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September 11, 2019

VIA CERTIFIED MAIL

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Ms. Pamela Christian
City Clerk
City of Richmond
450 Civic Center Plaza
Richmond CA 94804

Re: Petition to Comply with the Voting Rights Act of 1965

Dear Ms. Christian:

On behalf the Bay Area Voting Rights Initiative (“BAVRI”) and Latino citizens who live in Richmond and are of voting age, I give notice of our belief, supported by evidence, that at-large voting in Richmond denies Latino voters of an opportunity to elect candidates of their choice that is equal to the opportunity enjoyed by non-Latino voters. Because Latino voters are now a majority in a large part of Richmond’s urban core, the city of Richmond violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. §10503(b), by electing its city council members at-large. This winner-take-all system also dilutes the electoral influence of Richmond’s Asian and African-American community, in violation of the California Voting Rights Act (CVRA), [Elections Code Section 14047](#).¹

While the number of Latinos eligible to vote has increased dramatically, their representation on the Richmond city council has declined. Latinos deserve to choose their own candidate from the inner city neighborhood in which they have a majority. They have distinctive electoral needs and preferences, such as officials who can speak Spanish and understand the challenges that immigrants face. They want their children to see more local Latinos succeed and progress in the elected leadership of our State. The proposed settlement of the federal and state violations manages a necessary political transition in a manner than respects the coalition between Latino and African-American voters, who often support each others’ agendas and candidates. Therefore, we seek districts that will guarantee that the council not only has a representative from the Latino majority area, but also two members who live in and are elected by the other urban African-American neighborhoods bounded by Richmond Parkway, San Pablo and the freeways.

Neighborhood Councils from Fairmede, the Hilltop District, May Valley, and

¹ While African-American candidates may win most at-large contests, they are not always the authentic choice of the African-American community.

Richmond Heights have endorsed neighborhood-based elections. So have activists of all races from throughout the City of Richmond.² The first campaign promise of the Richmond Progressive Alliance (RPA) was to implement district elections, which they explained would make the council “more efficient.” See Attachment 1. The NAACP Legal Defense Fund has fought against at-large voting, recently forcing the school board in Ferguson, Missouri to elect by district.³ The LDF has explained why the campaign against at-large voting is so important to the equal rights of African-Americans. See Attachment 2.

Neighborhood-based elections will give every Richmond voter, regardless of race, the opportunity to vote for the candidate who will be most effective in representing the values and interests of their specific community. Voters will no longer be forced to guess which seven candidates might be able to work together, nor will they need to rely on special interests to assemble slates for their approval. Candidates will be able to solicit support personally by knocking on doors in their own neighborhoods, whether or not they can afford to mount a city-wide campaign. By making its City Council more representative and physically closer to its neediest constituents, Richmond will elect officials who will, over time, look more like the increasingly diverse neighborhoods they serve.

For good reason, the Legislature has created the CVRA as an almost irrebuttable presumption in favor of single-member constituencies. It knows that winner-take-all elections profoundly damage our state’s democracy. In the last half century, Richmond’s at-large school board and city council have only produced one legislator or statewide official. Council districts will provide opportunities for a new generation of leaders that Richmond voters can elect and then promote to county, state and even federal office. Because at-large voting depressed minority turnout in Richmond for decades, it was not until 2018 that Contra Costa finally elected an African-American to a countywide office.

In Richmond, winner-take-all allows high-turnout areas like Marina Bay and Point Richmond to control city elections, diluting both the African-American and Latino vote. As recently as 2012, a majority of the council lived in wealthy Point Richmond, which has only three percent of the city’s population.⁴ Although many council members and candidates do not disclose their home address, most council members still live in wealthy, high-turnout neighborhoods outside Richmond’s urban core. *Id.* All are male, and none speaks Spanish. No Latino member has ever lived in the Latino majority area; nor has any recent candidate of any race. (The proposed settlement does

² <https://www.districtelections.net/home>

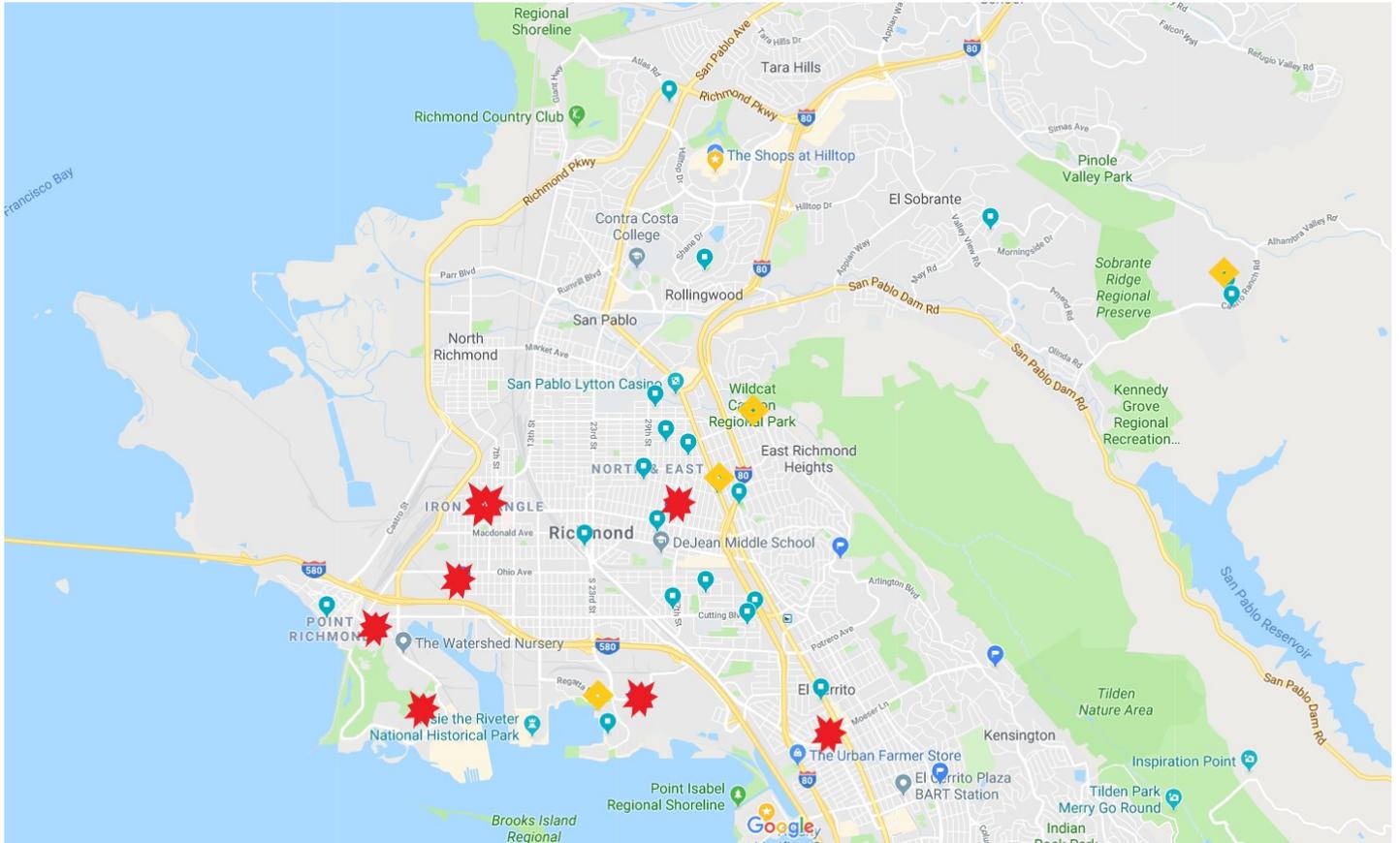
³ *Missouri NAACP v. Ferguson-Florissant SD* (8th Cir. 2018) 994 F.3d 924.

⁴ Rogers, “A Tale of Two Cities,” *Contra Costa Times*, Feb. 13, 2013.

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not displace incumbents; all will serve out their term and each will have an opportunity to run for re-election.)

APPROXIMATE RESIDENCE LOCATIONS OF INCUMBENTS (red stars), CANDIDATES (2006-2016) (cyan darts), AND FORMER LATINO MEMBERS (yellow diamonds)



Latinos only expect to control one seat on the city council, but federal law entitles them to an opportunity to elect their candidate of choice, who must live in the Latino majority area around Belding Woods and Shields-Reed. No incumbent or recent candidate has ever come from this area. Latinos need one council member who understands how they experience crime, how passionately they want quality education for their children, and how those who are not yet citizens live in constant fear of our national government. They deserve access to a council member who walks on the same streets as they do every day, not just when campaigning.

RPA was right to identify the inefficiency of at-large government. *See* Attachment 1. Every jurisdiction is different, but at-large elections almost always lead to dysfunction within the city government, especially when demographics are changing.

The genius of representative democracy is that it brings to the legislative body the full diversity of values, needs, and insights expressed by each part of the community through a dedicated delegate. Negotiation encourages compromise among these delegates who understand that each is accountable to a separate set of constituents. These constituents can usually accept, win or lose, that their material needs and opinions have been fully heard. When they do not have this confidence, they can change their council member.

By contrast, at-large voting is a recipe for conflict within the Board and between the council and the management staff that it oversees. Richmond effectively gives seven people the same job, creating a perpetual competition among the incumbents. They must convince the same set of voters that each of them has the absolute best answer on every question for the entire city. For the good of the city, this needs to change.

The time to comply with federal law is now. For years, the City of Richmond has suffered the effects of an educational system governed by a Board whose majority resided in a high-turnout, low-minority suburb. In March 2019, the West Contra Costa Unified School District (WCCUSD) settled a lawsuit brought by BAVRI, conceding that if the case had gone to trial, they would likely have been found to have violated the federal Voting Rights Act.⁵ In November 2020, all five WCCUSD trustees will be up for election. By having its transition at the same time, the City of Richmond can reduce voter confusion and allow grass-roots activists to coordinate neighborhood-based campaigns. Minority turnout peaks during the presidential general election, so the Legislature will not permit any deferral to 2022. For the same reason, the law requires that the high-minority districts be scheduled for 2020.

I. 2020 PROVIDES AN UNUSUAL OPPORTUNITY TO ADOPT DISTRICT ELECTIONS AT LOW COST WHILE CONTINUING RICHMOND'S LEGACY OF ELECTING AFRICAN-AMERICANS.

It would be futile to resist district elections. WCCUSD rejected a map proposed as a settlement four days after BAVRI filed suit, only to stipulate to trustee area elections using an almost identical map after spending at least \$565,000.⁶ The city faces the same evidence that led WCCUSD to concede that it was in violation of the federal Voting Rights Act. It would be foolish to expect a different result.⁷ By petitioning for

⁵ Paragraph 4, Stipulation of March 4, 2019
<https://www.wccusd.net/cms/lib/CA01001466/Centricity/Domain/16/Joint%20Ex%20Parte%20Application%20for%20Entry%20of%20Judgment.pdf#page=12>

⁶ Most differences reflect the fact that the original map was constrained to follow precinct lines in order to facilitate 2018 implementation.

⁷ Liability does not require a showing of intentional discrimination. Almost all of the evidence that WCCUSD found impossible to refute applies with equal force to Richmond because the same Latino voters face the same totality of circumstances.

compliance at this time, we are protecting the city from a potential federal lawsuit next year, which could disrupt the election or even prevent certification of its results.⁸ Our proposed map can resolve the matter economically and with relatively little diversion of council attention from other pressing matters.

The City Council does not need to hire a demographer to realize that Richmond's unique geography limits any opportunity to gerrymander. Districts in Hilltop and the east Richmond hills are only tenuously connected to the rest of the city; the latter will have to run down McBryde Avenue to connect to population in Richmond Heights. The area south of I-580 (and Pt. San Pablo) is a distinct socio-economic community of interest that will need to include Parkview and the Annex to attain equal population. Any attempt to blend Point Richmond with the central city would unlawfully dilute minority voters. This was a critical principle in the WCCUSD settlement, which combined the area south of I-580 with El Cerrito.⁹ See Attachment 4 (court-approved map for WCCUSD trustees). So, the only remaining question is how to allocate the remaining half of the city – its urban center, where more than 70 percent of eligible voters are black and Latino.

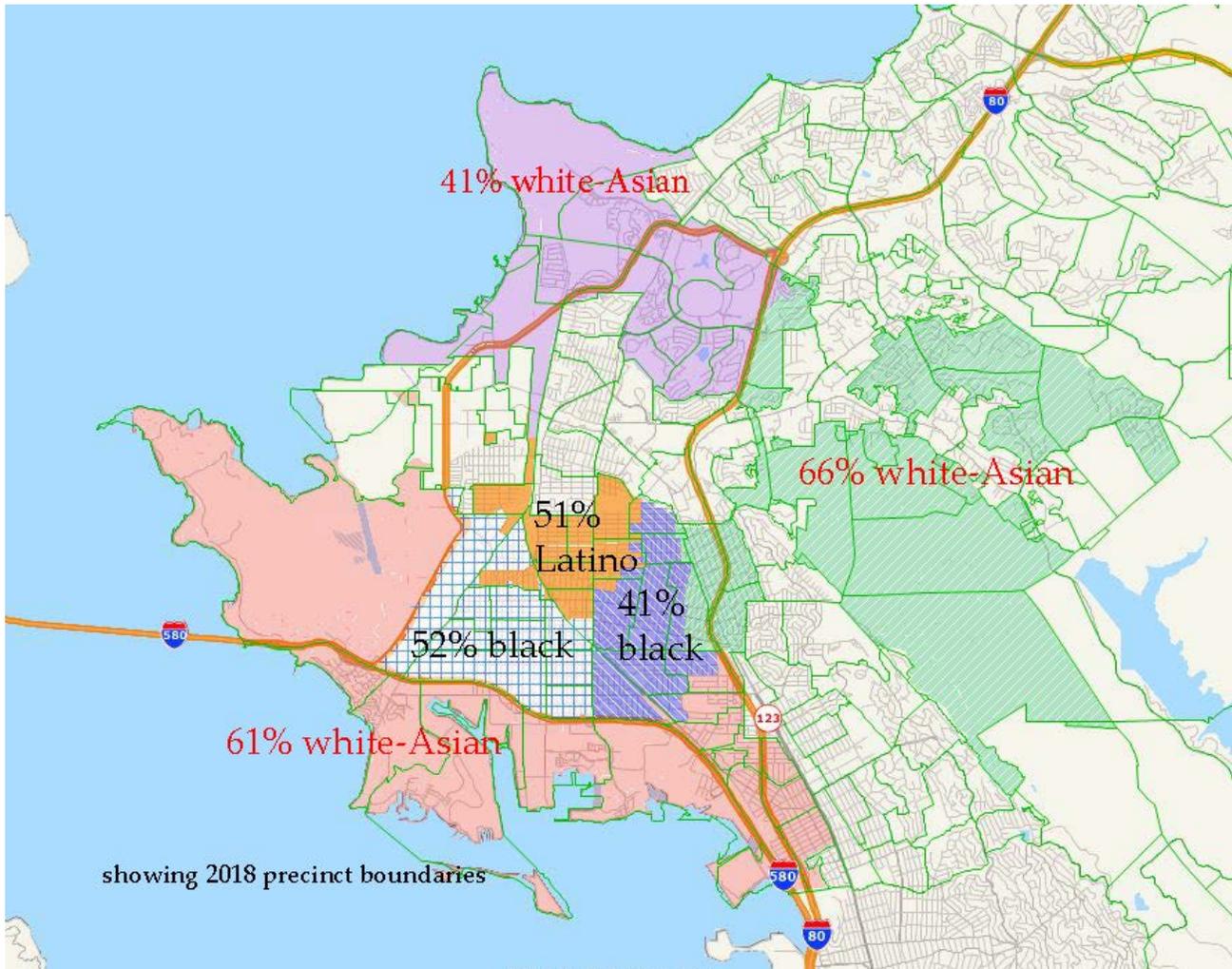
Incumbents usually have grounds for concern when the city faces a Section 2 violation. Dublin San Ramon Services District (DSRSD) recently had to create two open seats for Asian-American neighborhoods. As a result, two of the three incumbents up for reelection in 2020 will be in the same district; the third incumbent will leave office and not have an opportunity to run until 2022. By contrast, a negotiated settlement of the federal claim would likely allow African-American voters to retain control of three districts without disrupting the ability of the two African-Americans (and one Latino) elected in 2018 to seek re-election. Two of the three African-American districts can be scheduled for the presidential election.

The map we propose to settle the federal claim protects African-American and Latino voters from dilution, without disrupting the incumbents, who will be able to run in their home districts when their current terms are completed. Public comment can fine-tune the boundaries among the inner districts, but we expect a majority Latino district, a low-income, majority black district, and a third plurality black district.

⁸ Rey v. Madera USD (2012) 203 Cal. App. 4th 1223, 1228.

⁹ <https://www.wccusd.net/cms/lib/CA01001466/Centricity/Domain/16/Approved%20Trustee%20Area%20Map%2003062019.pdf>

PROPOSED SETTLEMENT MAP



MAP DEMOGRAPHICS

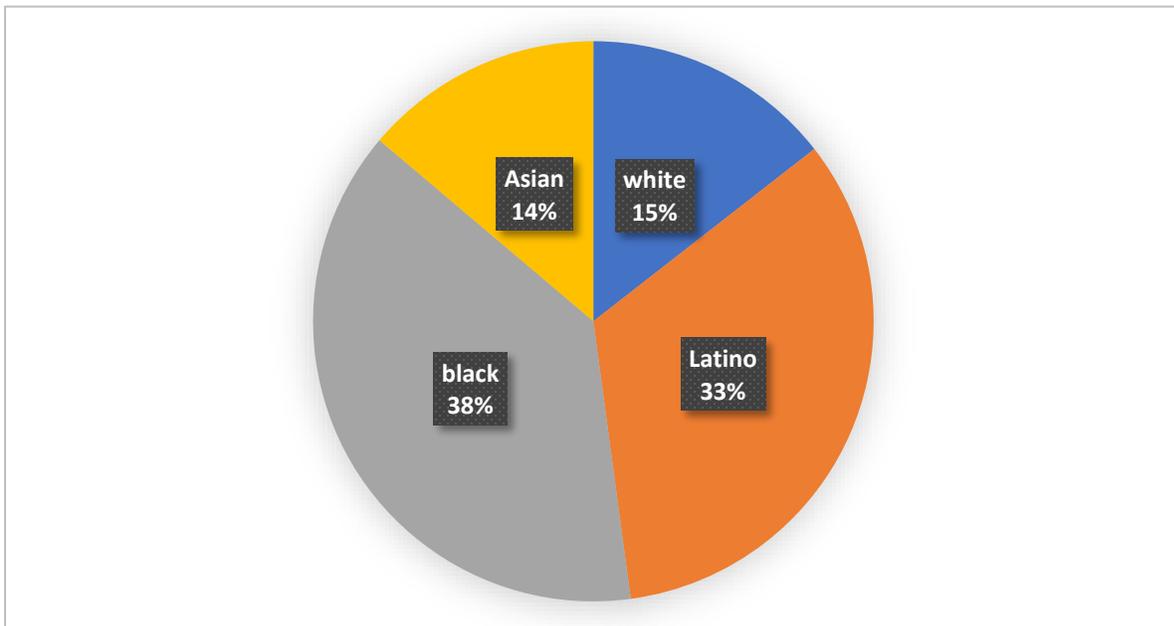
Outer Districts

	Green East Hills		Purple Hilltop		Pink Pt Richmond	
White	5091	38.0%	1852	16.7%	5558	42.9%
Asian	3696	27.6%	2740	24.7%	2320	17.9%
White-Asian		65.6%		41.4%		60.9%
Latino	2211	16.5%	1915	17.3%	1525	11.8%
Black	2161	16.1%	4379	39.5%	3282	25.4%
CVAP	13391		11092		12941	
Population	17510		17026		17671	

Inner (Minority)
Districts

	Orange		Light Blue Low-income black		Dark Blue Black plurality	
	Latino					
White	810	10.7%	859	10.6%	2216	21.4%
Asian	1184	15.6%	588	7.3%	1821	17.6%
Latino	3873	50.9%	2444	30.2%	2400	23.2%
Black	1599	21.0%	4171	51.5%	4051	41.1%
CVAP	7602		8102		9845	
Population	17220		17296		17116	

TOGETHER, RICHMOND'S THREE INNER CITY DISTRICTS
WILL BE 70 PERCENT MINORITY
(2013-2017 census survey data)



The demonstration of a Latino majority district (*see page 18 infra*) aggregates census block groups, which are the smallest unit for which the census reports citizenship data.¹⁰ The demographic estimates for the settlement map split block groups using data disaggregated by the University of California under contract to the Legislature.¹¹ These data are official and available online without cost to anyone who

¹⁰ <https://www.census.gov/data/datasets/2016/dec/rdo/2013-2017-CVAP.html>

¹¹ https://statewidedatabase.org/d10/2017_cvap.html

wishes to verify them. The settlement map splits precincts when necessary, but considers the boundaries of other jurisdictions. Minimizing the number of precincts and ballot types can simplify the election for voters and avoid administrative errors. Minor revisions may be necessary to avoid imposing unnecessary costs on the registrar.

The sequencing of elections must also not have discriminatory effects on minorities. Although they constitute 50% of the eligible voters in the demonstration district, only 44% of those who actually voted in this areas in November 2018 midterm elections were Latino. As council member Bates has pointed out, “The African-American community [also] doesn’t turn out unless it’s a national election.”¹² Therefore, Section 10010 of the Elections Code requires giving minority districts preference for electing their representatives in the statewide general election that on the presidential cycle.

LATINO SHARE OF ELIGIBLE VOTERS AND
TURNOUT IN RECENT ELECTIONS (citywide)

	SHARE OF VOTERS		CVAP
	primary	general	
2006	12%	13.3%	
2010		15.0%	
2012		16.7%	21.2%
2014		14.4%	23.9%
2016	19%	21.4%	26.6%
2018	11%	20.0%	*

Source: voter share data <https://statewidedatabase.org/election.html>; CVAP <https://www.census.gov/data/datasets/2016/dec/rdo/2013-2017-CVAP.html>

Prompt adoption of the settlement map also address the concerns for cost that the city council expressed four years ago, when it tabled a proposal to implement district elections.¹³ A staff presentation suggested that it would cost \$500,000 to “hir[e] consultants to perform studies and then put the measure on the ballot.”¹⁴ The following year, at the request of the League of California Cities, the Legislature eliminated any requirement of voter approval, observing: “In all cases, citizens alleging that at-large elections violate the CVRA [have] prevailed.”¹⁵ But the initial cost of outside counsel and a separate demographer can be considerable, and the staff analysis

¹² <https://www.eastbaytimes.com/2014/11/29/low-turnout-helped-doom-chevron-candidates-in-richmond-but-questions-linger-for-2016/>

¹³ <http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/6458>

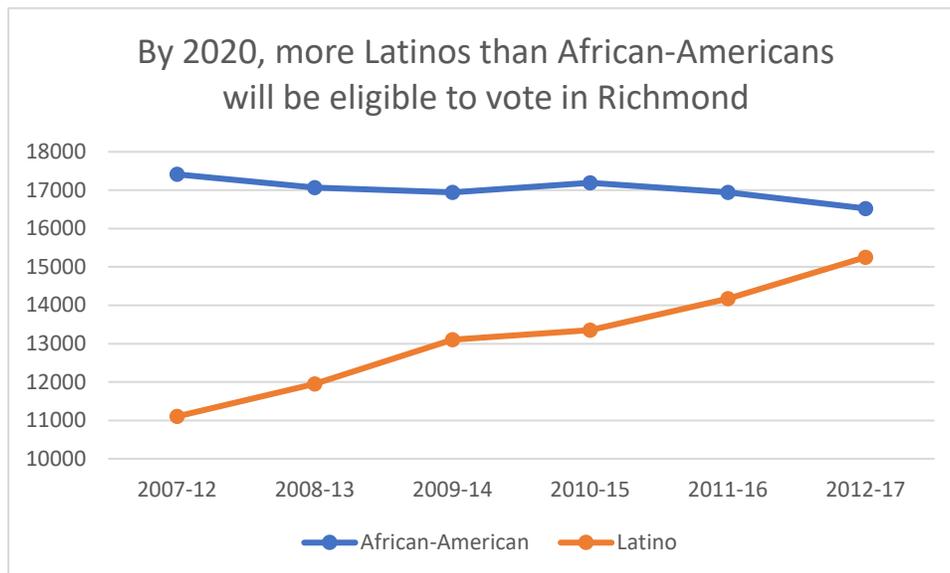
¹⁴ <https://www.eastbaytimes.com/2015/03/26/richmond-council-rejects-district-elections/>

¹⁵ A.B. 2220, Senate Rules Committee Report, July 29, 2016.

did not consider the costs of defending litigation. Tiny Martinez spent \$110,000 during the four-month mapping process, and is still embroiled in litigation over its creative gerrymander two years later.¹⁶ Due to our settlement and its risk pool, WCCUSD was able cut off its defense costs at about \$230,000, but most jurisdictions spend far more. Avoiding these costs will provide an immediate windfall for Richmond's budget. The use of districts will cut recurring elections costs almost in half.

The real accomplishment of the proposed settlement is to preserve Richmond's long legacy of electing African-Americans to city council. Lest we forget, Richmond elected George Carroll as the first black mayor of a major American city. As Attachment 3 shows, for decades Richmond voters have elected experienced council members from prominent African-American families. But this model does not recruit a new generation to leadership, and is therefore not sustainable.

As explained below, Latinos may outnumber all other ethnic groups in the city combined. Ninety-six percent of the Latinos who turn 18 every year in the city are American citizens. Next year's census data will almost certainly show that there are more Latinos eligible to vote in Richmond than African-Americans.



Our map preserves three African-American districts, one with an absolute majority and two with 40%+ pluralities. In other urban California districts, African-Americans have shown that their superior organizational abilities allow them to control districts with 40% of more of the electorate. That is why an essential element of any transition to district elections must be an independent commission to preserve this bargain for the decade following the 2020 census.

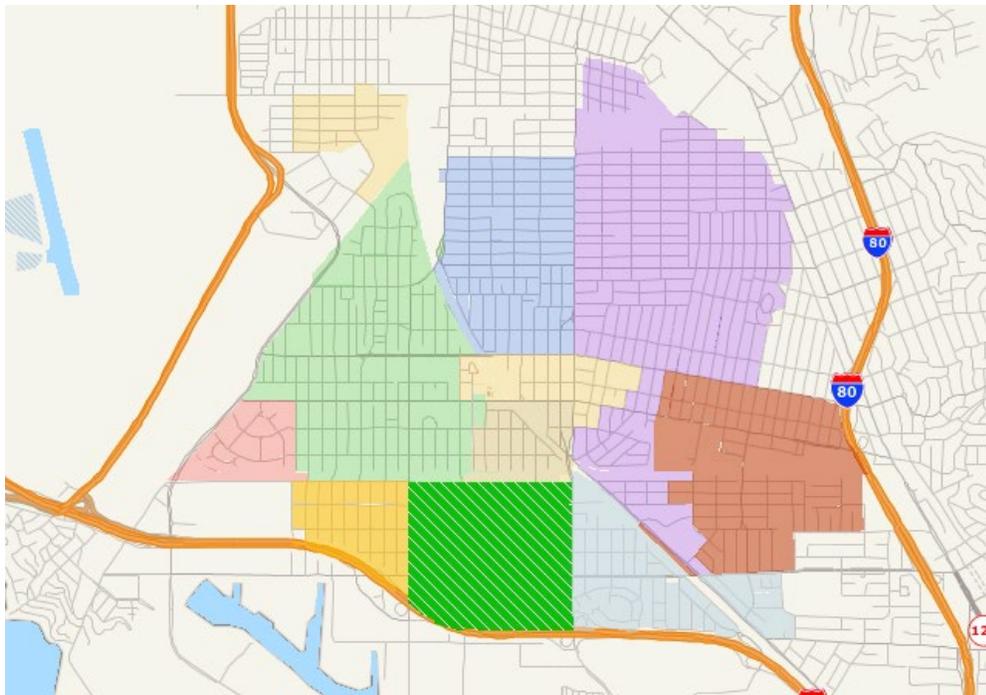
¹⁶ <https://martinezgazette.com/shenkman-clients-sanchez-noonan-sue-city-say-districts-lines-violate-election-dode/>

II. A PUBLIC PROCESS SHOULD DEFINE THE BOUNDARIES WITHIN RICHMOND'S URBAN CORE.

Consistent with A.B. 350, we will not bring a CVRA claim in state court if the city adopts a resolution stating its intent to adopt district elections within 45 days of its receipt of this letter.

We recognize that the three minority districts include twelve neighborhood councils, which should all have an opportunity to help fine tune the boundaries. The A.B. 350 process of five hearings over a 90-day period would allow all affected interests to comment on the proposal and suggest any alternatives.

APPROXIMATE NEIGHBORHOOD BOUNDARIES WITHIN THE THREE INNER DISTRICTS



Source: <https://ca-richmond3.civicplus.com/DocumentCenter/View/27654/Neighborhoods-MOD2-STD---2015?bidId=>

Our current view is that the city should use the same framework that the Legislature has enacted (A.B. 350) to comply with the CVRA. It is our hope that this will also provide an economical means of complying with Richmond's liability under Section 2. Under this process, the Council has 45 days from its receipt of this letter to pass a resolution of intent to adopt council districts. Given the city's federal liability, we would hope to conclude a settlement more quickly. Once the Council does so, it will have an additional 90 days to conduct five public hearings to assist in the design of the maps. We also anticipate that the City can complete the state law process by the middle

of January 2020, possibly much earlier.

Many assume that the California Voting Rights Act allows cities to draw whatever lines they wish, provided that they comply with the 135 day timeframe.¹⁷ This is not the case when a city is in violation of federal law. Richmond must create a remedial district in which Latinos have a dominant influence. The city must also demonstrate that its map does not dilute the electoral influence of black or Asian voters. The settlement map accomplishes these objectives, and can accommodate refinements that emerge from a hearing process, provided that do not defeat the basic legal requirements. We regard the establishment of an independent redistricting commission, similar to the one being established for the WCCUSD as an essential remedy for the federal violation. Without such a commission, the map that will be in used until 2032 would be determined by a council with a majority living outside the area whose influence has been diluted.

The consequences of federal liability are not entirely negative. If the parties can agree on an effective remedy for the federal violation, the plaintiffs will consider accepting a consent decree that would likely immunize the city from additional challenges under state or federal law.

III. DISTRICT ELECTIONS EMPOWER VOTERS.

Many incumbents have reservations about changing the electoral system that brought them to power. Their supporters can also be vocal in opposing reform. But district elections are not about displacing or entrenching the incumbents, nor promoting any particular challengers. It is a long-term reform that guarantees the right of eligible voters to choose and support candidates. A properly designed map gives each voter an equal opportunity to influence city elections and politics, whether he or she lives in a wealthy neighborhood or in poverty.

The American system of single-member constituencies entitles every voter identify one candidate whom they deem most capable of representing their particular goals and values. At-large elections force each voter to pick additional candidates who fall short of the voter's ideal. Making the least bad choice requires almost impossible predictions of whom other voters will elect and how the ensemble will work together. Confronted with such a puzzle, many voters will undervote, accept a slate designed by candidates or moneyed interests, or simply revert to the most familiar names. None of these circumstances is likely to result in a council comprised of the most well informed policy-makers. Nor is the elected group, often from the same neighborhood, likely to be

¹⁷ A lawsuit is currently challenging the map adopted by Martinez, on grounds that it does not comply with criteria identified in Elections Code, 21601. Martinez does not have a residential concentration of any protected group that could make a minority district possible. It is not a charter city.

the most capable of negotiating with each other to meet the needs of a diverse city. From the voter's perspective, voting for eight people is less powerful than voting for a single office-holder who is dedicated to representing you and accountable to you and your neighbors directly should he or she fail to do so.

The at-large system also performs poorly in recruiting new generations of candidates, especially when there is major demographic change. The system encourages political organizations or special interests to assemble slates. These are established organizations often turn to familiar candidates. Candidates cannot effectively run on an independent basis unless they can afford citywide media or are otherwise well-known. Richmond values family connections and past service. As Attachment 3 demonstrates, on at least five occasions, Richmond voters have returned long-serving council alumni to office after a break in service. When a council member died almost twenty years after leaving office, the voters elected his widow who went on to serve another twenty years. The cost of these loyalties is the city's loss of opportunity to elect younger candidates, newcomers, and representative of growing minorities.

For all these reasons, winner-take-all elections are inconsistent with the system of representative democracy that our founders established.

IV. HISTORY DEMONSTRATES THAT DISTRICT ELECTIONS ARE ESSENTIAL TO PROTECT THE RIGHTS OF MINORITIES.

BAVRI wishes to avoid a repetition of the claims made by some WCCUSD trustees that the Voting Rights Act is "bad for black people."¹⁸ The 1982 amendment to the Voting Rights Act targeted at-large elections, and was one of the greatest advances for civil rights during the Reagan era. At that time, the South had elected only one African-American to Congress since Reconstruction; today, there are sixteen. In California, Latino majority districts now elect black leaders such as Congressman Maxine Waters, Senators Steven Bradford and Holly Mitchell, and Assemblyman Reggie Jones-Sawyer.¹⁹ At the time of the Voting Rights Act, no large American city (i.e., population now over 250,000) had ever elected an African-American mayor. Two-thirds elected city councils at-large.²⁰ Today, all but two of those cities now elect from districts.²¹

In American democracy, multi-member constituencies are an anomaly. Each

¹⁸ WCCUSD Board meeting of March 7, 2018, at 9:24PM.

http://richmond.granicus.com/MediaPlayer.php?view_id=15&clip_id=4289; see also Marhch21, 2018, at 9:11PM http://richmond.granicus.com/MediaPlayer.php?view_id=15&clip_id=4297

¹⁹ Congressman Waters' district is 55% Latino; SD-35, 53%; AD-59, 75% Latino.

²⁰ National League of Cities, Municipal Yearbook (1966).

²¹ Columbus and Cincinnati.

https://ballotpedia.org/List_of_current_city_council_officials_of_the_top_100_cities_in_the_United_States

voter elects one delegate to each house of the state legislature, one county supervisor and one congressman. When Madison and Hamilton agreed that the House of Representatives should include delegates elected individually from districts, they relied on almost a century of experience in local government.²² Electing city officials was itself an American innovation. Until the Great Reform Act of 1832, crown appointees provided most local government in Britain.²³ By that time, New York and Chicago²⁴ had elected councils that were often controlled by members elected from immigrant neighborhoods.

California may have invented the use of at-large voting as a tool to exclude minorities and dilute the influence of urban areas²⁵ California was the last state to elect its entire delegation to the House of Representatives at-large.²⁶ Winner-take-all was used to purge the Californios from the Los Angeles city council.

The American South took note. Southern counties adopted at-large elections when blacks were enfranchised after the Civil War, and again during the Civil Rights era. When necessary, legislators in southern states were elected as a group from winner-take-all districts large enough to ensure a white majority.²⁷ California also gave one senator to each county, which not only limited the influence of urban areas in state politics, but allowed rural interests to control apportionment of the state's congressional delegation until 1967. Most Southern states adopted this innovation.

Richmond's Charter was adopted at the height of the Progressive movement, so it is not surprising that it has an at-large council. California's Republican Governor Hiram Johnson, promoted at-large election for cities and even counties²⁸, as part of the

²² New York City's charter of 1683 established a council of six aldermen, one per ward. New York's counties subsequently adopted supervisorial districts, a practice that other mid-Atlantic states followed decades before the revolution.

²³ 2 & 3 Wm. IV, c. 45, <https://www.nationalarchives.gov.uk/education/politics/g6/>

²⁴ Chicago elected two members per ward until 1923.

²⁵ . The 1850 census did not record the language or ancestry of native-born Americans, so Californios were considered white. But by the time it counted California, only 21% of the population were citizens of voting age. <https://www2.census.gov/library/publications/decennial/1850/1850a/1850a-47.pdf?#page=18>

²⁶ California's statewide representatives were seated until 1864 despite a statutory prohibition on multi-member districts enacted in 1842. 5 Stat. 491. Hind's Precedents of the House of Representatives, at 182 (1907).

²⁷ In many southern states, each county had one delegate to the upper house, diluting the influence of urban counties. By the time this practice was banned, a third of the population could elect a majority in the State Senate. This distortion paled compared to the impact of one senator per county in California, where 11 percent of the state's population could elect a senate majority.

²⁸ 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.

Progressive's nationwide program to "reform" municipal government. They also attempted to make local elections nonpartisan, which limited information available to voters.²⁹ Finally, the Progressives encouraged a practice they called "cooption." When a council member decided not to seek reelection, he was expected to resign in time for his colleagues to appoint a member of the local establishment, who usually succeeded in defending the seat.³⁰ These combined effect of these practices was to allow Republican majorities to survive decades of demographic change. As late as 1955, 68 percent of council members in California's 28 largest cities were registered Republicans, as were 80 percent of large city's mayors.³¹

The Progressive reforms had nationwide effects and were not intended to empower immigrants or minorities. Indeed, the Progressives were responsible for eliminating voting by immigrants in the eight states that still permitted it.³² (California never permitted aliens to vote.) Japanese comprised 15% of the population in 1890, but Johnson supported Japanese exclusion and was a leading advocate for the Immigration Act of 1922, which placed strict quotas on immigration from all countries outside Western Europe. Latinos had served on Los Angeles city council for 60 years, but during the Progressives' at-large period (1909-1925), the council was 100% Anglo.

California pioneered other electoral devices that discriminated against minorities and urban areas. In 1964, the Supreme Court outlawed Alabama's allocation of one senator to each county on grounds that it gave 34% of the population the potential to elect a majority of the state's senate. At the time, 11% of California's population could do the same. Earl Warren joined the decision that effectively overturned the system that allowed him to control the legislature while governor, but suggested that – in the case of congressmen – the states could go back to multimember districts.³³ Congress quickly enacted 2 U.S.C. §2c to close that loophole. The California Supreme Court struck down the congressional reapportionment enacted by the malapportioned state senate in 1961.³⁴

In 1965, Latinos, white ethnics and African-Americans joined together to support two of the most consequential laws in American history - the Voting Rights Act and the Immigration and Nationality Act. At the time, several Mississippi counties with majority black populations had not permitted a single black to register. The new

²⁹ Adrian, "Some General Characteristics of Nonpartisan Elections," 46 A.P.S.R. 766, 776 (1952).

³⁰ Blair and Flournoy, Legislative Bodies in California at 74 (1967).

³¹ Lee, Politics of Nonpartisanship at 56-57 (1960).

³² 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 alien voting, but abolished it between 1895 and the Progressive initiative of 1910.

³³ Reynolds v. Sims, 377 U.S. 533, 577 (1964)(dictum).

³⁴ Silver v. Reagan, 67 Cal.2d 454 (1967).

immigration law eliminated quotas and prohibited discrimination based on origin or ethnicity, changing the demographics of the nation, especially California. In the House of Representatives, one of the leading advocates for the Voting Rights Act was a Bay Area congressman, Don Edwards.

In 1972, California's Asian Secretary of State, March Fong Eu, joined Shirley Chisholm and other civil rights leaders to challenge the state law that required the political parties to elect national convention delegates at-large.³⁵ Their credentials challenge led the Democratic Convention to empanel a reform commission, chaired by Professor Morley Winograd of USC, which recognized that "winner take all" disenfranchised both political and racial minorities. The party required that delegates be elected from congressional districts (or smaller units) as part of a package of reforms to increase the participation and influence of minorities.³⁶ The Winograd Commission, and more limited reforms within the Republican Party,³⁷ forced Congress to confront how at-large elections also led to the underrepresentation of women and minorities in public office. In The Shameful Blight: The Survival of Racial Discrimination in Voting in the South, Congressman Edwards (D-Cal.) complained that southern jurisdictions were using at-large voting to dilute the influence of newly enfranchised African-Americans.³⁸

In 1974, after finding that intentional segregation of black students by the at-large board of the Stockton Unified School District violated the Fourteenth Amendment, Judge John Keane ordered that the district to create individual trustee areas.³⁹ The case received nationwide attention, demonstrating how electing local bodies at-large resulted in discrimination and inequity when they allocated public resources.⁴⁰

In 1975, Congress expanded the protection of the Voting Rights Act to language minorities, including Asians and Latinos in California, New York, Massachusetts and other states outside the South. But in 1980, the Supreme Court held that the new law

³⁵ Counsel worked for Congresswoman Chisholm on the floor of the 1972 Convention to support the decision of the Credentials Committee to unseat the winner-take-all delegation. Rafferty papers, on deposit at the Kennedy Library, Box 12. <https://www.jfklibrary.org/asset-viewer/archives/SRPP>

³⁶ Rafferty papers, on deposit at the Kennedy Library, Box 10. <https://www.jfklibrary.org/asset-viewer/archives/SRPP>; see also Box 1 of the Winograd papers at the Bentley Library in Michigan. [https://quod.lib.umich.edu/b/bhlead/umich-bhl-](https://quod.lib.umich.edu/b/bhlead/umich-bhl-921091?byte=10691383;focusrgn=C01;subview=standard;view=reslist)

[921091?byte=10691383;focusrgn=C01;subview=standard;view=reslist](https://quod.lib.umich.edu/b/bhlead/umich-bhl-921091?byte=10691383;focusrgn=C01;subview=standard;view=reslist)

³⁷ See Schnall, "Party Parity: A Defense of the Democratic Party's Equal Division Rule," 13 J. of Gender, Social Policy & the Law," 381, 385 (2005)

³⁸ Rafferty papers, on deposit at the Kennedy Library, Box 6. <https://www.jfklibrary.org/asset-viewer/archives/SRPP>

³⁹ Hernandez v. Stockton USD, No. 11-7939, filed 1970, decision noted, 9 Clearinghouse Rev. 35 (1972).

The trial court record has apparently been lost. Hernandez v. Williams, C044986 (3rd DCA 2004).

⁴⁰ <https://www.nytimes.com/1975/09/15/archives/desegregation-starts-smoothly-for-schools-in-stockton-calif.html>

could not invalidate at-large elections in three southern cities, unless the plaintiffs proved intentional racial discrimination. 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 against voters who belonged to “protected groups,” i.e., racial or language minorities. The Senate Report stated “factors” to help identify when an electoral practice was discriminatory in effect. In Thornburg v. Gingles (1986) 478 U.S. 30, the Supreme Court interpreted the statute to require a challenge to at-large voting to show that a single protected group (*i.e.*, blacks, Asians, Latinos) could control at least one district. They established a bright line requirement – there had to be a district in which the protected group comprised a majority of adult citizens. 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. See footnote 10, *supra*.

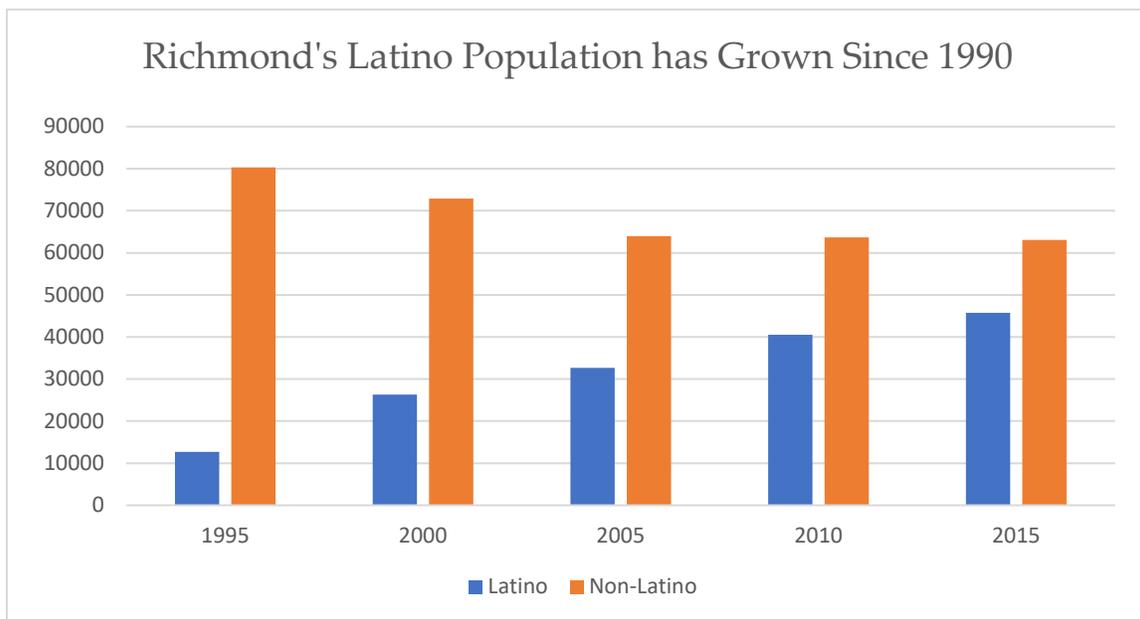
The Gingles requirement made the Voting Rights Act ineffective in California. Federal courts generally refuse to recognize that black, Latinos, and Asians can vote as a coalition. Because these racial minorities usually live together in California, it is unusual for a single protected group to be able to demonstrate that a jurisdiction can create a district in which their members alone are a majority of eligible voters. So the Legislature enacted the California Voting Rights Act, which dispenses with the federal requirement of majority-minority district, as well as other elements of Section 2. The only essential element of CVRA is that there be racially polarized voting, but the only remedy is that the jurisdiction adopt districts. It is usually assumed that the CVRA allows the incumbents can draw the lines however they choose. This is not the case under Section 2, nor is it the case if the jurisdiction fails to complete the districting process within the safe harbor. In these cases, a court can review the boundaries or prescribe other measures to provide an effective remedy that equalizes the voting power of the protected groups.

The extraordinary success of the Voting Rights Act for African-Americans in the South was the impetus for extending its protections to California’s Latino and Asian populations.⁴¹ According to the NAACP, Section 2’s prohibition on minority voter dilution continues to be a vital and effective protection for black voting rights. Attachment 2. Unlike most California jurisdictions, Richmond is liable under both state and federal laws. Therefore, the council needs to adopt a map that prevents dilution of the Latino and Asian vote as effectively as possible.

⁴¹ Counsel prepared the statistical analysis of the success of the Voting Rights Act used by the Urban League and Joint Center for Political Analysis in support of the 1975 extension. See Rafferty Papers, on deposit at John F. Kennedy Library, <https://www.jfklibrary.org/asset-viewer/archives/SRPP>

V. AT-LARGE ELECTIONS PREVENT THE CITY COUNCIL FROM REPRESENTING RICHMOND'S CHANGING POPULATION.

The history posted on the city's website describes dramatic changes in Richmond's population and ethnic composition.⁴² Unfortunately, the history ends with data from 1995. Today's website It reports that Latinos had grown to 14.5 percent of the city's population, and Asians to 12 percent according to the "latest census." But it refers to the census conducted in 1990. Much has changed in 30 years. As of 2015, 42 percent of Richmond's population is Latino. The most recent estimate is based on five-year old data from a survey that was found to undercount Latinos in California by 8 percent compared to the 2010 census, so it is possible that Richmond is already a Latino-majority city.⁴³



Every year, the Census Bureau publishes a special tabulation for use in voting rights cases. It estimates, for each block group in the country, the Citizen of Voting Age Population (CVAP) that is white, black, Asian, Pacific Islander, American Indian, and Latino, as well as certain combinations.⁴⁴ CVAP estimates likely undercount Latinos by

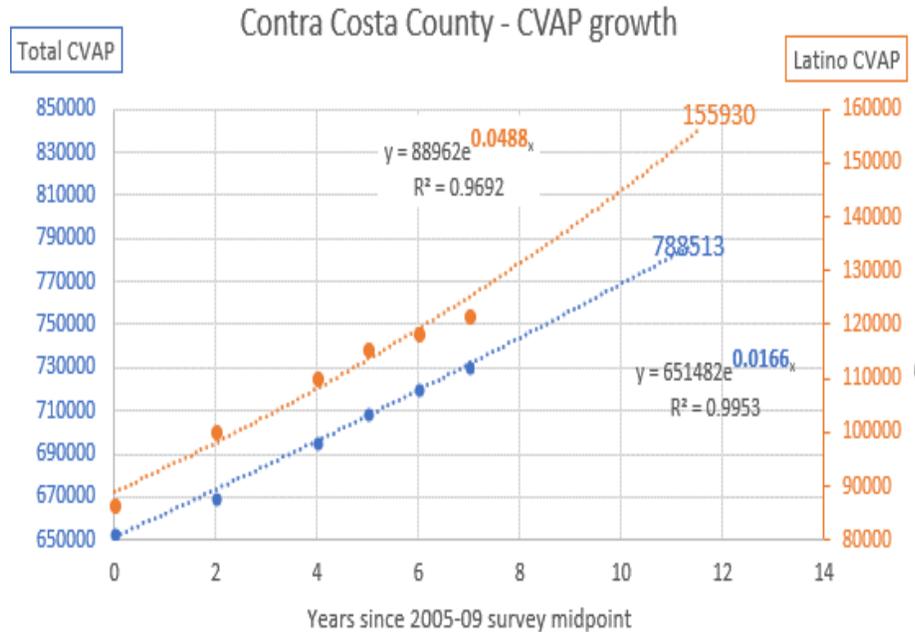
⁴² <http://www.ci.richmond.ca.us/112/History-of-Richmond>

⁴³ Chapa, et al. "Estimating CVAP," UC Berkeley Warren Center, Table 3 at 6.

⁴⁴ The data reflect self-identification on questionnaires supporting the American Community Survey. For purposes of this tabulation, Latino ancestry is categorized separately from the other ethnicities, so Latinos are also asked to identify themselves white, black, Asian, or mixed race. The most current version, released in March 2019, includes data collected from 2013-2017. Since the trends have been consistent over that period, it approximates a point estimate for 2015. Although it likely reflects an undercount of the actual number of Latino adult citizens, this is the standard used by federal courts to satisfy the Gingles requirement

about 8 percent,⁴⁵ and Latino share of the electorate is increasing exponentially over time. Richmond has 3850 Latino citizens who are not yet old enough to vote

The upcoming census will not change this picture. . Across Contra Costa County, 2000 Latinos turn 18 every year. Ninety-six percent are American citizens.



At-large elections have created a political establishment in Richmond that is almost as durable as the entrenchment of Republicans on the councils of California’s largest cities that endured from 1910 until the 1960s. Two current council members have served more than 25 years, one having appeared on 12 ballots since having been elected more than fifty years ago. At least two more council members served over 20 years, with an additional four serving more than three four-year terms. These incumbents are justly proud of having managed the transformation of Richmond’s economy and the changes in its population after World War II. But they cannot fully understand the challenges facing Richmond’s emerging Latino majority.

VI. LATINOS CAN BE A MAJORITY IN ONE COUNCIL DISTRICT.

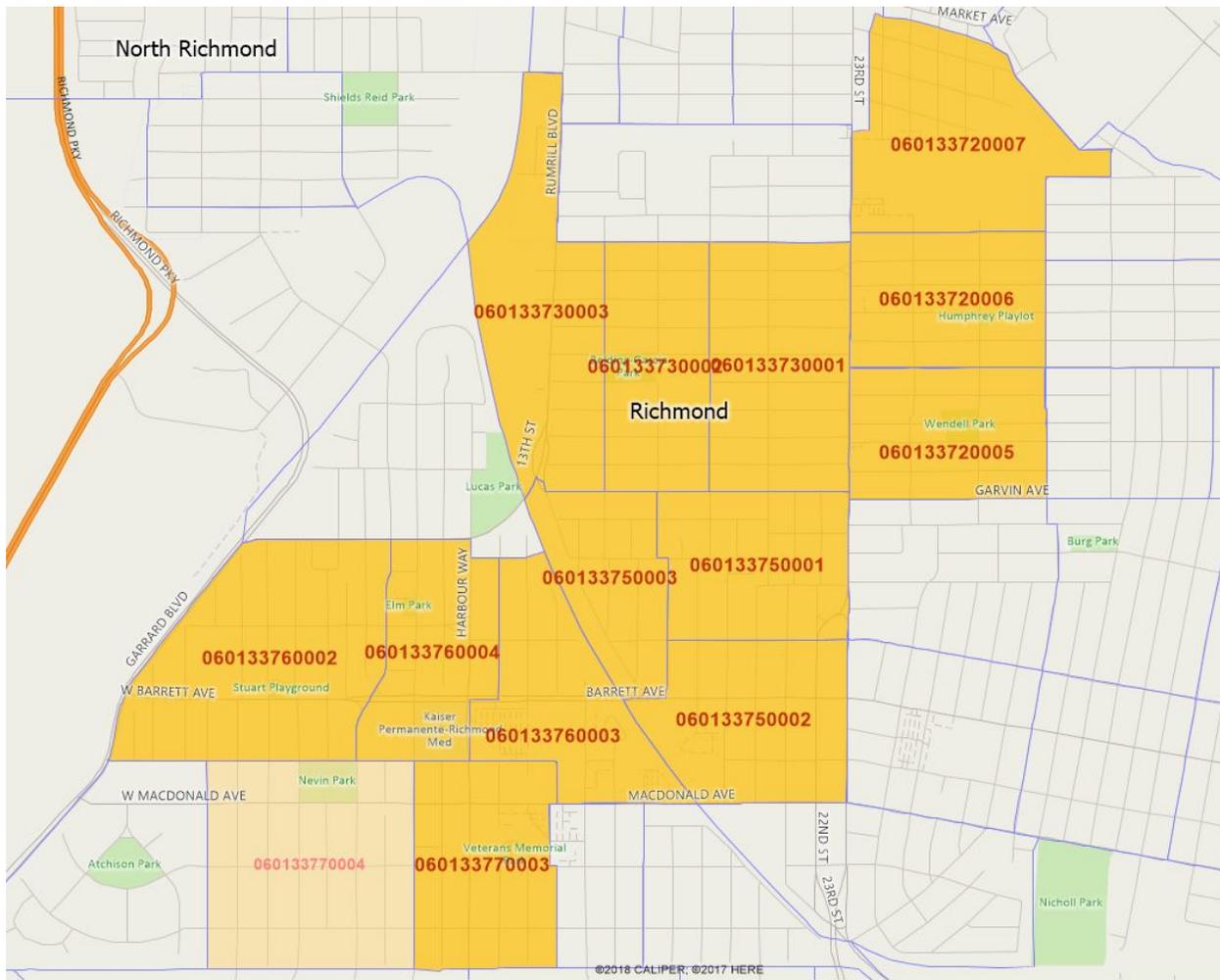
Practice under the federal Voting Rights Act distinguishes between the “demonstration district,” which satisfies the Gingles test, and the “remedial district” that is actually implemented.⁴⁶ The latter may consider the political factors and

⁴⁵ After the 2010 census, Berkeley researchers found that the CVAP estimates undercounted Latinos by 8 percent. https://www.law.berkeley.edu/files/Redistricting_PolicyBrief4_forWeb.pdf Chapa, et al. “Estimating Citizen Voting Age Population.” This causes the African-American share of CVAP to be overcounted.

⁴⁶ See Levitt, “Quick and Dirty: The New Misreading of the Voting Rights Act,” 43 Fla.S.U.L.Rev. 573

administrative realities, but must first and foremost address the interests of the protected group and assure them the most effective remedy. Furthermore, the census attempts to design block groups to reflect actual neighborhoods and communities of interest, but does not always succeed. Therefore, the following “demonstration map” is not identical to that proposed as a settlement.

Within the 13 orange block groups, with or without the additional block group with the lighter shade, a majority of citizen adults (CVAP) are Latino.⁴⁷ The ideal size for a Richmond district is calculated using a different set of data – the actual 2010



(2016)

⁴⁷ When courts use CVAP, nominal (midpoint) values anywhere close to 50% are usually accepted as majorities. *Garza v. County of Los Angeles* (1991) 756 F. Supp. 1298 allowed “illustrative districts [that] were just shy of the 50 percent mark, in the 44 to 46 percent range.” *Gomez v. City of Watsonville* (1988) 863 F.2d 1407, 1416 & n.47 apparently relaxed the requirement of a nominal majority, using just 12% of the total CVAP to support two out of seven “majority” Latino districts. See also *Rodriguez v. Pataki*, 308 F.Supp.2d 346, 405-06 (S.D.N.Y. 2004) (“near majority” of 45.4% adequate); *Meza v. Galvin*, 322 F.Supp.2d 52, 62 (D. Mass. 2004) recognized the need to consider the 90 percent error range, but declined to find a majority based on a range of 26-45%, because “highest point in the range ... was nearly five percent below a statistical majority.”

enumeration. In 2010, the 13 block groups had a population of 17637, which is 358 more than the ideal of one-sixth of the city's entire population. If you add the fourteenth block group, the 2010 population was 19,683 or 18.9% of the city – close enough to create one of five districts. (The population is now 21,271 or 19.6% of the city.) This demonstrates that a majority-Latino district could be drawn even if the elected mayoralty was abolished and the size of the council reduced to five members. It could also accommodate a hybrid system with a mayor, an additional at-large member, and five district members. BAVRI does not currently consider these approaches necessary to an effective remedy, but the community may discuss them during the A.B. 350 process.

VII. RACIALLY POLARIZED VOTING EXISTS IN RICHMOND AND THROUGHOUT THE NATION.

For the federal claim, it is necessary to show that Latino citizens vote differently from non-Latino voters, since Latinos are the only underrepresented minority to have a majority district.⁴⁸ State law also recognizes coalitions, so the more typical case where blacks and Latinos combine to support a candidate can also prove racial polarized voting (RPV).⁴⁹ For purposes of state law, this is sufficient to prove that at-large election dilutes minority influence. No other evidence is required. Elections Code, §14028(e)⁵⁰.

RPV is not a bad thing. Where RPV does not exist, it means that white voters alone determine the winner of every office and the outcome of every ballot question. Minority voters simply ratify those choices, because they always vote in exactly the same way. Intuitively, that is not the case in most jurisdictions. Black voters experience criminal justice system in a way that differs from white voters; as a result, they voted differently on Prop. 58 throughout the state. Minorities often act in coalition, Asians and Latinos strongly supported the restoration of bilingual education, to an even greater degree than black voters. This can be seen even in Richmond, where a large

⁴⁸ Campos v. City of Baytown (1988) 840 F.2d 1240 (5th Cir. 1988) recognized a claim based on a coalition of blacks and Latinos, but this is unusual.

⁴⁹ 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.”

⁵⁰ “(e) Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section.”

Subsection (b) provides that the determination of a violation may consider “the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body”

majority of white voters also voted yes on Prop. 57. Black, Latino, and Asian voters joined together to give 75% of their votes to Diana Becton who won the 2018 district attorney race, even though 66% of white voters chose other candidates.

The Voting Rights Act and the CVRA protect voters, not candidates. In the aggregate, district elections will increase opportunities for minority candidates, as well as candidates of other races who may be excluded by the costs and other barriers imposed by at-large elections. But neither law seeks to guarantee that the members of the protected group are elected to office in proportion to the group's population or voting strength. Both seek to give minority voters opportunities to elect the candidate of their choice, and to influence the election, that are equal to that enjoyed by the rest of the electorate.

Furthermore, the candidate of choice is not always a member of the same minority group. As noted above, Latino majority districts have elected congressmen like Maxine Waters and Mark Takano.⁵¹ Nor is a candidate automatically the candidate of choice for the group of which he is a member. In the 2012 U.S. Senate race, Texas Latinos overwhelmingly chose an Anglo candidate over a Latino immigrant.⁵² Charles Ramsey provides an example of reverse polarization that is closer to home. In 1993, Ramsey was highly polarized. A tide of black votes in Richmond elected him to WCCUSD with little white support. In later years, however, his reelections became increasingly dependent upon white precincts in El Cerrito.

The council may argue that fact that six of the seven council members is inconsistent with a claim that the African-American vote is diluted. It is unnecessary to argue this point, because dilution of the Latino vote is sufficient to sustain a claim under Section 2. Plaintiffs are committed to a map that empowers the urban African-American community to elect two council members.

A. ENDOGENOUS EVIDENCE

For purposes of the state and federal Voting Rights Acts, RPV can be demonstrated using either endogenous or exogenous evidence. Endogenous evidence analyses elections for specific candidates in races for the offices in question. BAVRI has already performed analyses of every Richmond council race going back to 2006 (except for 2008). In each, ecological regression, which is the primary methodology used in voting rights cases, shows evidence of racial polarization.

⁵¹ CD-41 is 56% Latino.

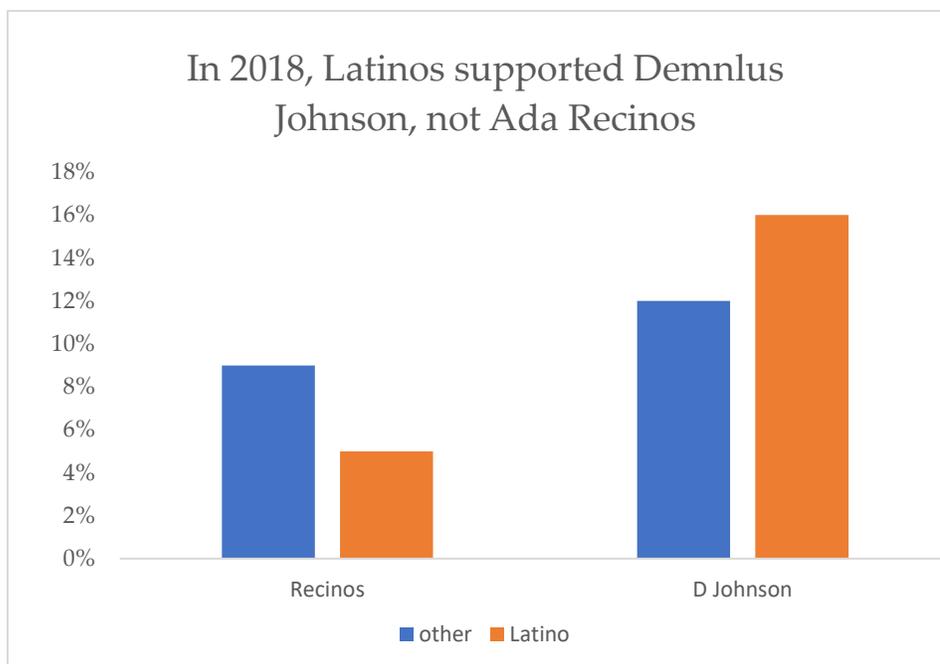
⁵² In 2012, a Latino immigrant ran for United States Senate in Texas against a white candidate. The Latino candidate won only 8% of the vote in a county that was 91% Latino; but 96% of the vote in a county that was only 7% Latino. Although Senate seats are not subject to districting under the Voting Rights Act, this is a stark demonstration of "reverse polarization."

Given the prospect of litigation, we will describe this evidence only in general terms. To the extent that the data could also unfairly stigmatize some incumbents, premature disclosure could make it more difficult for these council members to accept this reform. We discuss a few illustrative examples in general terms.

Maria Viramontes and Linda Lopez enjoyed a large differential of support from the Latino community in both the 2006 and 2010 elections. Latino turnout was simply not enough to carry either candidate in 2010, given the decline in support for them by the rest of the city's voters.

2014 was a landmark election, in which the Richmond Progressive Alliance (RPA) swept to a supermajority on the council. Both the RPA and the pro-Chevron slate included a candidate with the same Spanish surname. One test of racial polarization is to consider the combined votes of Latino candidates; there is 80% confidence that the Latino community preferred them over the remaining candidates. The Latino community did strongly prefer one of the two African-American candidates for the short-term seat, and supported him at a higher level than the non-Latino community.

Districting gives each minority community the opportunity to determine its own candidate of choice. Elected bodies generally do a poor job of deciding for a minority, and this city council is no exception. Since the 2014 race, the council appears to have sought to increase its diversity when making appointments to vacancies. Neither of the candidates it chose appealed to the Latino community. In 2018, there is 95% confidence that Latinos disfavored appointed incumbent Ada Recinos, even though she



campaigned on the basis that no other incumbent spoke Spanish.⁵³ The Latino community gave Demnlus Johnson even stronger support than the non-Latinos. However, support for dynamic crossover candidates like Mr. Johnson is conditional. The Latino community expects him to support their aspirations, which include the opportunity to elect a Spanish speaker who lives in the Latino-majority district.

B. EXOGENOUS EVIDENCE

Evidence of RPV is equally compelling if it involves how voters within the jurisdiction responded to ballot questions or chose candidates in other races. Not surprisingly, Latino voters behave differently from non-Latino voters, often for obvious reasons. To the extent that Latinos have more information about ballot questions of particular interest to their community, analysis of these choices may be even more reliable than evidence drawn from the at-large council races.

Two WCCUSD trustees, both of whom live in El Cerrito, voted in favor of Resolution 64-1617, stating the district's intent to transition in time for the trustee elections of 2018, when each was up for reelection. Five weeks later, they insisted trustee elections be submitted for voter approval in November 2018, automatically delaying implementation two years. This tactic succeeded at delaying trustee area elections until 2020 (for reasons that Richmond could not duplicate if it chose to try). One trustee had strong support from the Charter school movement. The other was a 16-year incumbent endorsed by the Democratic Party.

In their final at-large election, the voters of WCCUSD retired both trustees. An analysis of the vote restricted to precincts within Richmond city limits supports an inference that less than 4 percent of Latino voters supported either candidate. At an extremely high confidence level, the regression infers that the Latino vote for each of these candidates was significantly lower than the non-Latino vote.

Reflecting their strong support for education, ecological regression infers that almost every Latino voted for Proposition 56, which funded a statewide school bond. All racial groups in Richmond supported Proposition 58 (restoration of bilingual education) at high levels, but support from Asians exceeded Latinos, which reduces the apparent differential from the non-Latino electorate.

The difference between Latino and non-Latino voters in the 2016 ballot questions is most stark on Proposition 62, which would have abolished the death penalty. 71 percent of non-Latinos in Richmond supported abolition, but only 51 percent of Latinos.

⁵³ Richmond Confidential, Jan. 31, 2018 <https://richmondconfidential.org/2018/01/31/ada-recinos-city-council/>

C. ADDITIONAL EVIDENCE

The 1982 Senate Report on Section 2 sets forth nine factors as examples of evidence that plaintiffs can use to support the essential conclusion: that discriminatory effects impair the political equality of the minority in ways that a court can remedy.⁵⁴ Because of California's uniquely diverse population, the Legislature enacted CVRA to dispense with any element needed to prove liability other than racially polarized voting (factor 2). Section 14028(e) describes these factors as "probative, but not necessary" to establish liability under state law. Most of the factors reflect the extrinsic circumstances of the Latino community that are not necessarily caused by any council action. Because the CVRA simplifies elements of a voting rights claim, it is seldom necessary to address these factors.⁵⁵

VIII. AN INDEPENDENT REDISTRICTING COMMISSION IS NEEDED TO PROTECT MINORITIES AFTER THE CENSUS.

The one-time map gives flexibility to the council during the political transition to district elections. Plaintiffs cannot support a remedy that does not include an independent redistricting commission to draw the permanent boundaries after the 2020 census results are released in March 2021. A redistricting commission has become a standard feature of CVRA processes that have gone to court, even if there is no federal

⁵⁴ See Boyd & Markman, "1982 Amendments Legislative History," [40 W&L L. REV. 1347](#) (1983)

⁵⁵ Section 2 cases are rare in California. Reversing the denial of a preliminary injunction, Gomez v. City of Watsonville (1988) 863 F.2d 1407, 1419, suggested that courts take judicial notice of "pervasive discrimination against Hispanics" to satisfy factor (1) (history of discrimination) and factor (5) (effects of discrimination) statewide. The Ninth Circuit excused the absence of factor (4) exclusive slating and factor (6) racial campaign appeals. At-large voting itself constituted a practice enhancing opportunities for electoral discrimination, satisfying factor (3).

In Richmond, there is a history and legacy of discrimination that continues to impair both Latinos and Asians, many resulting from extrinsic actions, including actions by WCCUSD. These include inequitable distribution of resources, poor urban schools, political demoralization, an unresponsive government agencies. The Latino community regarded a 2008 independent campaign mailer as racially charged for purposes of factor (3). It was directed against two non-Latino candidates, and forced a third to withdraw from the race. 2008 – See h "Drugs comes to Richmond from across the Mexican border." It says that city leaders who oppose driver's license checkpoints hold "public safety hostage."

Unfortunately, Latinos suffer additional electoral devices. In the 2014 election, there were only seven Spanish-speaking poll workers in all of San Pablo. The registrar has not consistently enforced AB 918, amending Election Code, Sections 12303(d) and 14201(d) to provide, among other requirements, that, 14 days before each election, the registrar post the precincts with officials offering assistance in languages other than English. The Civil Rights Division sent observers to Contra Costa County in 2016.

Factors (8), (9), and (10) examine the extent to which minority candidates have won elections, the degree to which elected officials respond to minority group; and whether the policy justification for the at-large election is tenuous. A Latino candidate of choice has not won election since 2006. Council members may be willing to concede that school trustees were not fully responsive to the equities of Richmond's minority population. The city has not articulated a policy justification for maintaining at-large elections.

liability.⁵⁶

It is possible that WCCUSD might consent to having Richmond use the redistricting commission that the court order requires it to create. Alternatively, Elections Code, Section 23004 now permits our county to create an independent commission that could draw the post-census boundaries under contract, but it is not yet clear whether Contra Costa County will do so. Several bills are pending to promote and expand independent districting. AB 1734, for example, would require that commissions similar in structure to the statewide Citizens' Redistricting Commission to redistrict most cities within each county.⁵⁷

IX. VOTER APPROVAL IS UNNECESSARY AND INAPPROPRIATE.

BAVRI strongly opposes a ballot question. As the Latino community made clear to WCCUSD, it is never appropriate for ask the local electorate whether the city should comply with federal voting rights law. A peculiar section of the Elections Code suggests that the council could, prior to December 16, 2019, place a question on the March 2020 ballot "solely to comply with a court injunction or consent decree or with federal or state voting rights laws." [§1415\(a\)\(2\)\(B\)](#). Doing so would forfeit the safe harbor, and would not delay the city's liability or excuse its violation of state and federal laws. It would give rise to additional liability under 42 U.S.C. §1983. See *Cooper v. Aaron* (1988) 358 U.S. 1 (action under 42 U.S.C. §1983 to enjoin legislation to nullify federal law). Last year, the Assembly Committee on Elections warned cities

If the voters rejected the proposal, the jurisdiction nonetheless would remain subject to a lawsuit under the CVRA. Furthermore, to the extent that there was racially polarized voting on the question of whether to transition from at-large to district-based elections, the results of the vote on that question could provide further evidence for a lawsuit under the CVRA. Report on A.B. 2123, April 11, 2018.

District election is not inconsistent with Richmond's Charter, which does not explicitly require at-large election.⁵⁸ Article III, Section 3 affirmatively provides for an ordinance creating "from district" elections by an ordinance introduced according to Article VIII, Section 2, which probably referred to an initiative. But the voters repealed that provision in 1968, when they amended Article V to authorize the council to depart

⁵⁶ E.g., Santa Barbara CVRA settlement.

https://assets.ctfassets.net/mla2k9txthv8/4cbx1d0jgAWysU8qSqmqy6/b2a35c9ba3b88f2e8bd9ed31df79c32/Santa_Barbara_-_Indep_Comm_-_Banales_Settlement_Agreement_031015.pdf For other cases, see <https://www.localredistricting.org/ordinance>

⁵⁷

https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml?session_year=20192020&keyword=%22redistricting%20commission%22&house=Both&author=All&lawCode=All

⁵⁸ <http://www.ci.richmond.ca.us/DocumentCenter/View/5129/City-Charter?bidId=>

from the general law in the Elections and Government Codes by ordinance. Government Code, §34871 authorizes district elections. Elections Code, §21620 provides that districts created by charter cities must comply with the Voting Rights Act. Charter cities subject to Section 2 (most recently San Ramon) have accepted that federal law preempts the Charter.

Even in the absence of a federal violation, Government Code, §34886 provides that a city may adopt districts (and also eliminate an elected mayoralty) without voter approval, provided it declares that it is doing so “in furtherance of the purposes of the CVRA.” Prior to this law, some cities such as Highland, Escondido, and Visalia⁵⁹ used ballot questions to delay implementation of district elections, but voter rejection only provides additional evidence that winner-take-all discriminates against minority representation.

CONCLUSION

The Legislature has set demanding deadlines so that a consensus to move forward does not unravel if a vacancy is created or filled. However, the geography of Richmond simplifies the districting process by limiting the options available for the three districts outside the city’s urban core.

Restoration of American-style grass roots democracy will bring great rewards to the City of Richmond. Ever since New York City implemented district elections in 1638, district elections have promoted egalitarianism, negotiation and efficiency in American municipal government. Representative local government has promoted economic growth and upward mobility for immigrants and the working class.

Sincerely,



Scott J. Rafferty

⁵⁹ After Highland’s voters rejected district elections, the court ordered plaintiffs’ map implemented. : <https://www.bbklaw.com/getmedia/ebbb4216-79c3-4d1f-8d2a-4d532fb23747/The-California-Voting-Rights-Act-What-To-Do-When-Your-Agency-Gets-a-Letter> ; [https://ballotpedia.org/City_of_Highland_City_Council_Member_Election,_Measure_T_\(November_2014\)](https://ballotpedia.org/City_of_Highland_City_Council_Member_Election,_Measure_T_(November_2014)) ; Escondido plaintiffs stayed litigation pending the ballot question, which rejected district elections, but the council settled four months later.: <http://www.sandiegouniontribune.com/news/elections/sdut-escondido-voting-rights-settlement-latino-2013mar20-story.html> ; Visalia placed a ballot question after being threatened with a lawsuit, which was not filed until after the question failed. It was four more years before the first round of district elections. <https://www.visalia.city/civicax/inc/blobfetch.aspx?BlobID=16022>

Petition that Richmond City Council Comply with Voting Rights Act, page 27

Attachment 1. Richmond Progressive Alliance, 2004 Platform.

Attachment 2. NAACP LDF, "At-large Voting: Frequently Asked Questions

<https://www.naacpldf.org/wp-content/uploads/At-Large-Voting-Frequently-Asked-Questions-1.pdf>

Attachment 3 Latino council members and other long-serving council members

Attachment 4 Court Approved WCCUSD Trustee map

ATTACHMENT 1

The following points of agreement have already been agreed upon by the currently nominated candidates, **Andres Soto** and **Gayle McLaughlin**

RICHMOND PROGRESSIVE ALLIANCE

Platform Ideas, Policies and Intended Directions

(as of 1/12/04)

Restore Democracy and Efficiency

District elections:

The City of Richmond needs fewer and better representatives. The more efficient city council we envision will also require that city council members reside in their districts.

Power to the neighborhoods:

We intend to respect and support the diversity of the many Richmond communities by empowering local neighborhoods to make decisions on their own neighborhoods (Street Sweeping Program model)

Democratize the agendas of the RCC meetings:

Reaffirm the current policy that allows any city council person to place any item on any regular or special meeting agenda, and expand this policy further to allow any resident of Richmond who provides the City Clerk with 40 supporting signatures from Richmond residents to have an item included in the next agenda.

Promote participation in RCC meetings:

Remove the limit in the number of speakers allowed to address the City Council during Open Forum Place. Open Forum as the first section of the agenda after the agenda revision.

Rotate the role of city's mayor and vice-mayor:

Establish instant run-off elections

Implement IRV concurrently with the implementation of District elections. In each district several candidates may run and with IRV, second choices kick in and count if no candidate achieves a first round majority.

Empower City Commissions:

Restore Community Safety

Review and restructure the Richmond Police Department

Rewrite the police manuals increasing standards and expectations.

Advance Community Policing

AT-LARGE VOTING FREQUENTLY ASKED QUESTIONS

What is at-large voting?

Under at-large voting, all voters cast their ballots for all candidates in the jurisdiction. In Beaufort city council elections, for example, all voters cast their ballots for five positions, with the top five candidates who receive the most votes citywide winning seats on the city council.

Why is at-large voting discriminatory?

At-large methods of election are often discriminatory because they, in combination with racially polarized voting, prevent voters of color from electing their candidates of choice where they are not the majority in the jurisdiction. Under this system, the votes of voters of color often are drowned out or submerged by the votes of a majority of white voters who often do not support the candidates preferred by Black voters.

How does at-large voting affect communities of color?

Fewer and fewer districts still practice at-large voting. That is because courts and other decision-makers long have recognized that discriminatory methods of election, like at-large voting, enhance the discrimination that communities of color experience because of socioeconomic and other disparities in life opportunities between Black and white communities.

LDF has long worked to eradicate discriminatory at-large methods of election that dilute the voting strength of communities of color.

How can districts switch from at-large to district-based voting?

Elected officials can call for a referendum on the question of moving from at-large to district voting, and voters can approve a change to the method of election through a referendum. South Carolina law empowers local city councils to take a simple majority vote to change the method of election through a referendum. Alternatively, communities can petition a city council to put the question of a change to the method of election to the voters. Without action by local municipalities, politicians who choose to maintain at-large voting can face time-consuming and costly litigation.

How are single-member districts created?

To remedy dilutive at-large electoral systems, single-member districts are created by a demographic mapping expert and include at least one district in which voters of color are the majority of the voting-age population in that district. These districts must satisfy all relevant laws and traditional redistricting principles. These districts are not intended to guarantee the election of politicians of a particular color, but rather to empower voters to elect their candidates of choice.

Are at-large systems rare or widely-used?

Since the passage of the Voting Rights Act in 1965, numerous at-large systems have been struck down under Section 2 of the Voting Rights Act. Although at-large voting is becoming rarer and rarer, in part due to the advocacy of LDF and other civil rights organizations, such discriminatory election systems remain in some places in our democracy, such as in Beaufort City.

The Voting Rights Act forbids the use of any electoral scheme, such as the at-large method of election, that submerges the votes of people of color in elections that a white majority of voters control. Widely considered the crown jewel of American democracy, the Voting Rights Act is the most effective tool for protecting voters of color against methods of election – like at-large voting – that weaken the voting strength of communities of color.

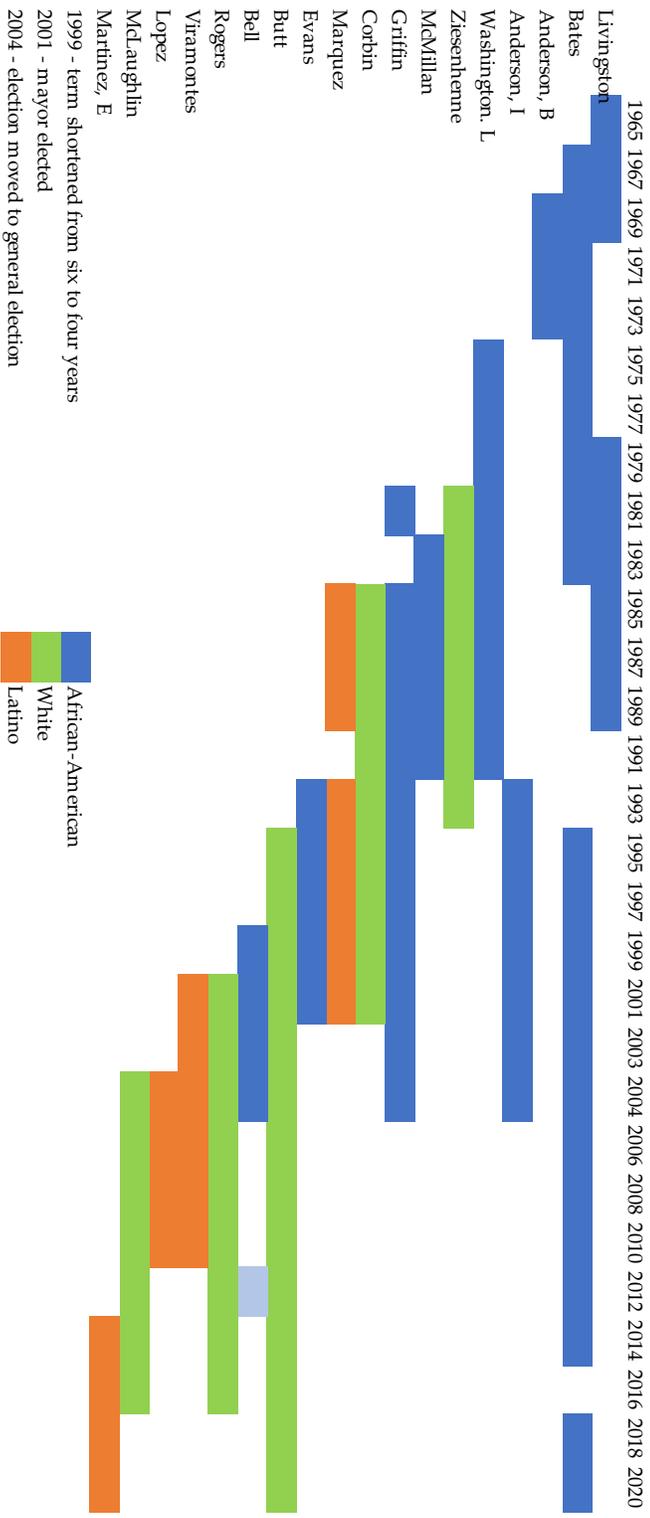
What are some notable cases that struck down at-large voting?

In a case that LDF successfully litigated, *Dillard v. Crenshaw County, Alabama*, a federal district court found that hundreds of Alabama districts intentionally employed at-large electoral methods to discriminate against Black voters. Because of that litigation, 176 jurisdictions settled and adopted some form of district voting. Following *Dillard*, in which 183 jurisdictions throughout Alabama ultimately abandoned their discriminatory at-large method of elections, few jurisdictions in Alabama still use this potentially dilutive voting scheme.

More recently, in *Georgia State Conference of the NAACP v. Fayette County Board of Commissioners*, LDF successfully challenged the at-large electoral method to the county board of commissioners and board of education in Fayette County, Georgia.

ATTACHMENT 3

Latino council members - and other long-serving incumbents

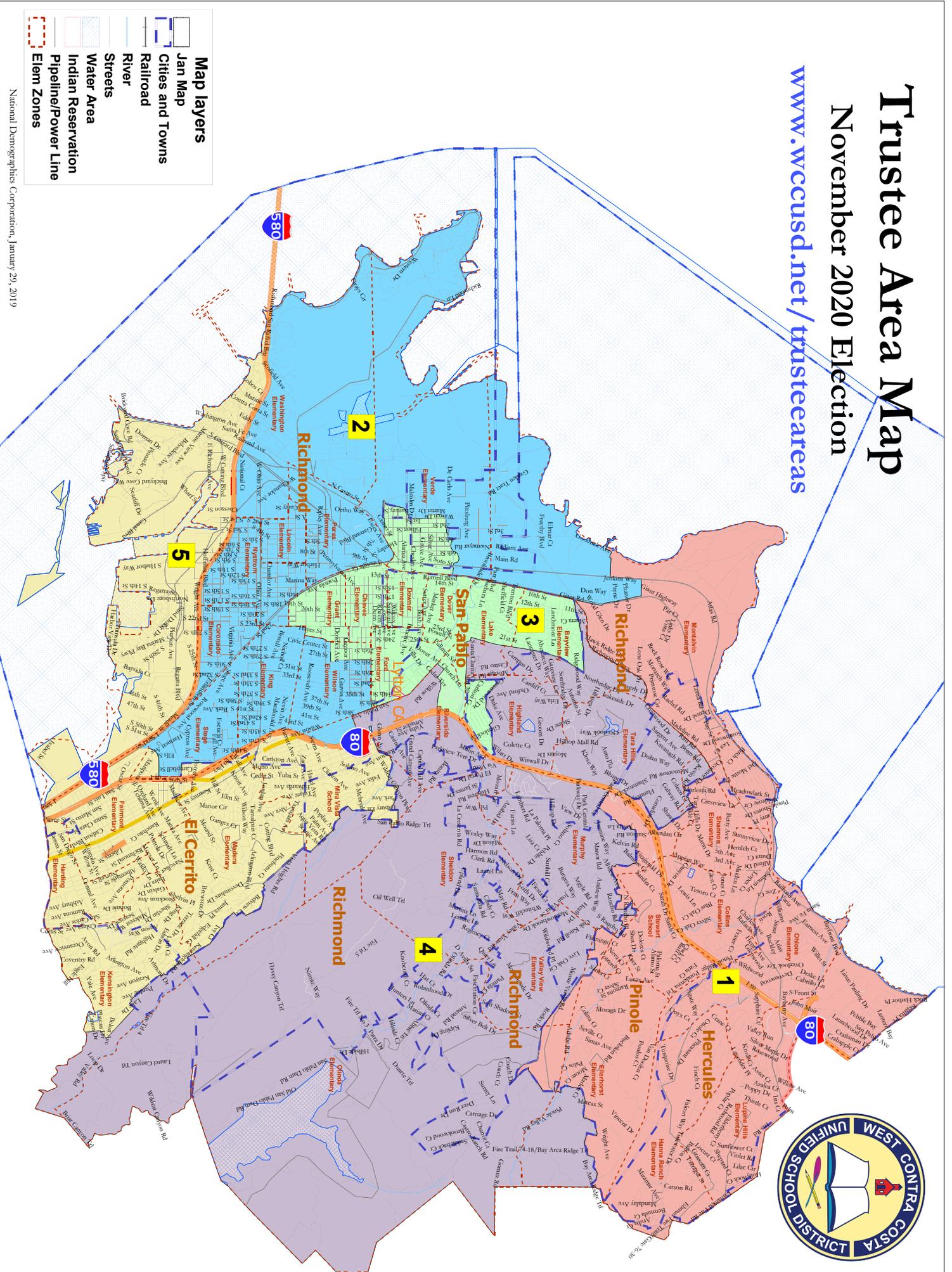


1999 - term shortened from six to four years
 2001 - mayor elected
 2004 - election moved to general election
 2009 - council reduced from nine to seven
 primary source: <https://www.ci.richmond.ca.us/DocumentCenter/View/39188/BLACK-ELECTED-OFFICIALS-IN-THE-CITY-OF-RICHMOND?bidid=>
 (The council has not published similar information on prior members who are not black.)

Trustee Area Map

November 2020 Election

www.wccusd.net/trusteeareas



Map layers

- Jan Map
- Cities and Towns
- Railroad
- Streets
- River
- Water Area
- Indian Reservation
- Pipeline/Power Line
- Elem Zones

WCCUSD - Jan Map demographics

District		1	2	3	4	5	Total
Ideal	Total Pop	47,973	47,191	44,511	48,513	47,659	235,847
47,169	Deviation from ideal	804	22	-2,658	1,344	490	4,002
	% Deviation	1.70%	0.05%	-5.64%	2.85%	1.04%	8.48%
Total Pop	% Hisp	21%	46%	67%	24%	13%	34%
	% NH White	25%	9%	8%	27%	51%	24%
	% NH Black	16%	35%	13%	23%	10%	19%
	% Asian-American	35%	7%	10%	21%	24%	20%
Citizen Voting Age Pop	Total	35,654	25,844	20,496	34,257	36,520	152,771
	% Hisp	18%	25%	49%	20%	9%	22%
	% NH White	29%	17%	14%	32%	58%	32%
	% NH Black	14%	44%	17%	23%	9%	21%
	% Asian/Pac.Isl.	36%	12%	18%	22%	22%	23%
Voter Registration (Nov 2016)	Total	27,147	21,808	15,467	26,348	33,223	123,994
	% Latino est.	25%	28%	53%	21%	9%	24%
	% Spanish-Surnamed	22%	25%	47%	18%	8%	21%
	% Asian-Surnamed	11%	3%	4%	8%	9%	7%
	% Filipino-Surnamed	6%	1%	2%	3%	1%	3%
	% NH White est.	38%	16%	18%	41%	69%	41%
	% NH Black	20%	50%	21%	28%	11%	24%
Voter Turnout (Nov 2016)	Total	20,209	13,115	9,249	19,204	27,457	89,234
	% Latino est.	25%	30%	54%	20%	9%	22%
	% Spanish-Surnamed	22%	27%	49%	18%	8%	20%
	% Asian-Surnamed	10%	3%	4%	8%	10%	8%
	% Filipino-Surnamed	5%	1%	2%	2%	1%	3%
	% NH White est.	43%	19%	27%	46%	70%	47%
	% NH Black	23%	51%	30%	29%	11%	25%
Voter Turnout (Nov 2014)	Total	10,807	6,864	4,045	10,568	18,056	50,340
	% Latino est.	18%	19%	41%	14%	7%	15%
	% Spanish-Surnamed	16%	17%	37%	13%	6%	14%
	% Asian-Surnamed	9%	3%	4%	6%	9%	7%
	% Filipino-Surnamed	4%	1%	3%	2%	1%	2%
	% NH White est.	47%	22%	25%	47%	74%	51%
	% NH Black est.	21%	55%	25%	30%	9%	24%
ACS Pop. Est.	Total	49,784	49,758	46,336	49,699	49,985	245,562
Age	age0-19	21%	29%	30%	21%	18%	24%
	age20-60	56%	57%	57%	56%	55%	56%
	age60plus	23%	14%	13%	22%	26%	20%
Immigration	immigrants	32%	36%	45%	30%	25%	33%
	naturalized	69%	30%	37%	57%	54%	48%
Language spoken at home	english	56%	43%	27%	56%	68%	50%
	spanish	15%	45%	57%	22%	9%	29%
	asian-lang	21%	8%	12%	13%	13%	14%
	other lang	8%	4%	4%	8%	10%	7%
Language Fluency	Speaks Eng. "Less than Very Well"	17%	28%	38%	19%	13%	23%
Education (among those age 25+)	hs-grad	53%	53%	51%	59%	36%	50%
	bachelor	25%	12%	9%	19%	30%	20%
	graduatedegree	11%	5%	3%	9%	28%	12%
Child in Household	child-under18	29%	34%	41%	26%	23%	30%
Pct of Pop. Age 16+	employed	61%	57%	58%	59%	63%	60%
Household Income	income 0-25k	10%	28%	26%	16%	12%	18%
	income 25-50k	16%	29%	28%	20%	16%	21%
	income 50-75k	17%	18%	21%	18%	17%	18%
	income 75-200k	48%	23%	25%	39%	43%	37%
	income 200k-plus	9%	2%	1%	6%	12%	7%
Housing Stats	single family	83%	63%	70%	71%	72%	72%
	multi-family	17%	37%	30%	29%	28%	28%
	rented	26%	60%	56%	43%	38%	44%
	owned	74%	40%	44%	57%	62%	56%
Total population data from the 2010 Decennial Census.							
Surname-based Voter Registration and Turnout data from the California Statewide Database.							
Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5-year data.							