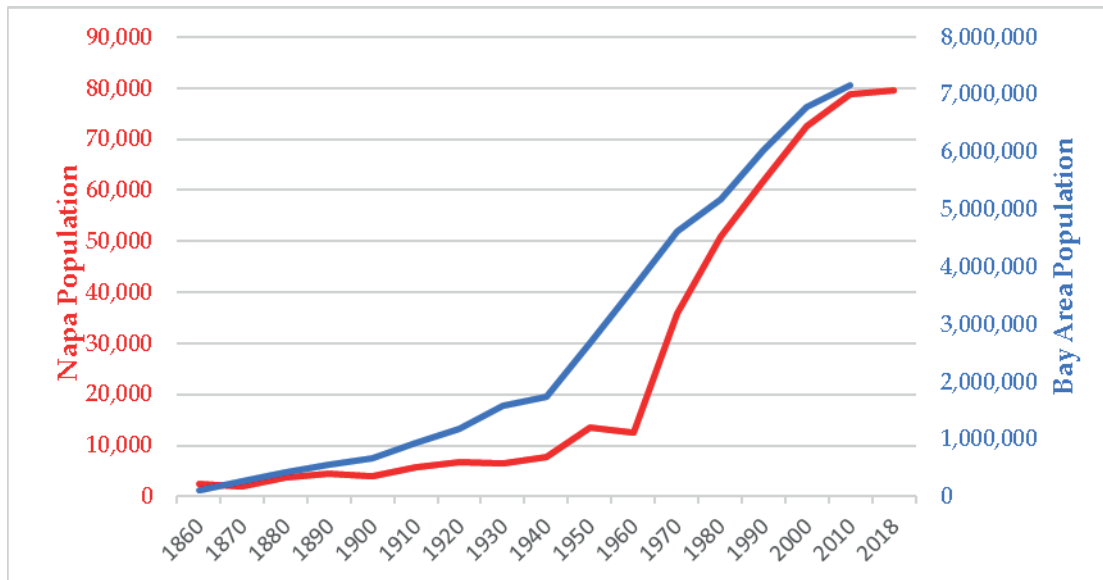
II. THE CHANGING DEMOGRAPHICS OF THE CITY OF NAPA

The desire to exclude or dilute the influence of white immigrants or minority voters was not a prominent issue in Napa in 1914, when it revised the 1903 charter and provided for at-large elections. The 1910 census tabulated nationality and race only at the county level. Napa County’s population of 19,800 had only 48 blacks, 315 Asians, and only 23 Mexican immigrants. At the time, The City of Napa was 28% of Napa County, and the County had fallen below one percent of the state’s population.

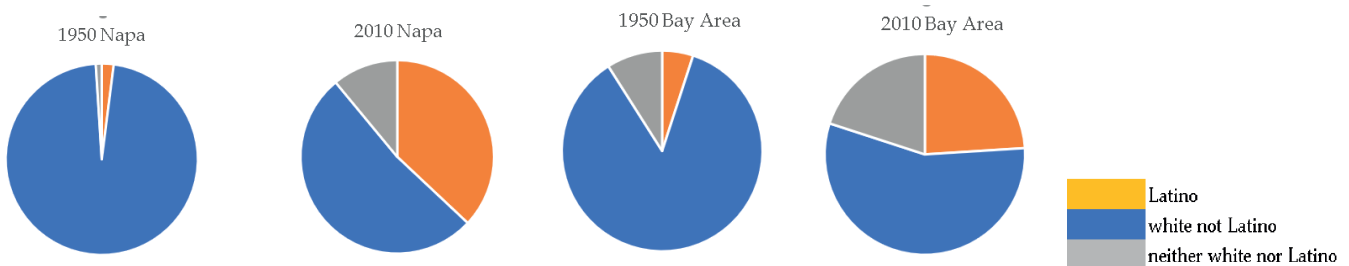
As detailed below, the population of the City of Napa became more diverse over fifty years ago, but it still has elected only one Latino councilmember (Alfredo Pedroza in 2012). By contrast, the governing bodies of districted jurisdictions in Napa County, such as the Board of Supervisors, the College Board, and Napa Valley Unified School District (“NVUSD”) Board, each have multiple Latino members. Neither is the City Council geographically representative. As the population has grown, more people live in neighborhoods without a resident member on the City Council. The affluent Browns Valley neighborhood currently has two members, while another two were neighbors in Linda Vista when elected.

challenge to at-large voting to show that a single protected group (*i.e.*, blacks, Asians, Latinos) could control at least one district. Since the decennial census has no citizenship question, courts rely on an annual tabulation of citizens by group that the census derives from survey data collected between censuses.

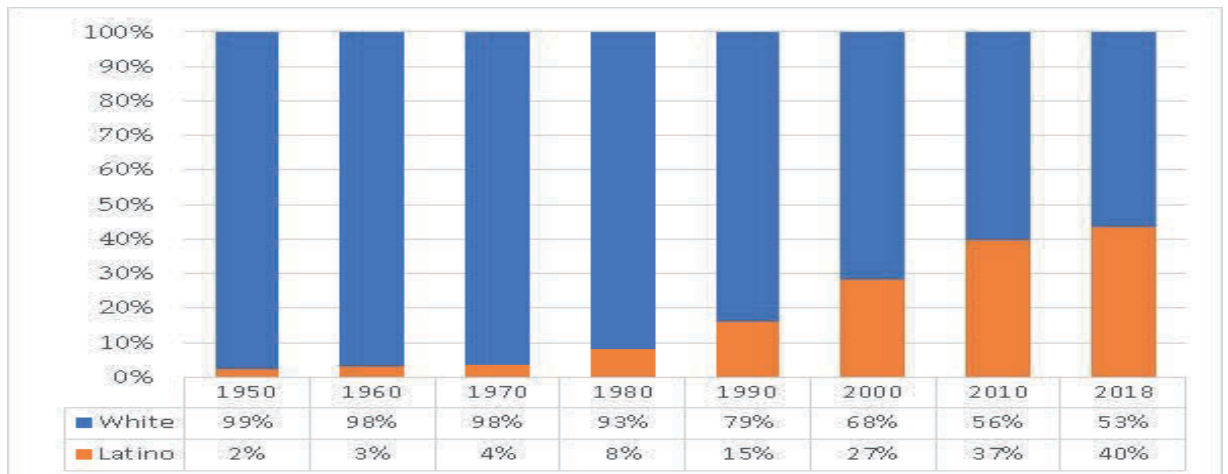
During World War II and its aftermath, the City of Napa did not industrialize, nor did it experience as much migration and growth as most other Bay Area



jurisdictions. In 1950, the population of the City of Napa was still 99% white, of which less than 3% was Latino. Since 1960, however, the City has averaged annual growth of 3¾%, almost three times the rate of the Bay Area overall. The demands of the agricultural and tourism sectors led to an influx of Latinos, who became the most significant minority in the City.



Latinos have now increased to 40% of the City of Napa's total population.



Of Napa’s Latinos, 95 percent is of Mexican nativity or descent; since 2010, there has been some increase in Guatemalan and Salvadoran migrants.¹¹

As a percentage of total population, the City of Napa still has fewer residents who were born outside the United States than the rest of the Bay Area. However, they tend to be younger and less likely to have naturalized. 40% of Napa Latinos cannot vote because they are not yet 18 or are not yet citizens.

	Napa	Bay Area
Foreign-born (of total population)	23%	30%
not eligible to vote (of all Latinos)		
< voting age	24%	22%
non-citizen	16%	14%

Because the decennial census has not included questions on citizenship since 1950, information about voter eligibility must be based on five-year estimates contained in the American Community Survey (ACS) conducted by the census. The most recent ACS data on citizenship were released on February 22, 2019, and includes observations taken from 2013 to 2017. These data show the number of Latino residents steadily going up every year; their citizenship rate and average age are also increasing. By contrast, the non-Latino population is stable. As a result, the Latino share of the City’s eligible voters (CVAP or citizens of voting age) has increased at one-percent a year for each of the last eight years reported. At least one out of four eligible voters in the City of Napa are Latino.

	Year (ACS midpoint)				
	2007	2009	2012	2014	2015
Population that is Latino	35%	38%	39%	39%	40%
Latinos who are citizens	61%	65%	66%	67%	70%
Latino citizens who are voting age	48%	50%	52%	53%	57%
Latinos eligible to vote as percentage of total city population	10%	12%	13%	14%	16%
...as percentage of eligible voters	17%	20%	22%	23%	25%

It is highly likely that the Latino share of eligible voters has increased since 2015 and that it will continue to do so. Napans under the age of 18 are 59% Latino. On a county-wide basis, 95% of these children are United States citizens, most of whom were born in Napa.¹²

¹¹ Compare 2010 census (PCT11) and 2014-2018 ACS (DP05).

¹² 2018 1-year ACS, C05009.

III. THE PROCESS OF CREATING DISTRICTS

The CVRA requires almost any jurisdictions to create districts, but until recently, it was assumed that the incumbents could prescribe any map they pleased. There were limited exceptions. Federal law could still allow judicial imposition of a specific map if there was evidence that a jurisdiction had intentionally discriminated against a protected group.¹³ Even in the absence of intentional discrimination, maps that had the effect of diluting minority influence (by packing them into a single district or cracking them among multiple districts) violated Section 2.¹⁴ This year, a surprise ruling in Sanchez v. City of Martinez (Contra Costa Superior Court, 2019), questioned the rule that courts would not review an otherwise constitutional map solely because it favored incumbents, *i.e.*, a political gerrymander.¹⁵

Effective January 1, 2020, A.B. 849, the FAIR MAPS Act, strengthens the statutory criteria applicable to charter cities. New Section 21601 of the Elections Code requires compliance with federal law, and then goes on to establish a hierarchy of criteria for maps: contiguity, respect for the geographic integrity of communities of interest, the use of recognizable natural and artificial barriers as boundaries, and compactness. The law establishes two new prohibitions: (1) the purpose of favoring a political party, and (2) the consideration of political parties, incumbents, and candidates in defining communities of interest.

Elections Code, Section 10010(a) requires a jurisdiction to conduct two hearings (within 30 days) before designing any draft maps. These hearings determine how their constituents view communities of interest and the application of the other statutory criteria. The jurisdiction must then publish at least one map, wait seven days, and conduct at least two more hearings (within 45 days) before adopting the final map. There can be additional hearings, but no map can be considered or revised at a hearing unless it has been posted seven days in advance. Section 10010(f) allows a jurisdiction to limit the reimbursement of petitioners' expenses to approximately \$32,000 if it passes

¹³ Garza v. County of Los Angeles (1990) 918 F.2d 763.

¹⁴ *e.g.*, Luna v. County of Kern (2018) 291 F. Supp. 3d 1088.

¹⁵ Castorena v. City of Los Angeles (1973) 34 Cal.App.3d 901, 917 ("We can find nothing in the cases which would authorize a court to invalidate an otherwise constitutional redistricting plan, simply because another plan might have been enacted had the redistricting body been blind to its impact on incumbents.")

In 2017, a CVRA action was brought against the City of Martinez, in which all precincts have a similar percentage of Latino voters. No evidence of racially polarized voting was shown, and no map could create a district that was particularly favorable to Latino voters. When the city chose to create districts that split precincts and radiated out from the residences of four incumbents who lived near each other, the Superior Court reasoned that using "incumbency protection as an extra-statutory criterion" effectively ignored the statutory criteria. Case#: MSC18-02219, Ruling on Demurrer, May 3, 2019.

a resolution of intent to transition within 45 days of the receipt of this letter, and adopts an ordinance establishing district elections within 90 days thereafter. The Napa Charter requires such an ordinance to be read at two consecutive regular meetings. During this period, neither my clients nor any other Latino electors can initiate litigation under the CVRA. So, if the Council passed a resolution of intent at its regular meeting on January 21, 2020, it could hold pre-map hearings at its regular meetings on February 4 and 28, 2020, followed by map hearings at its next two regular meetings, on March 3 and 17, 2020. The ordinance would be read at the meetings on March 17 and April 7, 2020. The statute allows the Council to conduct one of the map hearings as a forum (ideally on a Saturday morning or another time convenient to the community). If it will facilitate additional public comment, the statute allows us to agree to extend this safe harbor until May 3, 2020.

The preparation of this letter and consultation with my clients has already exhausted the statutory fee.¹⁶ Nonetheless, I will continue to advocate on behalf of my clients and hope to assist the process at some of the hearings. In past proceedings, I have offered to design maps to the specifications of each member of the council or board, as well as in response to community fora, but only one jurisdiction has accepted this proposal. Despite the Legislature's invitation to collaborate, the incumbents often prefer to spend larger amounts to hire their own attorney and demographer. (Martinez budgeted \$60,000 for a defensive demographer and another \$45,000 for outside counsel, even though it only has 20,000 voters.¹⁷)

The CVRA provides an opportunity to make organic changes to the electoral practices of a city or special district without the costs of a ballot question. [Government Code, Section 34886](#) (cities). Not only can a jurisdiction move from at-large to districted elections, but it can change the size of its council (within the relevant statutory limitations). It can add (or eliminate) an elected mayor. Other reforms needed to make the remedy of districting effective, such as residency requirements may also be appropriate, although the city attorney must ultimately decide such ancillary terms can be accomplished through an out-of-court settlement, or if they require a court-approved stipulation.

IV. OPPORTUNITIES FOR A LATINO INFLUENCE DISTRICT

The needs of the immigrant Latino community are at least as great as those of other residents of the City of Napa. Among City residents born in Latin America, only 3% are unemployed, but 12% live in poverty.¹⁸ 40% do not speak English well. 63% do

¹⁶ According to Richmond's demographer, my hourly rate is 40% lower than that routinely granted by courts.

¹⁷ <http://www.cityofmartinez.org/civicax/filebank/blobdload.aspx?BlobID=16602#page=3>

¹⁸ 2018 5-year ACS S0506.

not own their home.

Although they cannot vote, noncitizens and residents under 18 count for purposes of apportioning districts. With limited exceptions, they are entitled to the equal protection of the law, including equal attention and concern by the City Council. Latino citizens who live in their households and neighborhoods are well placed to represent them, but these Latino voters collectively have had little influence on City Council elections, let alone an equal opportunity to elect candidates of their choice. Latino influence districts, in which at least 30% of the eligible voters (citizen adults) are Latino, will give this community the voice that it needs on the City Council. Fortunately, Latino citizens of voting age are capable of representing the interests of their family and neighbors. 75% speak English well, and 95% have at least a fifth-grade education.¹⁹

Bilingual assistance has assisted these voters, although registration rates still lag the non-Latino electorate. The Justice Department obtained a consent decree early in 2016 that required jurisdictions whose elections were conducted by the county registrar to provide Spanish-language ballots, literature, and bilingual poll workers,²⁰ but agreed to dissolve the decree after the County achieved 83% Latino turnout in the 2016 general election.²¹

No questions regarding citizenship have been included in the decennial census since 1950. The census conducts the American Community Survey (ACS) every year and combines five years of observations to estimated numbers of citizens and citizens of voting age (CVAP) by race and Latino ethnicity. These data are tabulated at the county, city, tract, and block group level. These data lag two years, so the average observation is about 4-1/2 years old. The census will provide a new basis for total population (which is critical to the size of the districts), but the annually updated ACS survey will be necessary for citizenship and a number of other socio-economic factors. Block group data is the most accurate, but city boundaries split a number of block groups.²² Block

¹⁹ 2016 Section 203 determination.

²⁰ <https://www.justice.gov/crt/case-document/file/926111/download>

²¹ Data, which are collected every five years for determinations under Section 203 of the Voting Rights Act, showed that the County would not continue to be designated.

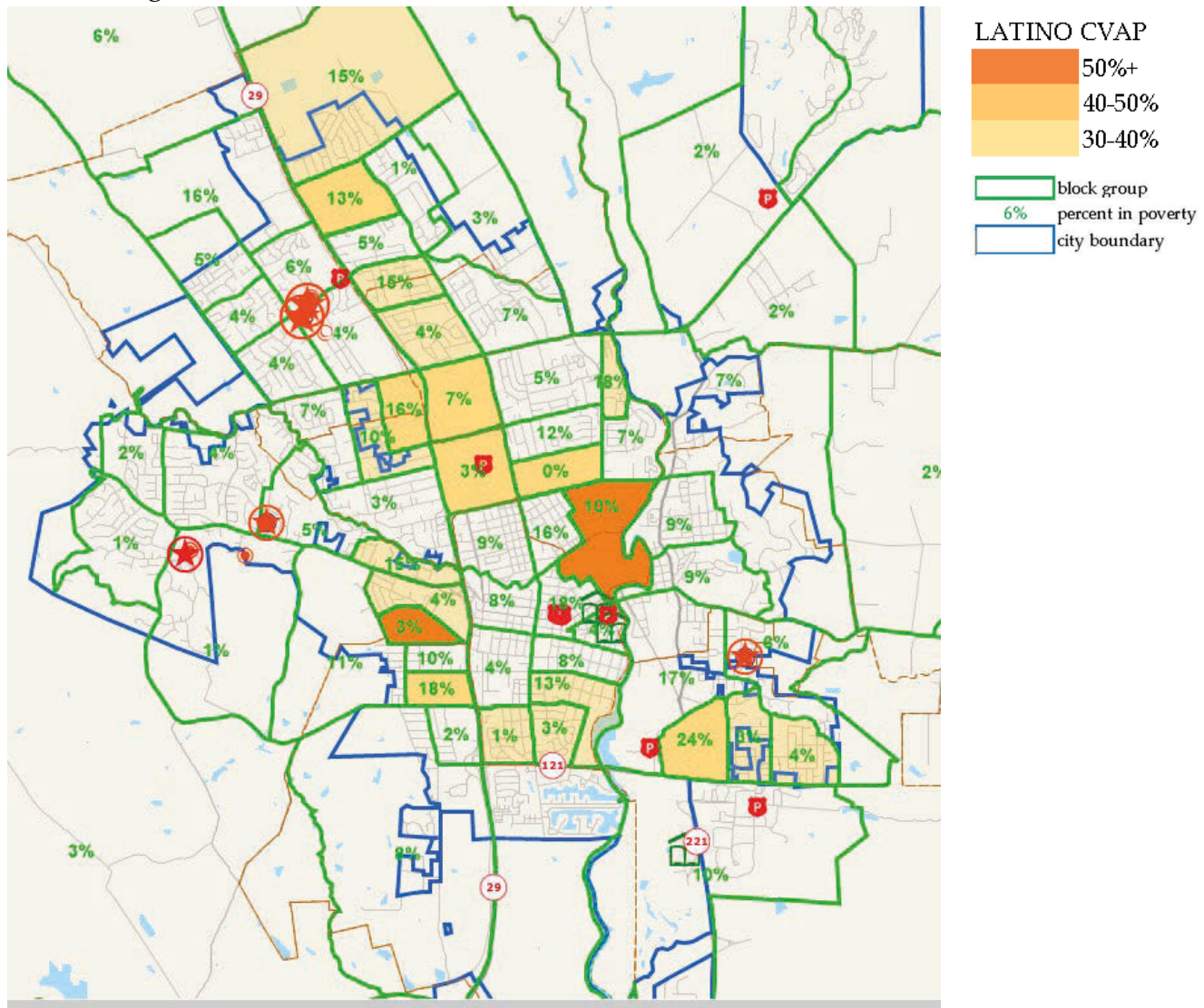
https://napavalleyregister.com/news/local/u-s-department-of-justice-frees-napa-county-of-bilingual/article_f9b388f5-5100-5d0d-9074-67ab82d8442a.html

²² Block groups are the lowest level at which authentic survey data are available for citizenship and other survey data. The City of Napa overlaps with 61 block groups, but its irregular boundaries and “county islands” split many of them. Therefore, some use of block level data is necessary. In downtown Napa, many census blocks correspond to city blocks, but are larger in rural areas.

There are several techniques to “synthesize” block group data with ratios from the 2010 census to prorate these estimates down to census blocks. It is not possible to calculate error ranges for synthesized data, so these estimates can be quite “noisy.” However, the Legislature publishes estimates of CVAP

estimates are also necessary to correspond to the 2010 data used to balance the population of each district.

Race and ethnicity should not be the predominant factors in districting. It is important to consider economic factors, such as the percentage of persons below the poverty level, educational attainment, median income, and language proficiency. As the following map of block groups shows, there are several concentrations of Latino electors, some of which coincide with areas in which poverty is higher than the City average.



disaggregated to the census block level, which provides values using a standardized method. When block groups reflect neighborhoods (and city boundaries), combining data at that level leads to more reliable estimates.

Election results are reported by precincts, so they are the fundamental unit of analysis for analyzing minority turnout and voting patterns. Napa is a Voters' Choice Act jurisdiction with fewer voting centers than ballot types. Districts should determine precincts, not the other way around. But it may avoid voter confusion and reduce the risk of ballot printing errors if the City avoids deviating from the existing boundaries of other jurisdictions when there is no reason to do so.²³

The Latino influence district would not necessarily be one chosen solely on the basis of maximizing the Latino share of citizen adults (CVAP). It should reflect actual neighborhoods, as defined by the community, with particular consideration to factors such as voter turnout and economic need. An ideal district would tend to isolate the most politically marginalized and economically needy community, as indicated by low turnout, low total CVAP, high levels of poverty, and low educational attainment. This is the community that needs its own voice on the City Council.

V. EXPLANATION OF RACIALLY POLARIZED VOTING

Both the federal Voting Rights Act and [Elections Code, Section 14028\(a\)](#) require a showing of racially polarized voting. Racially polarized voting occurs when some candidates preferred by one race or language group receive a higher level of support from that group than from the electorate at-large.²⁴ Racially polarized voting is almost universal, and not necessarily a bad thing. But for these racial differentials, every choice of the white majority would win office, and minority voters would never determine the outcome of an election.

This differential is inferred by comparing the vote share in precincts in which different percentages of the voters belong to the race or group in question. Proof of intentional discrimination by voters or elected officials is not required. [Elections Code, Section 14028\(d\)](#). All that is necessary is to show that members of a race or language group vote differently than other voters. This can be demonstrated by examining ballot questions, as well as candidate races. African-American voters support criminal justice reforms more strongly than others. Latino voters support candidates and propositions that improve the treatment of immigrants. Latino and Asian voters tend to support education more strongly than the rest of the electorate. It is almost self-evident that racial and ethnic groups vote differently, and the CVRA establishes no minimum threshold. Therefore, almost no jurisdiction contests the existence of racially polarized voting. Wherever there is racially polarization, the jurisdiction must create single

²³ Ballot errors can be particularly difficult to correct under the VCA, since everyone gets a mail ballot. <http://www.maderatribune.com/single-post/2019/01/30/MUSD-Area-5-Trustee-certified>

²⁴ [Elections Code, Section 14026\(e\)](#): "a difference ... in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate."

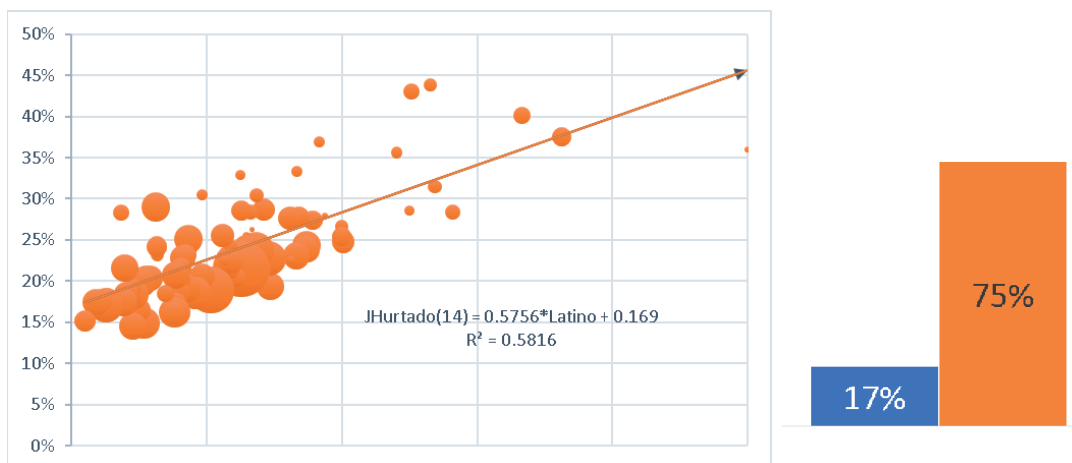
member districts that attempt to increase the influence of minority voting blocs.

Consider two recent statewide ballot questions. In 2016, Senator Ricardo Lara sponsored Proposition 58 to repeal most elements of Proposition 227 (1998), which effectively banned bilingual education. The proposition passed overwhelmingly (74% yes) in most parts of the state and by a similar margin among non-Latino voters in the City of Napa. An examination of high-Latino precincts, however, suggests Latino support in excess of 90%.

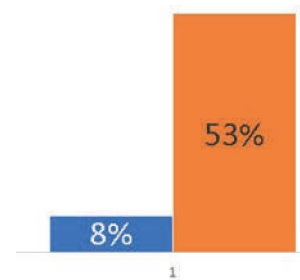
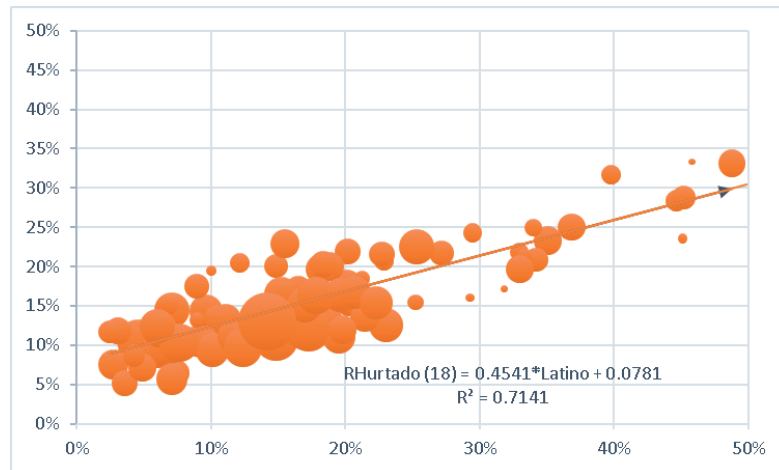
Because Latino citizens passionately care about education for their children and those of noncitizens in their community, they also supported Proposition 51 in 2016, which authorized \$9 billion in bonds for K-12 education and community colleges. In this case, a linear regression model of voting in the City of Napa suggests that 44% of Anglos, but 81% of Latinos, supported the measure. Proposition 51 passed with 55% of the statewide vote. Such a dramatic differential on a bond measure is compelling evidence that Latino electors are casting well-informed votes reflecting values of their community that differ from those of the non-Latino electorate

Once racial polarization is established, it is probative, but not necessary, to show that minority candidates have been disproportionately unsuccessful in the at-large system. [Section 14028\(e\)](#). Recent elections demonstrate a complete lack of success by Latinos seeking election to the City Council. In 2014, candidate Jose Hurtado received 75% of the Latino vote, but only 17% of the non-Latino vote, so he placed third. (Two years later, Jose Hurtado won election to the NVUSD Board of Education.) In 2018, Ricky Hurtado ran for City Council. He received a majority of approximately 53% of the Latino vote, but only 8% support from non-Latino voters. He also placed third.

JOSE HURTADO – 2014 Council Election – 58% Latino vote differential



RICKY HURTADO - 2018 Council Election – 45% Latino vote differential



note: vertical axis is candidate support by precinct
horizontal axis is Latino share of vote by precinct

ADDITIONAL BENEFITS AND CONSIDERATIONS

Although my client shares the Legislature's desire not to defer districting until after the census results in 2021, the Legislature has also facilitated the creation of local independent redistricting commissions, which has become increasingly popular among citizens. These commissions can be judicially approved in a consent order at the conclusion of a collaborative CVRA process under AB 350, or they can be established under the new statutory authority. I attach a copy of the stipulation establishing a citizens' commission for West Contra Costa Unified School District. We expect the commissioners to be appointed by a distinguished retired federal judge.

CONCLUSION

This is an effort to initiate a collaborative process to comply with the CVRA on a basis that will likely please the overwhelming majority of Napa voters. The transition will not displace incumbents, because both of the councilmembers up for re-election have chosen to run for mayor.

Sincerely,

Scott J. Rafferty

Exhibit D

INDEPENDENT REDISTRICTING COMMISSION

1. WCCUSD ("District") shall establish an independent redistricting commission ("Commission") to prepare trustee areas for 2022. To ensure that the Commission will be free of political influence and representative of the District's diversity, its seven (7) members shall be appointed by a retired judge to be selected by counsel for Plaintiff and Defendant ("Selection Judge").
2. The Superintendent shall solicit and accept written nominations for appointment to the Commission in accordance with this provision no later than January 1, 2021 to March 1, 2021. Individuals or organizations desiring to nominate persons for appointment to the Commission shall do so in writing to the Superintendent. The Superintendent shall remove from the pool any individual who does not comply with the conditions set forth in Elections Code section 23003, subdivisions (c) and (d). The Superintendent shall transmit the names and relevant information regarding all remaining nominees, along with the names of the individuals and organizations that made such nominations to the Selection Judge. The Selection Judge shall appoint seven (7) individuals to serve as members of the Commission no later than May 1, 2021. The Selection Judge shall use his/her best efforts to appoint people who will give the Commission racial, geographic, social, and ethnic diversity, and who, in its judgment, have a high degree of competency to carry out the responsibilities of the Commission and a demonstrated capacity to serve with impartiality. The Selection Judge will select one member from each current trustee area and two members from within Contra Costa County excluding the boundaries of the District. If one member from each current trustee area cannot be selected, and/or two members from within Contra Costa County excluding the boundaries of the District, the Selection Judge can select a member from within the District boundaries. The Commission shall not be

comprised entirely of members who registered to vote with the same political party preference, pursuant to Elections Code section 23003, subdivision (f). Persons who accept appointment to the Commission shall, at the time of their appointment, file a written declaration with the Clerk of the Board stating that they will not seek election as District trustee prior to 2028. Any vacancy in the Commission after the Commission is constituted shall promptly be filled by the Selection Judge, following the same procedure and using the same criteria established herein.

3. Within sixty (60) days after the members of the Commission are appointed, the Commission shall adopt a budget and submit it to the Board. The Board shall appropriate to the Commission and to the Superintendent the funds necessary for the Commission to accomplish its task, including paying for an expert demographic consultant.

4. The Commission shall conduct an open and transparent process that ensures full and meaningful public participation. The Commission shall adopt procedures sufficient to ensure that any communication it receives directly or indirectly from incumbent trustees is reduced to writing and posted on the internet. The Commission shall provide public notice of and hold five public hearings, one in each current trustee area, at which all residents will have equal opportunity to comment on the drawing of district lines. The Commission shall make every reasonable effort to afford maximum public access to its proceedings, setting times and locations that assure accessibility to members of protected classes. Notice of and translation services at each public hearing shall be provided in Spanish.

5. Members of the Commission shall comply with the terms of Election Code 23003, subdivisions (e) and (g), and shall be subject to West Contra Costa Unified School District's Conflict of Interest Code.

6. After the public hearings, and no later than October 1, 2021, the Commission shall, in consultation with its demographic consultant, prepare a preliminary map and accompanying report ("Preliminary Plan") dividing the District into five trustee areas. Those trustee areas shall be used for all future elections of Trustees, including their recall, and for filling any vacancy in the office of member of the Board until such time as new trustee areas are established for the 2032 election. The Commission shall draw the proposed district boundary lines of the District pursuant to the criteria set forth in the following order of priority:

- a. Compliance with the United States Constitution, including reasonable equality of population within each trustee area.
- b. Compliance with the Federal Voting Rights Act, first by establishing or maintaining trustee areas containing a majority of members of a protected class to the extent legally permissible, and then by considering any extent to which trustee areas containing a near majority of a protected class, or a majority of protected classes that act in coalition, would provide those protected classes with the opportunity to elect their candidates of choice and to influence elections on a basis more equal to the opportunity enjoyed by the rest of the electorate
- c. The additional requirement of state law that population be as nearly equal as possible, using the 2020 census and any population figures validated pursuant to Education Code 1002, subdivision (b), and 5019.5, subdivision (a).
- d. Trustee areas will be drawn using the factors authorized in Education Code 1002, subdivision (a): (1) Topography; (2) Geography; (3) Cohesiveness, contiguity, integrity, and compactness of territory; and (4) Respect for geographic integrity of neighborhood

and any community of interest, (including those of racial, ethnic, and language minorities) to the extent possible without violating any of the preceding provisions.

7. The Commission shall not consider the place of residence of any incumbent or political candidate in defining trustee areas. Trustee areas shall not be drawn for the purpose of favoring or discriminating against an incumbent, candidate, or political party pursuant to Elections Code 23003, subsection (k).

8. The Commission shall file the Preliminary Plan with the Superintendent, who shall make it publicly available. The Preliminary Plan shall contain a map with a depiction of the trustee areas and a report that outlines the bases on which the Commission made its decisions regarding trustee area boundaries, including its compliance with the criteria stated above. The Commission shall comply with Elections Code 23003, subdivision (j), regarding public hearings and map publication, except as otherwise set forth herein. After having heard comments from the public on the Preliminary Plan, the Commission may make any revisions. The Commission shall then approve a Recommended Plan by majority vote of all members. The Commission must file the Recommended Plan with the Superintendent by January 1, 2022.

9. The Board shall hold at least one (1) public hearing on the Recommended Plan before its adoption by the Committee. After having heard comments from the public on the Recommended Plan, the Commission may make any revisions. The Commission, possessing the power to adopt the trustee areas of the District, will then adopt a Final Districting Plan of its choosing by majority vote at a public hearing. If legally required for implementation of the Final District Map, the Board shall then promptly approve the Final Districting Map.

10. No change in the boundary or location of any district by redistricting as herein provided shall operate to abolish or terminate the term of office of any member of the Board prior to the

expiration of the term of office for which such member was elected. Until trustees elected in November 2022 take office, the map identified in Exhibit C shall be used in the application of any provision of law related to the recall of a trustee or the filling of a vacancy.

11. Pursuant to Election Code Section 23003, subdivision (l), trustee areas adopted by the Commission shall not be altered by the Board or the Commission until after the next federal decennial census occurs, unless those trustee areas have been invalidated by a final judgment or order of a court of competent jurisdiction.

12. If the Selection Judge encounters an issue related to the interpretation or implementation of the Independent Redistricting Commission agreement, the Selection Judge will seek input and agreement from the parties, the Superintendent of WCCUSD or his designee, and the Plaintiff or her designee.