

# SCOTT J. RAFFERTY

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April 13, 2023

Mayor Jason Gibbs and City Council  
City of Santa Clarita  
23920 Valencia Blvd., Suite 300  
Santa Clarita, California 91355

Dear Mayor Gibbs and Councilmembers:

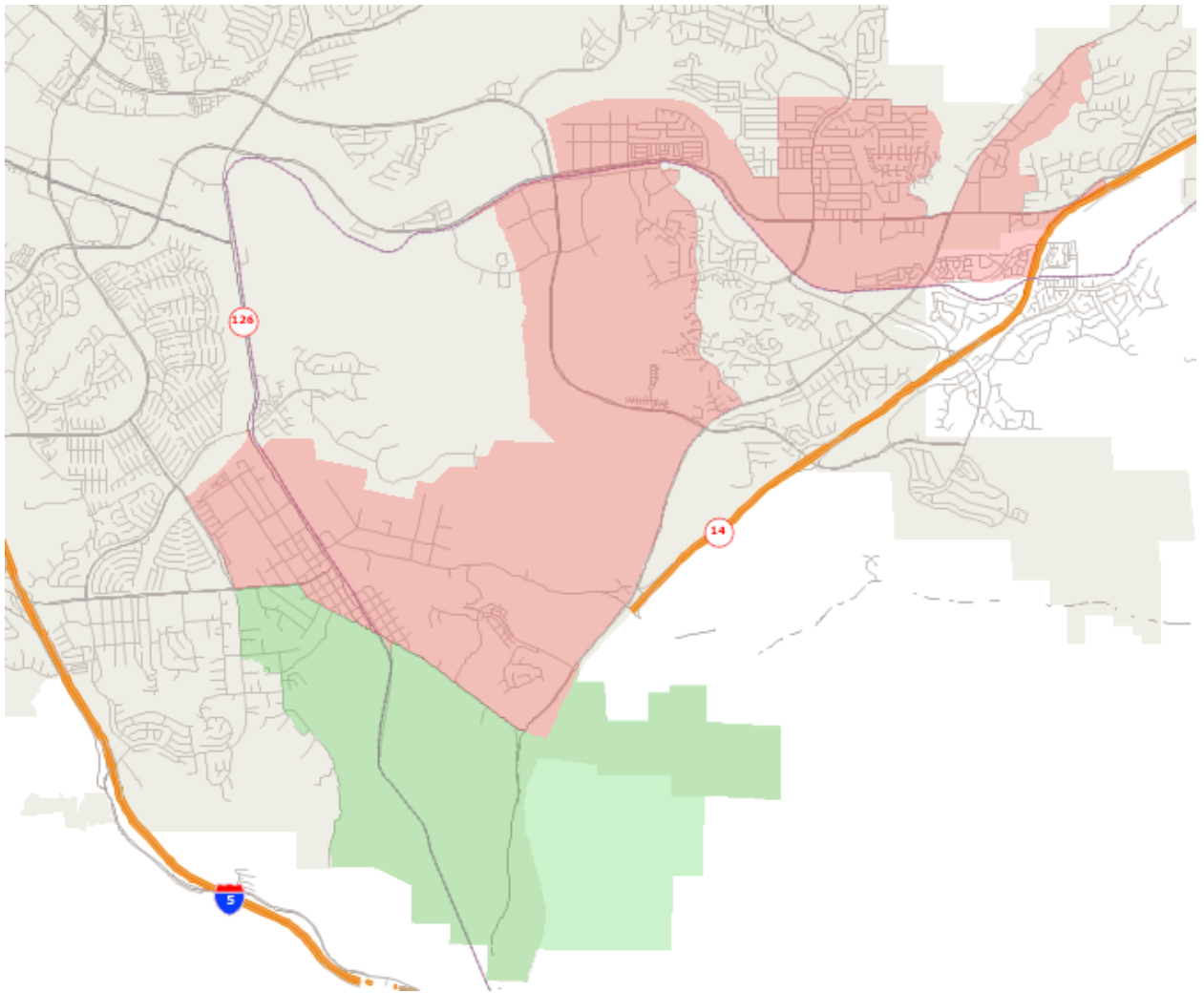
Tonight, Santa Clarita decides not to be the largest city in America to elect its entire council at large. My clients are proud to have collaborated with the council to make this historic transition. They act not only on behalf of the Latino community, or those who seek to support candidates who cannot afford to run at-large, but they act to guarantee that the council will be more representative of every voter and every neighborhood of every race.

This form of collaboration is untested. It has not repeated the litigation that cost the city \$600,000 but didn't achieve anything. It can avoid federal liability – something nobody wants - now that the city is able to create a district in which a majority of eligible voters (*i.e.*, adult citizens) are Latino. Maps 101-106 do not achieve one effective Latino district, which is essential to this reform.

We committed to a compromise, and we are prepared to keep our word. We accepted the joint map as the product of compromise, but also as its outer limit. The remedial district we proposed, very like Mr. Ferdman's, did not include Happy Valley or other areas southwest of Newhall and Lyons. It was more effective for the Latino community in all respects, smaller in population and land area, and more cohesive economically. The constitution requires an honest and good faith effort to achieve one-man-one-vote. It is very unusual to have a remedial district that is 5% greater than ideal (average) population.

Although we believe that NDC's calculation understates Latino CVAP (adult citizens) ratios, we had asked that the council post the demographic data for the proposed district in the same manner in has for the public maps. Accepting NDC's data for purposes of an apples-to-apples comparison, our district (red) was 51% Latino. To accommodate the council, we added 3,168 residents southwest of Newhall/Lyons (green). This area is 31% Latino CVAP and very different in many economic variables. The Latino district goes from being 2% below ideal population, which is appropriate

given that it is a remedy for past underrepresentation, to 5% overpopulated. The combined district is only 49% Latino CVAP. Although it was designed to include densely populated areas that could be easily walked in campaigns, adding 50% land area makes it even larger in area than the northern districts. For all these reasons, our accommodations are the outer limits of compromise. We do not believe that a court would approve the enlargement without our agreement.



Based on our last hearing, we have agreed to move all Parvin Lane and Circle J Ranch out of the remedial district and into District 2. We also agree that the four homes at the end of Hacienda Lane should be moved into the remedial district, since can only be accessed from Newhall. Moving 35 people living on Newhall Ranch Road increases the population of the overpopulated minority district with no similar justification.

Our original map kept the Skyline Ranch neighborhood together. The chamber of commerce proposes moving 73 people from district 4 to district 5. We will confer with the city but are unlikely to object.

The council determined to follow school district boundaries in dividing Districts 2 and 3. The chamber proposes departing from school district lines, which makes District 2 non-contiguous, in violation of the FAIRMAPS Act. *See* block 060792012007. Our original map also concluded that Newhall Ranch and Soledad Canyon Roads were the appropriate dividing lines. The chamber also moves three Saugus neighborhoods south of the riverbed from District 3, which is mostly Saugus, into District 2, which is mostly Newhall and Valencia. This density and character of two of these communities accessed from Soledad Canyon Road is distinct from more affluent areas in either district. The common school district is a more compelling common interest than being south of the riverbed, which is crossed by major roads. In any event, there is simply too much population to move the entire area south of the river into district 2. This would leave District 3 almost 6% underpopulated, which is not consistent good faith effort to maintain equal population.

Finally, the chamber wants to remove the block bounded by Flo Lane out of the remedial district. This is a majority Latino census block. Only 15% of the residents are citizens old enough to vote. The needs of each child in this census block are at least as great as those of any other city resident. They are represented by the few adult citizens, who have much more in common with District 1 than Fair Oaks and Sand Canyon. It is a small area, but few census blocks are more deserving of being in the remedial district.

#### CONCLUSION

Of course, we prefer our original map. We agreed in principle at the last hearing to adjust for Circle J Ranch. Assuming the council asks to discuss Skyline Ranch, we may agree to depart from the school district boundaries. By further changes should not be averse to the remedial or increase deviations from one-man-one-vote.

Sincerely,

A handwritten signature in black ink that reads "Scott Rafferty". The signature is written in a cursive, slightly slanted style.

Scott J. Rafferty200

# SCOTT J. RAFFERTY

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February 4, 2020, 1:17PM

VIA CERTIFIED MAIL 70180680000036640872

Ms. Mary Cusick  
Clerk, City of Santa Clarita  
23920 Valencia Blvd.  
Suite 120  
Santa Clarita, CA 91355

Re: Petition to Comply with the California Voting Rights Act (CVRA)

Dear Ms. Cusick:

Neighborhood Elections Now, a group including Santa Clarita voters of a variety of races and ethnicities, has requested that I represent them in this petition, which asks the City Council to abolish at-large elections and create single-member districts. 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, which violates the California Voting Rights Act (CVRA), [Elections Code Section 14027](#).<sup>1</sup> Your receipt of this notice initiates the period during which the city may notice its intent to come into compliance with the CVRA by implementing district elections, as specified in Elections Code, Section 10010(b). 2020 is an opportune time for Santa Clarita to shift to district elections, because one of the incumbents has announced that he will not run for reelection.<sup>2</sup>

The illegal at-large system has entrenched incumbents who were elected twenty years ago, when Santa Clarita was 80 percent white and only 20 percent Latino. Annexation and migration has not only increased the Latino population. From 2007 to 2015, the numbers of Asians and African-Americans in Santa Clarita also doubled.<sup>3</sup> Although whites are a minority of the city's total population, this group still constitutes 57 percent of the city's eligible voters. *Id.* Winner-take-all allows bloc voting by whites to continue the group's control of the entire council. Furthermore, none of the current incumbents has won a majority of the ballots cast. The result is rule by an entrenched

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<sup>1</sup> The deprivation of plaintiffs' right to cast undiluted votes and to exercise equal influence in city council elections also raises issues under Section 2 of the Voting Rights Act of 1965, as Santa Clarita's circumstances resemble those that recently led the Columbus, Ohio city council to eliminate at-large elections. See [Section III](#), *infra*.

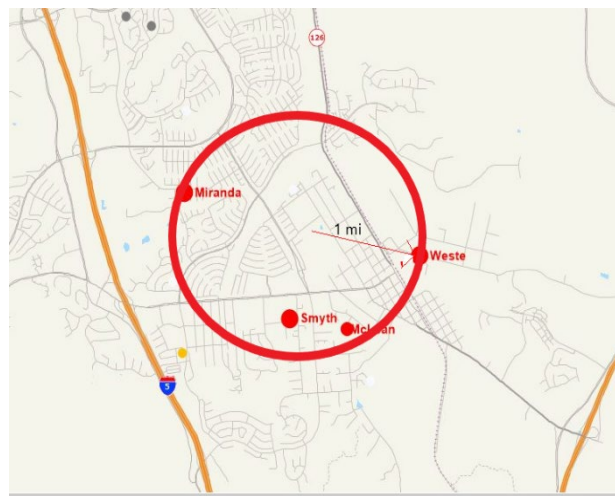
<sup>2</sup> <https://signalscv.com/2019/07/councilman-bob-kellar-says-hes-not-running-in-20-2-others-announce/>

<sup>3</sup> Comparison of ACS data 2005-2009 with 2013-2017.

minority.

Compliance with state law requires the Council to adopt district elections, using a map that increases opportunities to influence elections not only for Latinos, but also for Asians (now 11% of eligible voters) and African-Americans (now 5% of voters). In other jurisdictions, the transition to district elections and citizens' redistricting have both enjoyed widespread support from voters of all races.

Little has changed since 2014, when the City recognized that it was futile to deny liability under the CVRA, settling Soliz and Sanchez-Fraser v. Santa Clarita. As detailed below, the two subsequent elections have demonstrated continued polarization by race. The Council is less representative than ever, given the growing diversity of the city. In a city that has grown to encompass 66 square miles, four council members now live within a one-mile radius. Member Bill Miranda did not seek the support of the Latino community when the Council appointed him in 2017 and did not receive it when he ran for election in 2018.<sup>4</sup> Tellingly, neither his campaign website nor his Voters' Edge profile did not claim a single endorsement from any Latino organization or individual leader other than former Santa Clarita resident Dante Alcosta.<sup>5</sup>

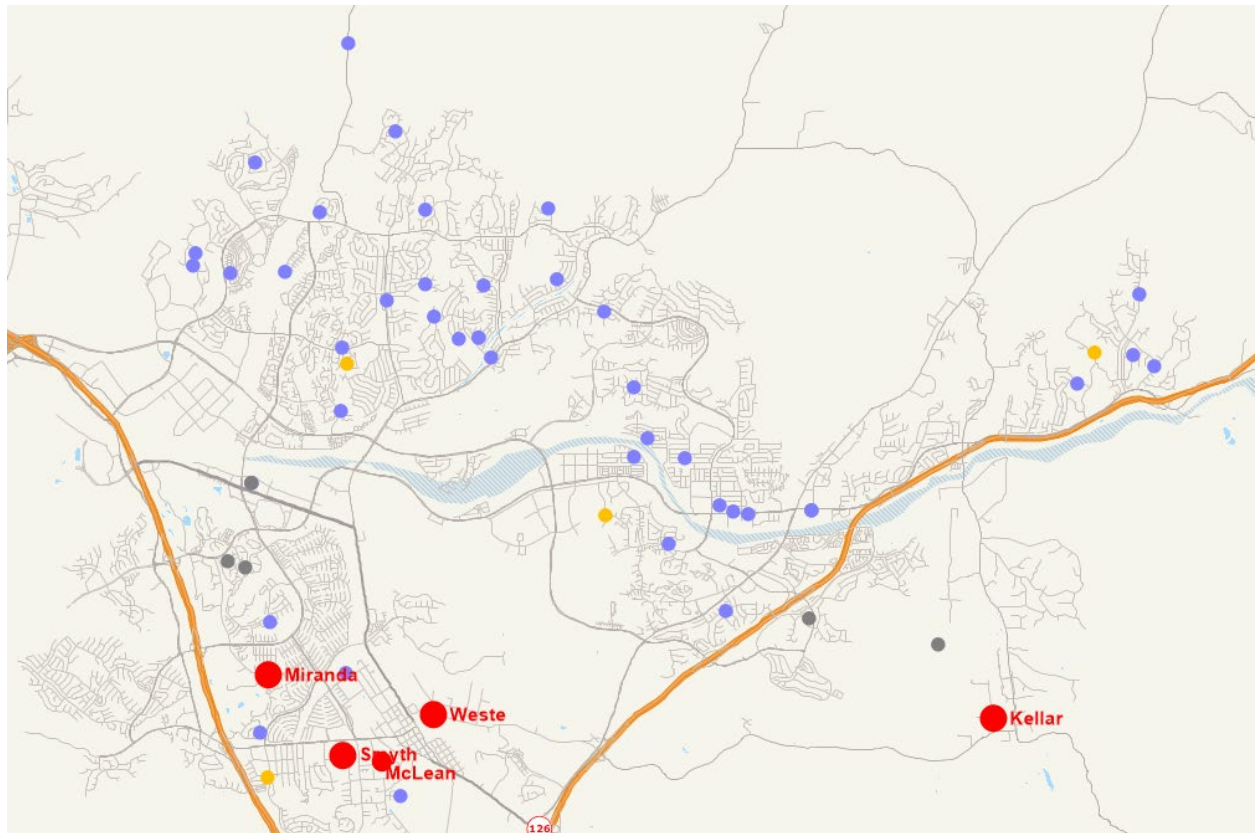


The concentration of current and past council members in the core of the original city of Santa Clarita stands in vivid contrast to the dispersion of candidates who have sought public office from across practically every part of the city, including the 37 annexations that have almost doubled its size. In this map, blue dots indicate candidates since incorporation at the locations where they are currently registered to vote. Grey dots show those who applied for appointment but have not run for election. Yellow dots indicate former incumbents, including the late Carl Boyer.

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<sup>4</sup> His application for appointment required three letters of recommendation, none of which came from Latino leaders of organizations. <https://www.santa-clarita.com/Home/ShowDocument?id=13354> .

<sup>5</sup> <https://votersedge.org/en/ca/election/2018-11-06/los-angeles-county/city-council-city-of-santa-clarita/bill-miranda>; <https://billmirandaforcitycouncil.com/endorsements/>



Winner-take-all has entrenched electoral choices taken twenty years ago, by a very different city. Except for the member who gained incumbency through appointment, each of the incumbents came to office with a total vote equal to less than four percent of Santa Clarita’s current voter registration.

	elected	votes
Laurene Weste	1998	5770
Cameron Smyth	2000	5461
Marsha McLean	2000	4201
Bob Kellar	2002	5777

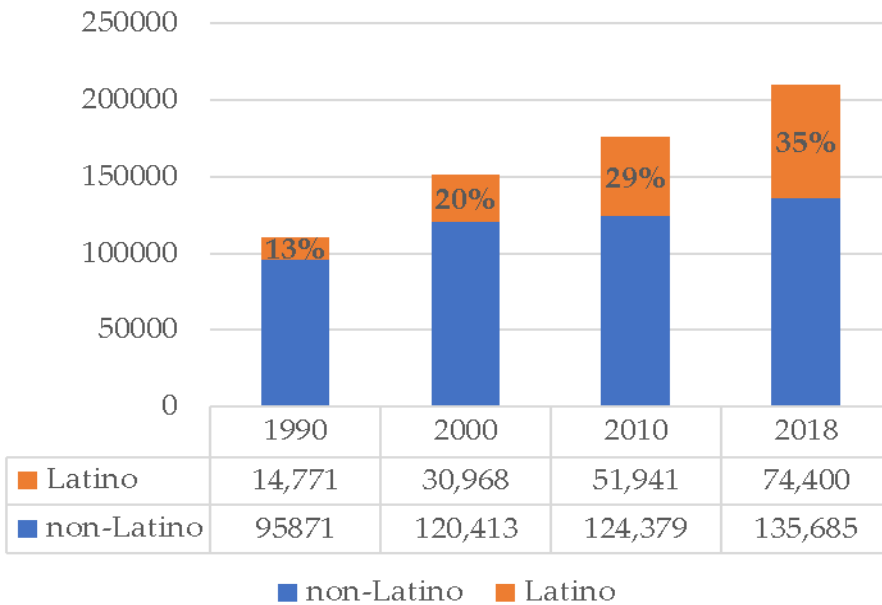
Except for the member appointed in 2017, the incumbents are all white and not Latino. Although municipal elections are supposed to be non-partisan, the incumbents have emulated the original effect of at-large elections, which insulated Republican mayors and city councils in California from demographic change and partisan realignment for five decades.<sup>6</sup> All five incumbents are Republicans, the majority party in 1998, but now

<sup>6</sup> Republican Governor Hiram Johnson championed “nonpartisan” at-large elections in 2010. 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, despite the fact that the majority of voters in most of these cities had

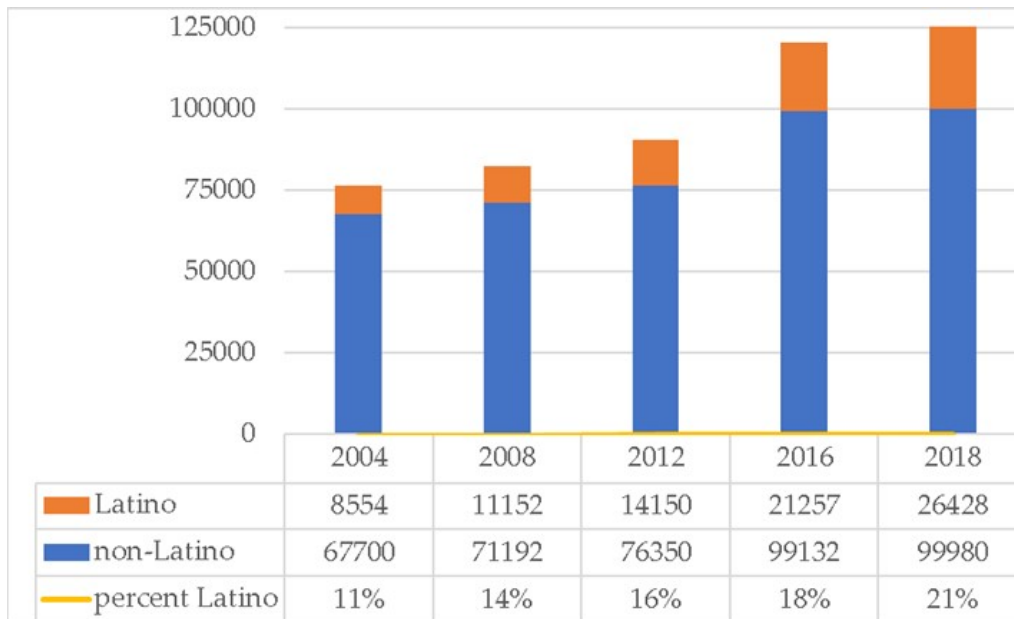


the preference of less than 34 percent of Santa Clarita’s registered voters.<sup>7</sup>

Since those elections, the Latino population has more than doubled.



In just the last 15 years, the Latino share of eligible voters has also doubled, with the latest available census data showing that it exceeds 21% citywide.



become Democratic. See Adrian, “Some General Characteristics of Nonpartisan Elections,” 46 A.P.S.R. 766, 776 (1952); Blair and Flournoy, Legislative Bodies in California at 74 (1967); Lee, Politics of Nonpartisanship at 56-57 (1960).

<sup>7</sup> [https://www.lavote.net/docs/rcc/election-info/LA\\_ROR\\_County\\_Summary.pdf](https://www.lavote.net/docs/rcc/election-info/LA_ROR_County_Summary.pdf) (as of Jan. 3, 2020).

When a vacancy arose after the settlement, public comment unanimously sought a special election. Among those asking that the Council allow the people to choose Mr. Alcosta's replacement was Gloria Mercado-Fortine, the only other Latino candidate ever to have received more than 5 percent of the vote.

Member Keller supported a 70-year old Republican neighbor, Brent Braun. The other members unanimously supported their 77-year old Republican neighbor, Bill Miranda, who presented himself as personally responsible for was the dissolution of Santa Clarita Valley's Latino Chamber of Commerce, which he described to the Council as a "tough call."<sup>8</sup>

The most critical evidence of racially polarized voting comes from the 2018 election. However impressive his career accomplishments may be, Mr. Miranda is not the Latino candidate of choice. A series of ballot questions from 2016 reinforce the conclusion that Latinos vote differently than non-Latinos, as is almost universally the case. Of course, Latinos often vote in coalition with the African-American community and sometimes with segments of the Asian community. For example, the Latino and Asian communities supported Alan Ferdman, a Republican candidate whom Dante Alcosta defeated by just 110 votes.

Today, four out of five council members (1) are septuagenarians, (2) have served for twenty years, (3) are Republicans in a majority Democratic city, and (4) live within a one-mile radius of each other. This is not the result of a democratic process. The at-large method of election has entrenched choices made two decades ago in a much smaller Santa Clarita. The illegal method of election has protected those choices from the effects of annexation, demographic change, and political realignment. That is why the incumbents spent \$1.2 million of public monies to settle the Soliz litigation on terms that allowed at least two of their members (Weste and McLean) to survive, when district elections would have doomed them.

The prospective plaintiffs do not seek a Latino majority district. They seek only an opportunity "to influence the outcome of the election" that is equal to that enjoyed by voters who are white and not Latino.<sup>9</sup> The CVRA requires district elections in such

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<sup>8</sup> <http://santaclaritacityca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1848&Format=Minutes> (3:44:43)

<sup>9</sup> Santa Clarita is the extreme case, seldom presented, that Justice Brennan had in mind when he wrote footnote 12 in Thornburg v. Gingles (1986) 478 U.S. 30, 47. The entrenchment of permanent at-large members, installed prior to annexations and in low-turnout unconsolidated elections, is so patently discriminatory in effect that it may justify federal judicial intervention, even though it is impossible to create a remedial district in which the protected group has a majority of eligible voters. Because the plaintiff do not claim the ability unilaterally to install a council member if elections are conducted by single-member districts, there is no logical predicate to require any of the three Gingles preconditions. The "loss of political power through vote dilution is distinct from the inability to win a particular



cases whether or not the protected groups show that it is concentrated in a single area or that it has a history of promoting candidates that have been usually defeated. In Santa Clarita, at-large elections have so stacked the deck as to make it irrational for most qualified Latino candidates to seek office. Until 2014, only one Latino candidate, Michael Cruz, had even won 5% of the vote (in 2006).<sup>10</sup> No major political party had endorsed any Latino for the Council.

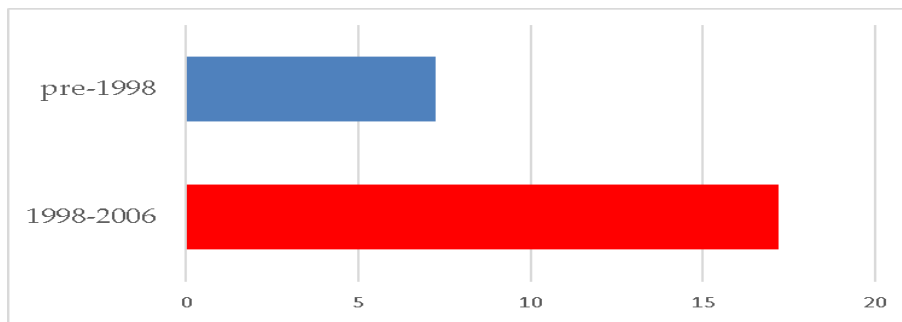
I. THE EMERGENCE OF NON-LATINO BLOC VOTING AND SANTA CLARITA'S PERMANENT COUNCIL MEMBERS.

In 1987, almost all of the inaugural candidates for City Council supported electing the Council at-large.<sup>11</sup> In this context, it is remarkable that 42% of the electors still voted for district elections. In 1994, attorney Gonzalo Freixes argued that districts would enable Latino representation. Council member Boyer responded that with 13% of the population, Latinos could elect a candidate at-large.<sup>12</sup> Nothing could be further from the truth. No tabulations exist for this period, but the Latino share of adult citizens, of registered voters, and of those who actually voted in the unconsolidated municipal elections, were far less than 13 percent.

Initially, there was some mobility within the Council. Three of the inaugural candidates served three terms, but Buck McKeon and Dennis Koontz served only one term. Until 1998, their successors (*e.g.*, Jill Klajic, George Pedersen, Clyde Smith) were elected only to single terms.

AVERAGE TENURE OF COUNCIL MEMBERS

by year of election



election.” Whitcomb v. Chavis (1971) 403 U.S. 124, 128. Gingles leaves open the standards pertaining to a claim of impaired influence in an election, even in a federal court – where issues of federalism and justiciability apply that are not relevant to a CVRA claim.

<sup>10</sup> During the 2010 campaign, candidate David Galvan was arrested for impersonating a police officer and Daniel Henriquez was accused of making false claims about his military and academic record.

<sup>11</sup> The only exceptions were Linda Calvert and Louis Brathwaite.

<sup>12</sup> The Signal, March 20, 1994 (Freixes editorial); Boyer, Santa Clarita: The Formation and Organization of the Largest Newly Incorporated City in the History of Humankind (2d ed. 2015) at 246.

The installation of the permanent council began in 1998, as illustrated in the timeline in Attachment 1. That year, Laurene Weste was elected to the first of five terms. Two years later, she was followed by Cameron Smyth and Robert Keller, both of whom are still in office. In 2002, Marsha McLean joined, completing the group of council members who appointed Mr. Miranda fifteen years later.

White bloc voting insulated these at-large members from competitive elections.<sup>13</sup> Running Weste and McLean together in the low-turnout gubernatorial year has been critical to the strategy of making them electorally invulnerable. Their vote is highly correlated. Between 75 and 90 percent of those who voted for McLean in 2018 also voted for Weste. But neither has ever won more than 18% of the total vote – a smaller share than many candidates who have lost during presidential years, such as Diane Trautman, Bob Spierer, Henry Schultz, and Laurie Ender.

Members Weste and McLean have now run together in five gubernatorial election cycles. In 2006, when Smyth left the Council, the remaining members appointed another white Republican, TimBen Boydston, to fill out their ticket. This was less than a perfect fit. Boydston was defeated for a term by Laurie Ender<sup>14</sup> but returned to office in 2012. Cameron Smyth returned to the Council to defend the presidential cycle with Bob Keller.

## II. THE FAILURE OF THE SOLIZ SETTLEMENT.

The Soliz settlement recognized, as we do, that there is no Latino majority district and no guarantee that districting will create a permanent opportunity to elect a Latino chosen by the community. The interests supporting the permanent membership of the Council recognized that Weste, McLean, and Smyth could not all survive the creation of single-member districts (unless two of them relocated). The compromise of cumulative voting was a well-calculated alternative to winner-take-all. Latino voters, in alliance with other protected groups and cross-over voters, could focus on electing at least one candidate in each cycle. Unfortunately, cumulative voting was not implemented.

The settlement extended the incumbents' terms to move the election from the spring and consolidate it with the general election. Standing alone, this change did not diminish the advantage enjoyed by 16-year incumbents. The first consolidated election was the least competitive in Santa Clarita's history. The incumbents' margin of victory over the nearest runner-up was more than 10 percent.

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<sup>13</sup> Attachment 2 shows how, once elected, these four members were consistently returned to office.

<sup>14</sup> Ms. Ender is white, not Latino, and declines to state a party preference.

### III. APPOINTMENT OF MR. MIRANDA.

Two years ago, the NAACP Legal Defense Fund threatened to bring suit against Columbus, Ohio to force district elections. As is still the case for Latinos in Santa Clarita, only one black had ever won election to the Columbus city council without having first been installed as an appointee. The NAACP pointed out that the Voting Rights Act is designed to give protected groups an equal opportunity to elect the candidate of their choice, and not simply to create a “black seat.”<sup>15</sup> Because Ohio has no equivalent to the CVRA, it was necessary for Columbus to hold a special election to amend its Charter. The voters approved the transition, which also required a citizens’ redistricting commission. The Charter amendment further reformed the appointment process, requiring public hearings and disfavoring any candidate who intended to seek reelection.<sup>16</sup>

At the time that the NAACP LDF brought its claim under the federal Voting Rights Act, African-Americans constituted a majority of the Columbus city council – even though they were only 28% of the city’s population. By contrast, Latinos are 35% of Santa Clarita’s population. Columbus’s decision demonstrates that it could be unrealistic to think that Santa Clarita could defend a claim brought under Section 2 of the 1965 Act, which does not require any showing of discriminatory intent.

Mr. Miranda himself has admitted that the appointment process was inappropriate.<sup>17</sup> He was a reluctant applicant, recruited to submit his application two hours before the deadline only because “close associates” declined to apply.<sup>18</sup> It is surprising that he found the candidate pool so deficient, because he wrote an entire chapter about the extraordinary merit of one of the first applicants, Gloria Mercado-

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<sup>15</sup> <https://www.naacpldf.org/files/about-us/Ltr.%20to%20Columbus%20City%20Council%202011.17.17%20.pdf>

<sup>16</sup> See Report of Charter Review Committee, at 6: [https://www.columbus.gov/uploadedFiles/Columbus/Elected\\_Officials/City\\_Council/Charter\\_Review\\_Commission/2016\\_Committee/2016%20Charter%20Review%20Committee%20final%20report.pdf#page=6](https://www.columbus.gov/uploadedFiles/Columbus/Elected_Officials/City_Council/Charter_Review_Commission/2016_Committee/2016%20Charter%20Review%20Committee%20final%20report.pdf#page=6) “Community feedback to the Committee demonstrates concern over the transparency of the Council appointment process, as well as the potential ‘power of incumbency’ bestowed on an appointed Councilmember.”

<https://www.google.com/search?q=columbus+charter+appointment&oq=columbus+charter+appointment&aqs=chrome..69i57j9l9&sourceid=chrome&ie=UTF-8#>

<sup>17</sup> “If I had been on the Council at the time, I would have voted for a special election,” Miranda said.

<https://signalscv.com/2017/05/council-members-stand-appointment-process-miranda/>

<sup>18</sup> <https://www.hometownstation.com/santa-clarita-news/politics/santa-clarita-city-council-names-bill-miranda-to-vacant-seat-2-181772>; <http://santaclaritacityca.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1848&Format=Minutes> (3:50)

Fortine, in his book, Profiles in Latino Courage.<sup>19</sup> Ms. Mercado-Fortine had been elected to four terms on the Hart USD Board, and is clearly established not only as a Latina, but as an authentic candidate of choice by the Latino community. According to press reports, Ms. Mercado-Fortine was unacceptable to Miranda's principal sponsor.<sup>20</sup>

If the Council believed that they were choosing a candidate of choice for the Latino community, they miscalculated. The prospective plaintiffs have conducted statistical analyses of each of the incumbents' performance in Latino precincts. While it is our normal practice to reserve detailed disclosure of these results until any court proceedings, they show that Latino voters rejected the Council's appointee when he ran for election in 2018.

#### IV. EVIDENCE 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.<sup>21</sup> 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 member 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 racial polarization, the jurisdiction must create single member districts that attempt to increase the influence of minority voting blocs.

While racially polarized voting may be, to some extent, a universal phenomenon,

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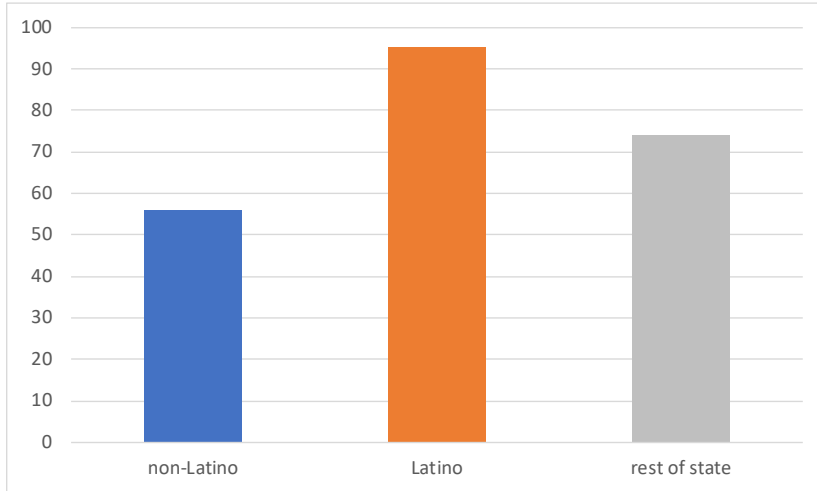
<sup>19</sup> Miranda described Mercado-Fortine as a "first-class citizen" who "courageously overcame racism, sexism, and classism" to "stand[] incredibly tall in both her profession and her community." p.117.

<sup>20</sup> [Signal](#), Jan. 5, 2017, <https://www.pressreader.com/usa/the-signal/20170105/281496455961597>;

<sup>21</sup> [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."

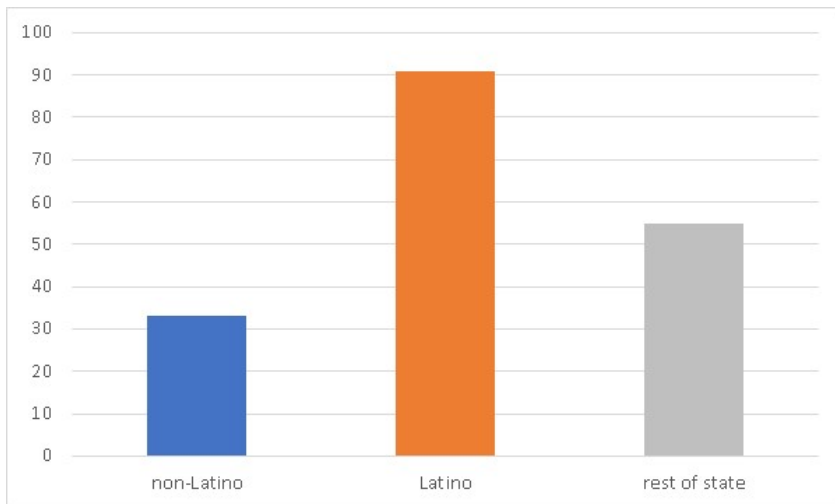
it is exceptionally pronounced in Santa Clarita. Consider two recent statewide ballot questions. In 2016, Senator Ricardo Lara sponsored Proposition 58, to repeal most elements of Proposition 227 (1998), which effectively banned bilingual education. The proposition passed overwhelmingly (74% yes) in most parts of the state. Latino support in Santa Clarita was much higher (95%) than non-Latino voters (62% yes).

**RACIALLY POLARIZED VOTING ON PROPOSITION 58**



Because Latino citizens passionately care about education for their children and those of non-citizens 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, the weighted regression model suggests that only 32% of Anglo voters, but 91% of Latino voters supported the measure, which 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.

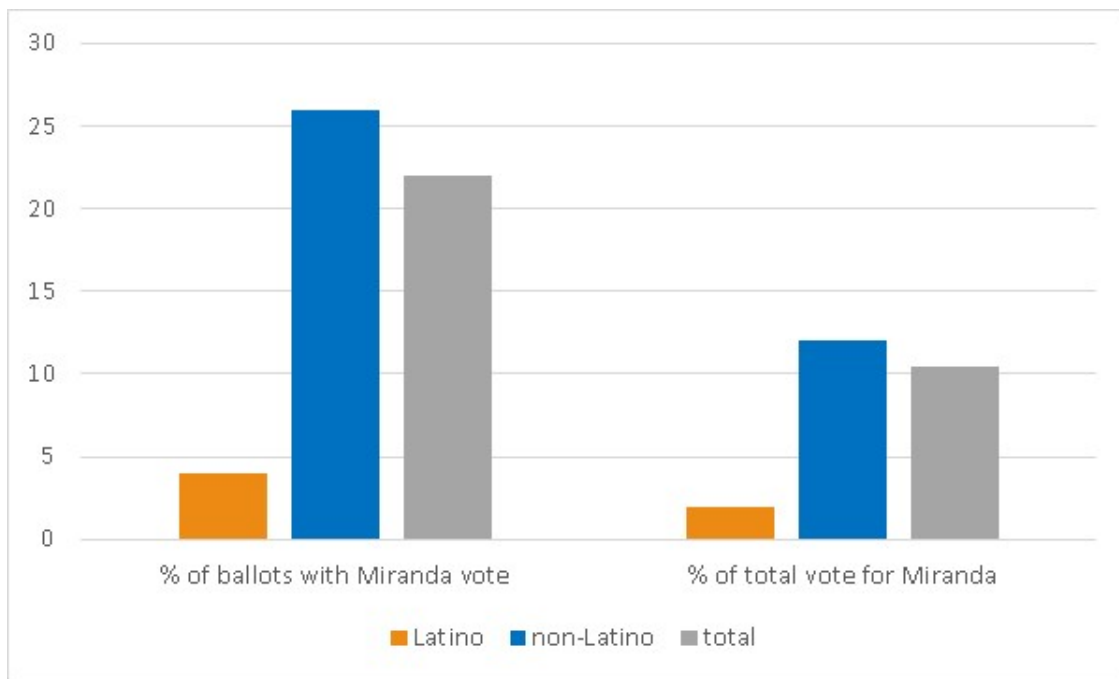
**RACIALLY POLARIZED VOTING ON PROPOSITION 51**



Standing alone, the fact that a protected group has distinctive preferences on ballot questions is sufficient to establish a violation of the CVRA. Once racial polarization is established, it is probative, but not necessary, to show that the protected group's candidates of choice have been disproportionately unsuccessful in the at-large system. [Section 14028\(e\)](#).

In the most recent election, one of the candidates that was not preferred by the Latino community was Mr. Miranda. Using a weighted ecological regression model, Mr. Miranda received less than 4 percent of Latino voters cast one of their three votes for Mr. Miranda.

#### MEMBER MIRANDA IS NOT THE LATINO CANDIDATE OF CHOICE



#### V. THE PROCESS OF CREATING DISTRICTS

Since no jurisdiction has successfully defended against a charge of racially polarized voting, the CVRA creates a very strong presumption in favor of district elections for all jurisdictions. When a jurisdiction faces federal liability, A.B. 350 provides a kinder, gentler way to come into compliance, although plaintiffs can always proceed without notice to federal court.

Even in the absence of intentional discrimination, maps that have the effect of diluting minority influence (by packing them into a single district or cracking them among multiple districts) violate Section 2.<sup>22</sup> This year, a surprise ruling in [Sanchez v. City of Martinez](#) (Contra Costa Superior Court, 2019), questioned the rule that state

<sup>22</sup> e.g., [Luna v. County of Kern](#) (2018) 291 F. Supp. 3d 1088.



courts would not review an otherwise constitutional map solely because it favored incumbents, *i.e.*, a political gerrymander.<sup>23</sup>

Effective January 1, 2020, A.B. 849, the FAIR MAPS Act, strengthens the statutory criteria applicable to general law 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. The maps must also avoid diluting African-American (5%) and Asian (11%) communities, although they are not large enough to have their own district.

[Elections Code, Section 10010\(a\)](#) requires a jurisdiction to conduct two hearings (within 30 days) before considering a map to how their constituents view communities of interest and the application of 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 a 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 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.<sup>24</sup> The statute allows the Council to conduct one of the map hearings as a forum on Saturday morning or another time convenient to the community.

## VI. ADDITIONAL BENEFITS AND CONSIDERATIONS

Although my client shares the Legislature's desire not to defer districting until

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<sup>23</sup> [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.

<sup>24</sup> Bay Area Voting Rights Initiative is sponsoring this petition and may designate additional organizational and individual members to serve as plaintiffs. Given delays sometimes associated with certified mail, multiple copies of this notice may be sent to expedite its receipt.

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. Attachment 3 is 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

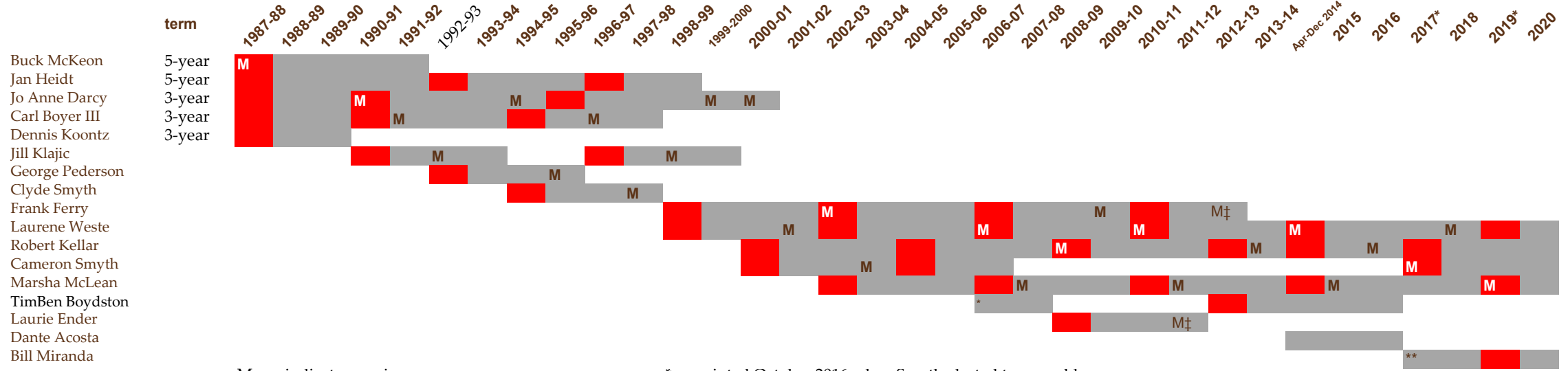
This is an effort to initiate a collaborative process to comply with the CVRA on a basis that will likely please the overwhelming majority of voters in Santa Clarita. The Council should seize this opportunity to resolve a liability that will not go away until district elections are implemented.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott J. Rafferty". The ink is dark and the signature is fluid and somewhat stylized.

Scott J. Rafferty

ATTACHMENT 1. TIMELINE SHOWING LENGTH OF SERVICE BY SANTA CLARITA COUNCIL MEMBERS



M indicates service as mayor  
 ■ indicates year of election  
 service for 2017 and 2019 reflects election in November of preceding year

\* appointed October 2016 when Smyth elected to assembly  
 \*\* appointed February 2017 when Acosta elected to assembly  
 † Alcosta was mayor until April 2012, Ferry served until December 2012

## ATTACHMENT 2. ELECTION RESULTS (citywide totals) – 1987-2018

Candidate or measure		year	vote	percentag e
Yes	incorporation	1987	14723	69%
against_districts	V	1987	10357	59%
Howard_P._"Buck"	McKeon	1987	9855	12%
Janice	Heidt	1987	8402	11%
JoAnne	Darcy	1987	7601	10%
for_districts	V	1987	7203	41%
No	incorporation	1987	6597	31%
Carl	Boyer	1987	6585	8%
Dennis_M.	Koontz	1987	6164	8%
Richard_M.	Vacar	1987	5935	7%
Linda_Hovis	Storli	1987	5550	7%
Louis_E.	Brathwaite	1987	3408	4%
Michael_D.	Lyons	1987	3111	4%
Bill	Hilton	1987	2374	3%
Andy	Martin	1987	2203	3%
Robert	Silverstein	1987	2116	3%
Roger_A.	Meurer	1987	1976	2%
H.G._"Gil"	Callowhill	1987	1813	2%
Gail	Klein	1987	1756	2%
Donald	Benton	1987	1687	2%
William_J.	Broyles	1987	1341	2%
Monty	Harrell	1987	1309	2%
Kenneth	Dean	1987	1306	2%
Vernon_H.	Pera	1987	1133	1%
Jeffrey_D.	Christensen	1987	974	1%
Edmund_(Ed)_G.	Stevens	1987	936	1%
Ronald_J.	Nolan	1987	848	1%
Dennis	Conn	1987	788	1%
Frank_A.	Parkhurst	1987	726	1%
Maurice_D.	Ungar	1987	2	0%
Jill	Klajic	1990	4081	15%
Carl	Boyer	1990	4042	15%
JoAnne	Darcy	1990	3548	13%
Kenneth	Dean	1990	3015	11%
Vera	Johnson	1990	2804	10%
Herb	Wolfe	1990	2699	10%
Dennis_M.	Koontz	1990	2155	8%
Linda	Calvert	1990	1772	7%
Andy	Martin	1990	1643	6%
Wayne	Carter	1990	983	4%
Janice	Heidt	1992	6748	20%

George_L.	Pedersen	1992	5693	17%
Michael_D.	Lyons	1992	3571	10%
Linda_Hovis	Storli	1992	3325	10%
Gary	Johnson	1992	3227	9%
Vera	Johnson	1992	2675	8%
Lee	Schramling	1992	2642	8%
Kenneth	Dean	1992	1318	4%
William_H.	French	1992	1243	4%
Linda	Calvert	1992	1175	3%
Andy	Martin	1992	751	2%
Bruce_K.	Bell	1992	435	1%
Wayne	Carter	1992	434	1%
Edmund_(Ed)_G.	Stevens	1992	394	1%
Randall_K.	Pfiester	1992	388	1%
Gregory_M.	Goyette	1992	223	1%
JoAnne	Darcy	1994	5460	19%
Carl	Boyer	1994	4216	14%
Clyde	Smyth	1994	3804	13%
Jill	Klajic	1994	3788	13%
Fred	Heiser	1994	2985	10%
Dennis	Farnham	1994	2784	10%
Linda_Hovis	Storli	1994	2406	8%
Tim_M.	Jorgensen	1994	1295	4%
Rosalind	Wayman	1994	822	3%
Larry_L.	Bird	1994	559	2%
Craig	Wanek	1994	481	2%
Kenneth	Dean	1994	332	1%
Theodore	DeVries	1994	274	1%
Jill	Klajic	1996	3584	17%
Janice	Heidt	1996	3422	16%
Frank	Ferry	1996	3208	15%
Laurene	Weste	1996	3104	15%
Gary	Johnson	1996	3049	15%
Louis_E.	Brathwaite	1996	1011	5%
Paul_J.	Bond	1996	887	4%
Andy	Martin	1996	669	3%
Rein_J.	Schuerger	1996	627	3%
Larry_L.	Bird	1996	555	3%
Kevin_M.	Keyes	1996	325	2%
TimBen	Boydston	1996	282	1%
James	Rose	1996	34	0%
JoAnne	Darcy	1998	7129	19%
Frank	Ferry	1998	6583	17%

Laurene	Weste	1998	5770	15%
Cameron	Smyth	1998	4826	13%
Marsha	McLean	1998	4531	12%
Wendell_C.	Simms	1998	2079	5%
Kent	Carlson	1998	1426	4%
David_L.	Ends	1998	1240	3%
Jeffrey	O'Keefe	1998	1068	3%
Michael	Egan	1998	918	2%
Ryan_Lawrence	Krell	1998	722	2%
Edmund_(Ed)_G.	Stevens	1998	508	1%
Dennis	Conn	1998	412	1%
Bob	Nolan	1998	389	1%
Chuck	Simons	1998	343	1%
Cameron	Smyth	2000	5461	23%
Bob	Kellar	2000	4844	20%
Marsha	McLean	2000	4201	18%
Diane	Trautman	2000	3556	15%
Eileen	Connolly	2000	1904	8%
Bob	Jonsen	2000	1412	6%
Rein_J.	Schuerger	2000	921	4%
Bob	Heinisch	2000	756	3%
Joe	Nocella	2000	423	2%
John_B.	Steffen	2000	324	1%
T._Michael	Shanklin	2000	177	1%
Frank	Ferry	2002	6684	19%
Marsha	McLean	2002	6117	17%
Laurene	Weste	2002	5516	15%
Janice	Heidt	2002	5111	14%
John	Grannis	2002	4101	11%
Duane_R.	Harte	2002	3767	10%
Michael_L.	Hainline	2002	1663	5%
David_J.	Albee	2002	1096	3%
Dennis	Conn	2002	665	2%
Lee_W.	Rich	2002	519	1%
John_B.	Steffen	2002	447	1%
Jan	Bilson	2002	439	1%
Cameron	Smyth	2004	7164	40%
Bob	Kellar	2004	5777	32%
Henry	Schultz	2004	4976	28%
Marsha	McLean	2006	5564	17%
Frank	Ferry	2006	5500	17%
Laurene	Weste	2006	5241	16%
Mark	Hershey	2006	4312	13%



Henry	Schultz	2006	3562	11%
Lynne	Plambeck	2006	3097	9%
Dwight	McDonald	2006	1838	6%
Michael	Cruz	2006	1743	5%
JoAnn_Smith	Curtis	2006	731	2%
Kenneth	Dean	2006	714	2%
Jack	Murphy	2006	634	2%
Laurie	Ender	2008	6180	25%
Bob	Kellar	2008	6135	24%
Bob	Spierer	2008	5089	20%
Diane	Trautman	2008	4959	20%
Maria	Gutzeit	2008	2800	11%
Marsha	McLean	2010	6831	17%
Laurene	Weste	2010	6698	17%
Frank	Ferry	2010	6510	16%
David	Gauny	2010	6478	16%
TimBen	Boydston	2010	5863	15%
Harrison	Katz	2010	2045	5%
Henry	Schultz	2010	1952	5%
David	Galvan	2010	1024	3%
Daniel_B.	Henriquez	2010	951	2%
Kenneth_W.	Mann	2010	800	2%
Johnny	Pride	2010	357	1%
Bob	Kellar	2012	7519	27%
TimBen	Boydston	2012	6145	22%
Laurie	Ender	2012	5408	20%
Ed	Colley	2012	4438	16%
Jon	Hatami	2012	3915	14%
Laurene	Weste	2014	6210	15%
Marsha	McLean	2014	5677	14%
Dante	Acosta	2014	4937	12%
Alan	Ferdman	2014	4833	12%
Gloria	Mercado-	2014	4633	11%
	Fortine			
Duane_R.	Harte	2014	4506	11%
Maria	Gutzeit	2014	4472	11%
Sandra	Bull	2014	1316	3%
Moazzem	Chowdhury	2014	1260	3%
Stephen_P	Daniels	2014	1141	3%
Paul_J	Wieczorek	2014	1098	3%
Berte	Gonzales-	2014	928	2%
	Harper			
Dennis	Conn	2014	447	1%

Bob	Kellar	2016	32216	25%
Cameron	Smyth	2016	30109	24%
TimBen	Boydston	2016	17108	13%
Alan	Ferdman	2016	12106	9%
Kenneth	Dean	2016	10101	8%
Sandra_L	Nichols	2016	5730	4%
Matthew_J	Hargett	2016	5486	4%
Mark	White	2016	3976	3%
Brett	Haddock	2016	3955	3%
David	Ruelas	2016	3918	3%
Paul_J	Wieczorek	2016	2806	2%
Laurene	Weste	2018	25603	14%
Marsha	McLean	2018	25273	14%
Bill	Miranda	2018	18885	11%
Diane	Trautman	2018	16479	9%
Kenneth	Dean	2018	14951	8%
Logan	Smith	2018	12871	7%
TimBen	Boydston	2018	12857	7%
Brett	Haddock	2018	11427	6%
Jason	Gibbs	2018	10008	6%
Matthew_J	Hargett	2018	7093	4%
Cherry	Ortega	2018	6499	4%
Sean	Weber	2018	5072	3%
Sandra_L	Nichols	2018	5049	3%
Paul_J	Wieczorek	2018	4903	3%
Sankalp	Varma	2018	2595	1%

**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.