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8
9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

10 COUNTY OF CONTRA COSTA

11 LINDA RUIZ-LOZITO

12 AYANA YOUNG

13 BAY AREA VOTING RIGHTS

14 INITIATIVE

15 Plaintiffs,

16 vs.

17 WEST CONTRA COSTA UNIFIED

18 SCHOOL DISTRICT,

19 Defendant

Case No.: MSC18-00570 [Dept 12]

THIRD DECLARATION ON SCOTT J.
RAFFERTY IN SUPPORT OF
APPLICATION FOR PRELIMINARY
INJUNCTION

[Civ. Proc. Code, §526]

Hearing Date: June 29, 2018

Complaint Filed: March 21, 2018

Judge: Hon. Charles Treat [Dept. 12]

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1 I, Scott J. Rafferty, declare:

2 1. I am counsel for plaintiffs in this case. I previously made declarations in support
3 of this Application dated May 21, 2018 and June 7, 2018. I have personal
4 knowledge of the facts set forth in each of these declarations, and if called to testify
5 thereto, I could and would do so competently. I also verify the allegations of the
6 complaint under penalty of perjury.

7 QUALIFICATIONS

8 2. I have a doctorate in Social Studies from Balliol College, Oxford, where I was a
9 Rhodes Scholar. I graduated with an A.B. from Princeton summa cum laude and
10 won the Aaron Godfrey Award and the Woodrow Wilson School Thesis Prize for
11 "Building the Consensus: the Civil Rights Division in the Kennedy Administra-
12 tion." I also studied quantitative methods under Prof. Edward Tufte and Prof.
13 Orley Ashenfelter as a graduate student at the Wilson School of Public Affairs of
14 Princeton University. I also have extensive experience in the statistical analysis of
15 racial discrimination, including statistical studies that were used to support the
16 extension of the Voting Rights Act to California and other jurisdictions with Latino
17 populations. I have qualified as an expert witness in numerous regulatory
18 proceedings in California, New York, Florida, Maryland, Delaware, Arizona,
19 Hawaii, New Jersey and other states. In most of these cases, my clients were state
20 agencies, either the regulatory commission, the Attorney General, or the state
21 agency charged with advocating for consumers. My testimony has typically
22 involved complex statistical analysis. It resulted in several important innovations
23 in utility regulation, promoted an effective transition to competition, and
24 succeeded in achieving disallowances, refunds, and protective regulations for
25 utility consumers. The attached curriculum vitae identifies some of the cases in
26 which I have refiled testimony. Paragraphs 56-61, *infra*, provide additional details

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1 of my training, academic research, and professional engagements. In each of these
2 activities, I have demonstrated special skill, knowledge, experience, training, and
3 education in the areas of quantitative analysis, forensic statistics, and the detection
4 of discrimination. Pursuant to Evidence Code, Section 720(b), I am prepared to
5 provide additional testimony in support of my objective qualifications to support
6 statistical evidence.

7 SUMMARY

8 3. The first declaration authenticated the following exhibits:

- 9 a. BATES #0004-0016: The demand letter dated January 21, 2018, which
10 petitioned for compliance and provided evidence of (1) racially polarized
11 voting in the 2014 and 2016 elections, and (2) circumstances that
12 demonstrated discriminatory effects inhibiting equal political influence by
13 minority groups in the district.
- 14 b. 0017-0022: Minutes of the special meeting of April 18, 2018, at which the
15 demographer's assisted committed to majority-minority districts as the first
16 priority and where the Board precluded any remedy that increased its size.
- 17 c. 0023-0024: The demographer's "Freeway" option, which created a 50%
18 Latino district, but extended it through unpopulated areas to the Bay,
19 splitting the two black concentrations.
- 20 d. 0025-0029: May 18, 2018 letter to defense counsel setting forth grounds for
21 injunction, seeking consent, or a scheduling agreement.
- 22 e. 0030: email of April 28, 2018 asking defense counsel to clarify intended
23 purpose and expected effect of ballot question, given the futility of pre-AB
24 350 votes in Glendale USD, Escondido, Highland, Visalia, Palmdale, and
25 seven other named cities.

26 4. The second declaration explained the June 4, 2018 letter to the WCCUSD

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1 Superintendent and President of the County Committee on School District
2 Organization. It details plaintiffs' proposed map, sequence of elections, and
3 transition, and provides additional evidence in support of Section 2 liability. It
4 was not Bates stamped.

5 5. This declaration supports the following points.

- 6 a. As a practical matter, if the Court holds that the general process for
7 approval organizational changes set forth in the Education Code does not
8 allow delay of the CVRA, it may also exercise the broad remedial authority
9 of the CVRA to achieve the majority-minority trustee areas that Section 2 (51
10 U.S.C. 10301(b)) requires. Nonetheless, plaintiffs submit evidence to
11 support a finding that they would be likely to prevail in establishing liability
12 under the federal Voting Rights Act at trial. Evidence of racially polarized
13 voting is essentially undisputed. Defendants have yet to deny any of the
14 complaint's allegations that the totality of the circumstances support a
15 conclusion that blacks and Latinos suffer effects of discrimination.
- 16 b. The defendants' process has limited public comment to one-to-three
17 minutes, usually near the end of a long agenda, once after midnight. Unlike
18 other jurisdictions in our county, it has not posted emails from the public,
19 eliminating transparency. Spanish language outreach was poor.
20 "Workshops" were not held until to days before the Board's finally meeting,
21 so the public never had a genuine opportunity to recommend changes.
- 22 c. Plaintiffs' map and the "June 4" emulation by the District are the only
23 options that attempt to follow precinct lines, which may be necessary to
24 implement trustee areas in 2018.
- 25 d. Plaintiffs' Latino area has 49% actually registered voters who are Latino.
26 Since the most recent census survey, the Latino population has grown and

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1 aged more quickly than the rest of our county. The updated midpoint
2 Latino share of citizen adults (CVAP) is 56.2%. Using census instructions,
3 the error range is 45.6% to 65%, according to census instructions. ¶36, *infra*.
4 Plaintiffs' black district has 49% black CVAP, which is within the margin of
5 error and the range that courts have accepted as a majority. Rafferty to
6 Duffy, June 4, 2018, at 6 (2nd declaration).

- 7 e. Defendant admit that it is possible to create majority trustee areas for both
8 minorities. "June 4" option overstates its success in concentrating Latino
9 and black voters. The black area has only 46% eligible voters who are black
10 (by either measure). In the Latino area is 42% of citizen adults and 45% of
11 registered voters are Latino. ¶8, *infra*. Because CVAP is an estimate with a
12 large error range, this map may comply with Section 2, but is marginal.
- 13 f. Defense expert, Dr. Douglas Johnson, has not disclosed the source of
14 proprietary data and has not fixed patent errors. Data in his summary table
15 indicated that the black and Spanish-surnamed voter turnout in 2016
16 exceeded the number of registered voters by 20% and 474%, respectively. ¶¶
17 19-20, *infra*. After he received my workpapers and data files on June 1,
18 under an agreed "exchange," his attorneys said they were delaying their
19 delivery until the June 6 board meeting. They withheld the data until after
20 6PM, June 7, the night before the revised application was due.¹ The

21
22 ¹ On May 30, 2018, Ms. Lozito and I met with Dr. Johnson and the two law firms representing
23 WCCUSD. We agreed to exchange data, which I understood to call for the workpapers that I
24 typically provide the opposing party in regulatory proceedings. Consistent with the
25 professional responsibilities with which I am familiar as an experienced expert witness, I
26 provided these files as quickly as possible, understanding that the opposing party needed time
to review the materials for purposes of impeaching my testimony. At noon the following day,
Counsel Spinelli emailed (May 31, 2018, 12:05pm) a prod to comply. Despite the demands of
preparing the injunction, I undertook to organize my files for Dr. Johnson. I transmitted 28

1 admission of majority-minority areas forced extensive revision,
2 compromising the ability to complete legal arguments.

- 3 g. The relaxed standards of CVRA and collaborative procedures of AB 350
4 have made Section 2 litigation a rarity in California. Earlier this year,
5 however, after Dr. Johnson testified for Kern County, Judge Drodz found
6 similar data errors and criticized defenses that Dr. Johnson repeats here. ¶¶
7 7, 12, 22, 26, *infra*.
- 8 h. At the League of Cities, Dr. Johnson urged using referenda to delay or block
9 implementation. [0062]. He criticizes the CVRA for not increasing the
10 number of minority office-holders, which may reflect his commitment to
11 “continuity in office.” [0057] He also promises to avoid “head-to-head”
12 contests, recently using a gerrymander in Martinez. (That is impossible in
13 this case, because the only Section 2-compliant options place 4 of 5
14 incumbents in the non-minority area.)
- 15 i. To assist the Court’s determination as to whether the exercise of equitable
16 discretion justifies tolerating another unlawful election, this declaration sets
17 forth facts demonstrating that the district’s attorneys did not act in good
18 faith before and after presenting the Board with a resolution committing to
19 attempt compliance in 2018. Almost four months after it left the safe
20 harbor, WCCUSD has yet to investigate, let alone deny, plaintiffs timely
21 evidence of racially polarized voting. Rewarding delay and bad faith would
22 destroy the compromise that the Legislature brokered between the cities and

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25 files, mostly in four transmissions on Friday, June 1. I supplemented files on Monday, June 4
26 to include subsequent work, but discontinued once Mr. Freiman notified me of the intent to
withhold all documents until after the Board meeting (6/5/18 2:19). Emails are available at
Court’s request.

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1 civil rights advocates, with statewide implications.²

2 j. According to Dr. Johnson, trustees elected at large maintain an at-large
3 viewpoint, preventing cultural change until all trustees are elected at-large.
4 fn.7, *infra*. Delayed implementation would allow three members elected at-
5 large this November to control the 2021 redistricting, entrenching the
6 unrepresentative status quo more firmly than ever.

7 k. Dr. Johnson's claim that I lack "objective qualifications" (Johnson Dec. ¶17)
8 overlooks my training in quantitative methods and my decades of
9 experience as an expert witness in forensic statistics retained by state
10 regulators. Justice Sotomayor wrote of me in her memoirs, "a measure of
11 integrity would remain evident over a distinguished career in public
12 service." *My Beloved World*, at 191.

13 SUPPORT FOR PLAINTIFFS' MAP

14 6. In November 2017, Contra Costa Registrar met with city clerks and announced that
15 he would refuse to implement any CVRA boundaries in 2018 if jurisdictions split
16 precincts. [0054] Exh. 10. This restriction is unusual and is not authorized by the
17 Elections Code. Despite this constraint, plaintiffs have built a strong Latino
18 majority precinct. Adjusted to reflect current values, 56.2% +/- 9.8% of the adult
19 citizens in the Latino trustee area we propose are Latino. ¶36, *infra*. Despite the
20 demoralization of being unable to exercise equal influence over school board
21 elections, Latino still make up 49% of actually registered voters. Either measure

22 ² The League of Cities articulated its bargain, which MALDEF, Common Cause, and the ACLU
23 accepted: "AB 350 is helpful because it provides a defined process for making the switch, and
24 limits the amount of costs and fees we would otherwise likely be assessed. In addition, for
25 proponents of district elections, it provides an incentive for cities to *make the switch more*
26 *quickly than they otherwise might occur.*" [https://www.cacities.org/Resources-
Documents/Education-and-Events-Section/MCXF/2017/Voter-Outreach-and-California-
Voting-Rights-Act-\(C#page=11](https://www.cacities.org/Resources-Documents/Education-and-Events-Section/MCXF/2017/Voter-Outreach-and-California-Voting-Rights-Act-(C#page=11)

1 establishes an effective “majority” minority district. None of Dr. Johnson’s options
2 attempt to follow precinct lines, except “June 4.”

3 7. Dr. Johnson’s experience as an expert witness in adjudicatory proceedings is more
4 limited than his large practice in advising bodies on districting, which is a
5 legislative function. He identifies only six matters in which he has been deposed
6 or pre-filed a declaration. I have not reviewed these testimonies, but his client did
7 not prevail in five of the six cases. He does not identify any occasion on which he
8 has ever been subjected to cross-examination. In particular, he does not disclose
9 his unsuccessful testimony in the recent Section 2 trial of [Luna v. Kern County](#), No.
10 1:16-cv-00568-DAD-JLT³, in which he and his client’s internal expert appear to have
11 committed many of the same methodological errors that occur here. In his findings
12 of fact, Judge Drodz repeatedly noted discrepancies between Dr. Johnson’s CVAP
13 calculations and those sponsored by Dr. David Ely, the plaintiffs’ noted
14 demographer with extensive experience in litigation. *Luna Findings of Fact*, at 16,
15 22, 25, 29. These may reflect the same errors in mishandling the data that I identify
16 below. The Court relied on Dr. Ely’s calculations.

17 8. The demographic tables accompanying several Dr. Johnson’s maps admit one or
18 two minority majority districts: “June 4” has areas that are 50.3% Latino and 52%
19 black, as well as the highest reported minority percentages of adult citizens
20 (CVAP). “Freeway” has a 50% Latino area by registration. “City and Schools C”
21 claims a 52% black area by registration. In the case of “June 4, with the exception
22 of the large discrepancy in black voter registration counts, most of the difference
23 between my data and Dr. Johnson’s results from his improper disaggregation of
24 CVAP data to the block level.

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26 ³ <https://www.kerncounty.com/pio/pdf/findings-of-fact.pdf>

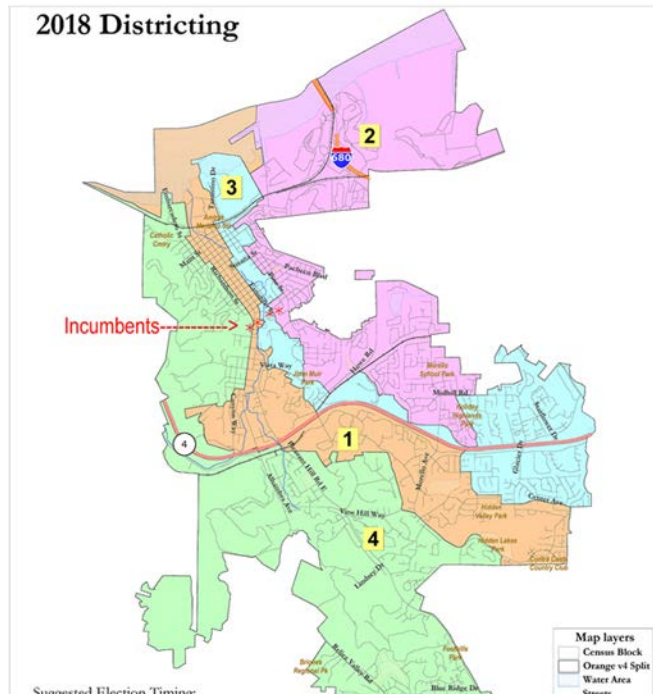
ANAYLSIS OF JUNE 4

MAP	(Most Latino area)			(Most black area)			
NDC numbers	CVAP	reg	reg/CVAP	CVAP	Reg	reg/CVAP	
Latino	9685	8460	87%	Black	11464	11416	99.58%
Total	22560	16813	75%	Total	25674	22114	86%
Latino/total	43%	50.3%		black/tot	45%	52%	
Total Pop				46095			
Plaintiffs' numbers							
Latino	9801	7807	80%	black	11154	9610	83%
Total	23545	17330	74%	total	24520	20894	80%
Latino/total	42%	45%		black/tot	45%	46%	
Total Pop				47293			

9. If reliable, precinct counts of actual voter registrations are the most direct measure of eligible voters. Our unusual constraint of making trustee areas conterminous with precincts means that using this measure also avoids allocation errors that occur when prorating census data. The plaintiffs' minority trustee areas minimize error by avoiding split block groups, but the precinct constraint sometimes makes this impossible.

10. "June 4" is the only map that purports conforms the precinct restriction, although the inclusion of the Richmond Annex precinct (the fork between I-580 and I-80) prevent it from being contiguous. Dr. Johnson's data for "June 4" shows that 11,416 of 11,464 black adult citizens (or 99.58%) have registered to vote. This is implausible.

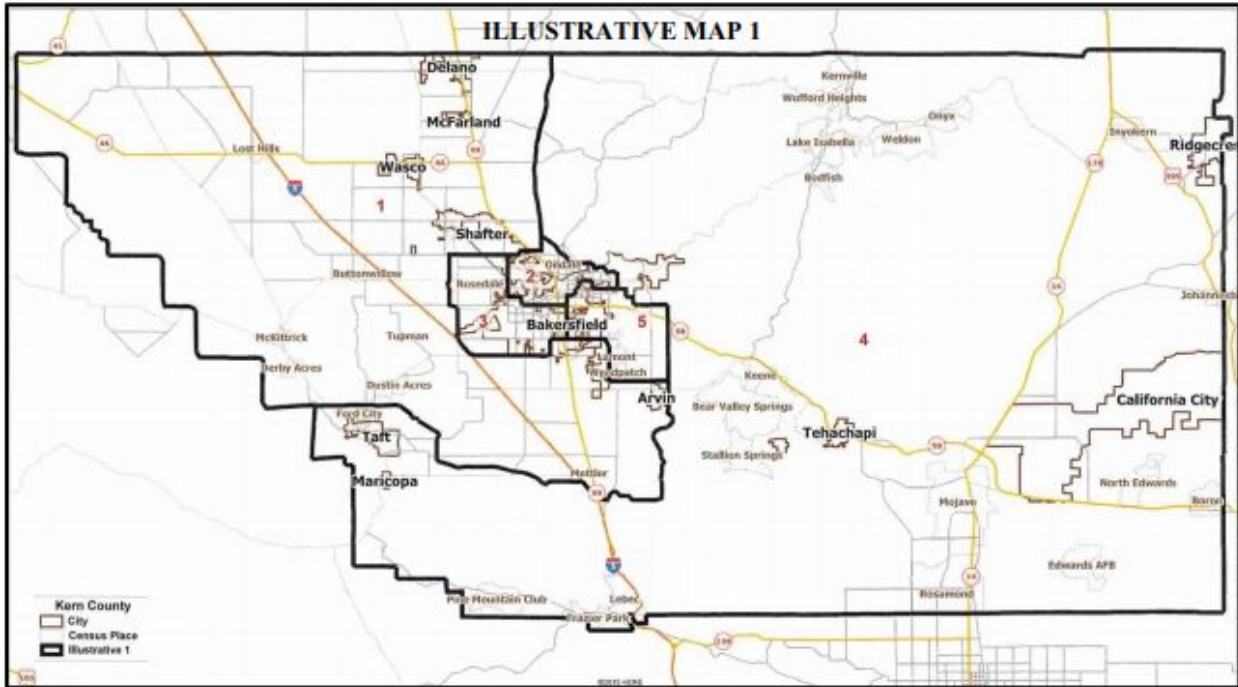
1 11. Dr. Johnson is a well-known and
2 accomplished expert, who has
3 built a very lucrative practice
4 supporting jurisdictions in CVRA
5 and redistricting matters. He
6 Johnson is a critic of the
7 California Voting Rights Act,
8 questioning whether districting
9 leads to more minority office-
10 holders.⁴ The examples that he
11 cites for lack of progress (e.g.,
12 Escondido, Wildomar) are cities
13 that retained him. This may not
14 be coincidental. His marketing
15 presentations typically promote what he calls “continuity in office” – which means
16 protecting incumbents. [0057] In Martinez, he created districts for each of three
17 incumbents who lived in adjoining precincts. These districts are erose, oblong,
18 and barely contiguous, the defining characteristics of a gerrymander. Districting
19 that focuses on protecting incumbents to such an extraordinary extent sometimes
20 fails to create equal opportunities for underrepresented minorities.



<http://www.cityofmartinez.org/civicax/filebank/blobdload.aspx?BlobID=16811>

24 ⁴ <http://www.latimes.com/politics/la-pol-ca-voting-rights-minorities-california-20170409-story.html>
25 <https://www.westerncity.com/February%202017/CVRA-White-Paper-Final.pdf>
26

1 12. While Dr. Johnson may appear to be authoritative in reciting legal requirements
2 and traditional criteria, he may not always comply with his own prescriptions. In
3 Luna, he objected to the manner in which the proposed district in northwest Kern



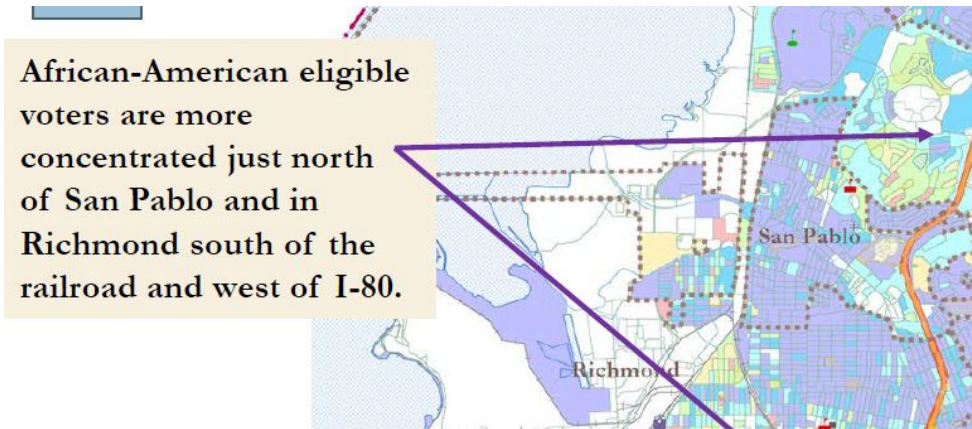
15 County “hooked” around the city of Bakersfield to include areas to its south. In a
16 similar manner, plaintiffs’ proposed black majority trustee area may appear to
17 wrap around San Pablo (an enclave of Richmond) to join Hilltop with downtown
18 Richmond. Judge Drozd dismissed his objection, observing that in the context of
19 Section 2, “‘compactness’ refers not to the shape of the district, but whether the
20 minority community is sufficiently concentrated to constitute a majority of the
21 CVAP in a single-member district.” Findings of fact, at 17.⁵ Despite the judge’s

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⁵ The Supreme Court has “assumed that complying with the VRA is a compelling state interest and that a State’s consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has ‘good reasons’ for believing that its decision is necessary in order to comply with the VRA.” Abbott v. Perez, No. 17-586, slip op. at 6 (June 25, 2018) (citations omitted).

1 explanation, Dr. Johnson makes a similar criticism of the plaintiffs' majority black
2 district in urban Richmond.

3 13. Dr. Johnson initial presentation acknowledged that the black population was
4 concentrated in urban Richmond. The Spanish neighborhoods are centered
5 around San Pablo city and unincorporated North Richmond (actually west of San
6 Pablo), both of which are enclaves of Richmond. Black areas in Hilltop in the north
7 and downtown between the railroad and I-580 are connected by the largely
8 unpopulated land (white on the map) between San Pablo and the Bay. Even
9 though his "Freeway" is unconstrained by precinct boundaries, it ignores the
10 common political affiliation of these three areas in Richmond by extending the



18 [https://www.wccusd.net/site/handlers/filedownload.ashx?moduleinstanceid=15899&dataid=31722](https://www.wccusd.net/site/handlers/filedownload.ashx?moduleinstanceid=15899&dataid=31722&FileName=C_TrusteeAreaBoundaryMaps_0.pdf#page=6)
19 [&FileName=C_TrusteeAreaBoundaryMaps_0.pdf#page=6](https://www.wccusd.net/site/handlers/filedownload.ashx?moduleinstanceid=15899&dataid=31722&FileName=C_TrusteeAreaBoundaryMaps_0.pdf#page=6)

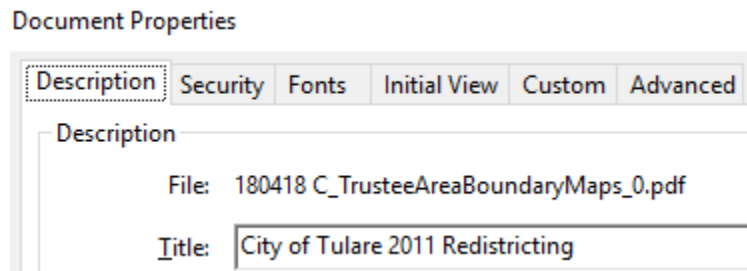
20 Latino trustee area to the Bay. By contrast, Hilltop, Iron Triangle and downtown
21 are within the same city and linked by Richmond Parkway. [0059]

22 14. Dr. Johnson is a polished presenter, and enjoys access to expensive, specialized,
23 and highly automated software with prepackaged data. He prepares templated
24 reports for jurisdictions; the document properties for the April 18, 2018

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1 presentation show “City of Tulare 2011 Redistricting” as its title.



7 15. To develop maps, he uses Caliper Corporation’s Maptitude with the optional
8 districting module that costs \$10,000 a year to license. The \$10,000 package
9 automates functions that can be performed with the standard \$800 version that I
10 use, but only by importing data “manually”. His package also includes a large
11 overlay of prepackaged data, but it does not appear that Dr. Johnson understands
12 the provenance and limitations of these data. Apparently, he has not looked
13 “under the hood” in some time, and may have very little understanding of the data
14 and any anomalies. He does he question unexpected values that require
15 explanation. He does not acknowledge the need for error analysis, particularly
16 regarding the nominal values calculated for Latino citizens in northern California,
17 when the census relies on multi-year samples without direct enumeration.

18 16. As a former congressional staffer, I respect Dr. Johnson’s expertise as a legislative
19 consultant. He reports serving as legislative director to a Republican congressman
20 almost immediately after graduating college, which is an extraordinary
21 accomplishment. He has also succeeded admirably in supporting redistricting
22 proceedings, which are a legislative function. Dr. Johnson’s marketing materials
23 promise to promote what he calls “continuity in office,” which is his phrase for
24 protecting incumbents. [0057] Many of the incumbent politicians who employ Dr.
25 Johnson appreciate his outspoken criticisms of the California Voting Rights Act.
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1 He claims that the law does not increase the number of minority office-holders in
2 many cases, citing many of his clients. This is no coincidence. Protecting
3 incumbents is not always consistent with CVRA compliance. He discusses
4 avoiding "head-to-head conflicts," but in the extreme case of WCCUSD, he cannot
5 draw a map that complies with Section 2, unless he places four of the five
6 incumbents in the same trustee area.

7 17. Dr. Johnson is not a lawyer, but tends to provide legal advice that is controversial
8 or simply wrong. Last month, he told the League of Cities audience that they may
9 be able to use referenda to delay or forestall compliance with the CVRA. [0062]⁶ In
10 December 2017, he admitted that delay compounds the gradual impact of this
11 reform: "Board members previously elected at-large tend to maintain an at-large
12 viewpoint. Real change in Board culture generally only occurs after Board
13 members who never won at-large are elected by-area." [0065]⁷

14 18. One of Dr. Johnson's techniques is to bind his clients to a set of "criteria" before
15 they have heard from their constituents in the public hearings required by statute.
16 As the plaintiffs' attorney in other jurisdictions, I have seen the views of officials
17 and activists alike evolve during this process, often dramatically. Dr. Johnson tells
18 his clients that, in order to avail itself of a presumption that deviations of up to 10%

19
20 ⁶ "[CVRA Recent Legislation and Outcomes](#)," see page 10: "perspective [sic] plaintiffs have
21 made the argument that a local ballot measure cannot contravene state law (such as the
22 CVRA) or policy, nor can a local ballot measure contravene the state's delegation of power to a
23 local governing body... There seems to be a gray area in the law and a need to balance between
24 the power to petition for referendum and the need to apply state law."

24 [http://www.rwglaw.com/media/event/32_5-2018-Spring_3b-Aziz-Johnson-Markman-
25 California-Voting-Rights-Act-Recent-Legislation-and-Litigation-Outcomes-
26 Individ.pdf#page=10]

⁷ "[15 Years with CVRA: Lessons Learned & Challenges Ahead](#)," CSBA workshop, at 17.
<http://www.morongousd.com/Downloads/15%20Years%20CVRA.pdf#page=17>

1 are constitutional⁸ as “required to meet an official criteria [sic],” they must specify
2 the criteria before the first map hearing. *See* Res. 69-1718 [Def. Exh 0012-0015]. This
3 is antithetical to the purpose of these hearings, which often consider changes to the
4 size of the governing body or redistricting commissions. At a special meeting
5 called to adopt 69-1718, the Board took an unexpected vote on an additional
6 resolution (96-1718), which was not agendaized, to preclude itself from expanding
7 its size to seven without entertaining any public comment. In subsequent
8 hearings, several speakers have suggested that seven trustees would better serve
9 this large district. Plaintiffs sought to preserve the option, in case it proved
10 impossible to create majority-minority trustee areas for a five-member board.
11 Plaintiffs promptly filed a Brown Act complaint, to which WCCUSD has not
12 responded.

13 19. Dr. Johnson tainted the process with his notion that binding declarations could
14 prevent a jurisdiction from listening to its constituents. He also may have misled
15 the Board by failing to disclose how poorly similar arguments fared in the Luna
16 case. WCCUSD was already in litigation. As Judge Drozd explained to Dr.
17 Johnson, “courts are not required to adhere to [the jurisdiction’s] principles” and
18 legislative bodies cannot “evade the compliance with the Voting Rights Act by
19 carefully selecting an array of redistricting principles.” Luna at 23, citing Gonzalez
20 v. Harris County, 601 Fed. App’x 255, 260–261 (5th Cir. 2015). The restriction on
21 limiting public input is even more fatal to the integrity of an initial districting, since
22 Section 2 does consider the continuity of prior boundaries (and to some extent the
23 principles that drew them) in a redistricting case.

24 20. Compared to legislative advice, a higher standard of candor to the tribunal applies

25 ⁸ The Fourteenth Amendment is not even the relevant standard, since Education Code, Section
26 5019.5(a)(1) requires more precise equality of population.

1 in adjudicatory proceedings. A Congressional staffer is under no obligation to
2 correct errors identified by members of the public. In the absence of litigation, a
3 districting consultant may take the same position. But, after this litigation began,
4 Dr. Johnson refused to correct basic information presented to the Board that was
5 replete with errors. I immediately brought the items described below to the
6 attention of his assistant, Ms. Tilton, at the April 18, 2018 meeting. At the third
7 map hearing, Ms. Lozito again brought to Dr. Johnson's personal attention that
8 these errors had still not been corrected.

9 21. His templated demographic summary claimed that 120% of the number of blacks
10 registered in WCCUSD voted in the 2016 election. Dr. Johnson apparently has
11 separate sources for estimating Hispanic voters, one based on Spanish surnames
12 and another he calls "estimated Latino." "Latino" registrants exceed "Spanish-
13 surnamed" by 11% (29,472 v. 26,476). Of the Spanish-surnamed group, only 2,882
14 (11%) turned out to vote in 2016, out of 20,082 "Latino" votes. Out of 2996
15 registered voters who are "Latino" but not Spanish-surnamed, 17,186 voted – a
16 turnout of 574%.

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	Count	Percent			
Voter Registration (Nov. 2016)	123,994				
Estimated Latino Reg	29,472	24%			
Spanish-Surnamed Reg.	26,476	21%			
Asian-Surnamed Reg.	9,202	7%			
Filipino-Surnamed Reg.	3,240	3%			
Est. NH White Reg.	54,847	44%			
Est. African-Amer. Reg	34,608	28%			
Democratic Reg.		64%			
Republican Reg.	10,416	8%			
Other/No Party Reg.	33,813	27%			
				Count	Percent
Voters Casting Ballots (Nov. 2016)	89,234	72%	Voters Casting Ballots (Nov. 2014)	50,340	49%
Estimated Latino Voters	20,068	22%	Estimated Latino Voters	7,584	15%
Spanish-Surnamed Voters	2,882	3%	Spanish-Surnamed Voters	6,813	14%
Asian-Surnamed voters	7,256	8%	Asian-Surnamed voters	3,604	7%
Filipino-Surnamed voters	2,267	3%	Filipino-Surnamed voters	1,024	2%
Est. NH White voters	18,028	20%	Est. NH White voters	25,860	51%
Est. African-Amer. Reg	41,817	47%	Est. African-Amer. Reg	11,966	24%
Democratic voters	60,651	68%	Democratic voters	34,327	68%
Republican voters	7,642	9%	Republican voters	5,443	11%
Other/No Party voters	20,942	23%	Other/No Party voters	10,571	21%

22. On each occasion, Ms. Lozito and I asked that they review and correct obvious inconsistencies. Minority turnout usually increases in presidential years, but the number of Spanish-surnamed voters fell by 58% from 2014 and 2016. The number of white voters fell by 30%. Yet, black voters increased 249%, to achieve the impossible 120% turnout noted above.

23. In an adjudication, the expert witness does have a duty of candor to the tribunal that requires the correction of errors when discovered. Unfortunately, similar data problems may explain the more severe errors in all of Dr. Johnson's maps. The "June 4" map is the only map based on precincts, which facilitates implementation in 2018, and is the only map to show majority-minority precincts. It claims that 11,416 or 11,464 black adults in the black "majority" district in the "June 4" map are registered (a rate of 99.58%).

24. Dr. Johnson calculations of CVAP are not identical to mine, just as they did not

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1 match Dr. Ely's in the Kern County trial. He uses source data that has been
 2 allocated to blocks, but the differences (1%-5.7%) are within the margin of error.
 3 The ratio of black to total CVAP is slightly lower than mine, which makes it even
 4 harder to interpret the 19% difference in registrants identified as black. (For
 5 convenience, the table from ¶8 is repeated below.)

ANAYLSIS OF "JUNE 4"	(Most Latino area)			(Most black area)			
	NDC numbers	CVAP	reg	reg/CVAP	CVAP	reg	reg/CVAP
Latino	9685	8460	87%	Black	11464	11416	99.58%
total	22560	16813	75%	Total	25674	22114	86%
Latino/total	43%	50%		black/tot	45%	52%	
Total Pop			46095				48764
Plaintiffs' numbers							
Latino	9801	7807	80%	Black	11154	9610	83%
total	23545	17330	74%	Total	24520	20894	80%
Latino/total	42%	45%		black/tot	45%	46%	
Total Pop			47293				48382

13 25. Racial and ethnic imputations underlie the polarization analyses accepted by
 14 courts. UC Berkeley maintains under contract to the Legislature statewide-
 15 database.org ("SWDB") for use in reapportionment. The most reliable attribution
 16 is the portion of voters who voluntarily choose to self-identify on question B of the
 17 voter registration form.⁹ According to the Contra Costa deputy registrar, they do
 18 not record this information and have purged it from data collected before the
 19 current registrar took office. Many voters do not self-identify, so proprietary data
 20 consider other sources. The form also collects data on place of birth and language
 21 preference, which is more helpful in imputing ethnicity than race. SWDB does not
 22 use registration form fields or extrinsic data, but only a "surname index" to
 23 estimate the number of voters in each precinct who are "Hispanic" or Asian, but
 24 does not provide data for blacks. Because there are fewer markers to permit

25 _____
 26 ⁹ "My ethnicity/race is: Mis antecedents ethnicos/raza: _____" On the online form:
<https://covr.sos.ca.gov/?step=2>

1 imputation of black registrants (i.e., distinctive surnames, foreign places of birth,
2 non-English language preference), these data are generally less reliable than the
3 Latino count.¹⁰

4 26. Ironically, Dr. Johnson's criticisms of my methodologies may be more appropri-
5 ately lodged against his own practices. I have loaded official data from the census,
6 while he has relied on packages that manipulate these data and redact their
7 margins of error. He claims his techniques are "industry standards," even when
8 they involve disaggregating and reaggregating data in ways that compound errors
9 and render them incapable of estimation. My use of multiple layers of geography
10 (precinct, tract, city, block group, block) indicates appropriate care in the
11 preservation of official data and the avoided of multiple prorations. His reference
12 to precinct registration counts with racial imputations as "some unique geographic
13 data that [I] created" reflects, most charitably, a misunderstanding on his part.
14 Johnson Dec. ¶14. I did not "create" data. I disclosed the provenance of the racial
15 imputations for registered voters to Dr. Johnson, but he has declined my request to
16 do the same.¹¹

18 ¹⁰ I have provided my source data and explained its provenance to Dr. Johnson, but he has not
19 reciprocated. He states that he increases the Latino registration by 5% to compensate for
20 what he considers an undercount, but has not disclosed if he uses SWDB (available for Latinos
21 only), Maptitude proprietary data, or some other source.

22 ¹¹ Prior to this litigation, the precinct counts were derived for targeting purposes by the local
23 Democratic party from data compiled by its vendor Political Data, Inc. He disregards this
24 explanation when he describes the precinct counts as "some unique geographic data that [I]
25 created." As he observes, this is commercial data whose value depends on its accuracy and is
26 subject to correction by users who contact the voters whose race is imputed. I subsequently
sought to license additional data from PDI, but they advised that they were too busy with the
June elections. He criticizes me for not relying on the "official" SWDB data, but SWDB does
not provide black racial imputations, due to the lack of a reliable surname index. Dr. Johnson
appears to rely on fields labelled "ST1216_m23" and "ST1216_m2_NHB," which may be part

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1 27. Dr. Johnson’s statement that I did not use a base layer of geography is not true. I
2 used several. The standard version of Maptitude includes a large overlay of
3 census tract data. Tracts are generally too large to allocate data properly to
4 proposed precincts. Therefore, I imported most of population data directly from
5 the census website, which report most data in the census block level. The census
6 survey of CVAP is not available below block group, so those data reside in a
7 separate layer. For purposes of documenting racially polarized voting, I have
8 imported layers for the precinct geography applicable to every election from 2002
9 until 2018. Except for the most recent data, the geographic data are available from
10 Berkeley’s statewide database.

11 28. Dr. Johnson’s criticisms of my facility in using Maptitude are ironic given the
12 problems encountered by Mr. Krauter, whom his client designated as the person
13 “most knowledgeable regarding use of the County’s redistricting software.”
14 According to Judge Drozd, Krauter tried and failed to determine CVAP using
15 Maptitude, instead of census files, so he simply assumed that 20% of Latino adults
16 were non-citizens in each census block.¹² While I do not intend to be the expert at

17
18 of the data package Caliper makes available with its automated redistricting software module.
19 There are no margin of error fields.

20 ¹² Luna decision, Doc. 188, trial citations to trial transcript omitted “Mr. Krauter employed
21 map-drawing software known as Maptitude. Maptitude contained the 2010 Census data, as
22 well as the County district boundaries that had been in place since 2001. The Maptitude
23 program was able to distinguish between Latino and non-Latino residents, as well as between
24 residents who were of voting age and those who were not. Notably, however, according to
25 Mr. Krauter, the data contained in Maptitude was unable to load citizenship data available
26 through the American Community Survey (“ACS”), an annual survey administered by the
Census Bureau that collects demographic information, including age, income, education, and
citizenship, from a sample of the population. Mr. Krauter attempted to add ACS citizenship
data to Maptitude, but was ultimately unsuccessful. For this reason, Maptitude as employed
by Mr. Krauter was unable to calculate the citizen voting age population (“CVAP”) of the
County or any of the supervisorial districts therein. Instead, Mr. Krauter merely estimated that

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1 trial, plaintiffs' support for this application already more sophisticated than the
2 defense testimony offered during the Kern County trial.

3 29. His declaration criticizes my use of Excel software to load data into Maptitude for
4 geographic modeling, but this is Caliper's recommended technique. *Id.* ¶14.
5 (Caliper also indicated that none of its preloaded data can be licensed except as
6 part of the \$10,000/year package.) Unlike his package, I did maintain the error
7 fields and stored official data in the appropriate geographic layers, which in the
8 case of CVAC is block group and tract. I have literally laid eyes on data with
9 which Dr. Johnson is surprisingly unfamiliar.

10 30. Dr. Johnson, who is not a lawyer, told the WCCUSD Board that "it is not the law"
11 that actual voter registration could establish a majority minority district. He
12 claimed that Section 2 liability could only be established if the minority had a
13 majority of the "citizen of voting age population" or CVAP. His November 2016
14 "Quiet Revolution in California Local Government Gains Momentum," white
15 paper makes a 22 accurate statement: "We look at CVAP because the courts in
16 Voting Rights Act litigation tend to use the CVAP counts from the Census Bureau
17 as the best available measure of eligible voters."

18 31. Courts have favored CVAP because it is often a more tolerant measure than the
19 direct count of who is actually registered and voting. CVAP includes 3.1 million
20 disenfranchised felons, who are disproportionately minority.¹³ Gomez v. City of
21 Watsonville (1988) 863 F.2d 1407, 1416 & n.47 noted "courts have repeatedly noted
22 that depressed registration rates may often be traceable in part to historical

23 _____
24 across the County, the Latino CVAP was roughly 20 percent lower than the Latino voting age
25 population. Thus, Mr. Krauter was forced to rely on these rough estimates of the Latino CVAP
26 in each district, conceding at trial that he was unable to determine the number with precision."

¹³ <https://www.americanprogress.org/issues/criminal-justice/news/2017/11/06/442326/3-1-million-u-s-citizens-voting-age-voiceless-elections/>

1 discrimination.” Gomez also apparently relaxed the requirement of a nominal
2 majority, using just 12% of the total CVAP to support two out of seven “majority”
3 Latino districts. Garza v. County of Los Angeles, 756 F. Supp. 1298 (C.D. Cal.
4 1991) also allowed “illustrative districts [that] were just shy of the 50 percent mark,
5 in the 44 to 46 percent range.” *See also* Rodriguez v. Pataki, 308 F.Supp.2d 346, 405-
6 06 (S.D.N.Y. 2004) (“near majority” of 45.4% adequate); Meza v. Galvin, 322
7 F.Supp.2d 52, 62 (D. Mass. 2004) recognized the need to consider the 90 percent
8 error range, but declined to find a majority based on a range of 26-45%, because
9 “highest point in the range ... was nearly five percent below a statistical majority.”
10 When courts use CVAP, nominal (midpoint) values close to 50% are usually
11 accepted as majorities.

12 32. Citizens of Voting Age Population (“CVAP”) is reported in two special tabulations,
13 an annual report and a less frequent analysis last performed in 2016 to update
14 language designations under Section 203 of the Voting Rights Act. Another
15 special tabulation is performed after each census for reapportionment purposes.
16 The so-called P.L. 94-171 data prepares detailed analysis of the voting-age
17 population by race, but does not include citizenship.

18 33. CVAP has always been based on sampling data, not an actual enumeration. Since
19 2000, the American Community Survey (ACS) has provided CVAP data. ACS and
20 its CVAP tabulation is updated every year. The smallest geographical unit (and
21 the only unit relevant to districting at this scale) is the census block group. To
22 obtain statistical significance, the census bureau must use data collected over a
23 five-year period. As the census acknowledges, this does not reflect an accurate
24 estimate of any point in time, especially if variables being studied are not in steady
25 state. Data published in February 2018 includes observations from January 2012.
26 The most current data may report Latinos who are eligible to vote as 12 years old

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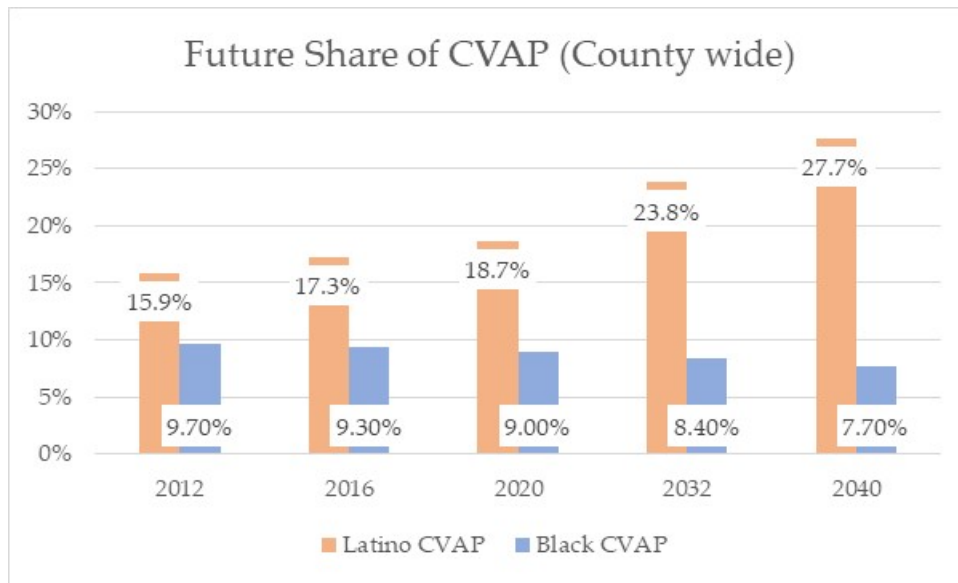
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1 simply because that was their age when they were observed in 2012. Many Latino
2 adults have also gained citizenship since being observed.

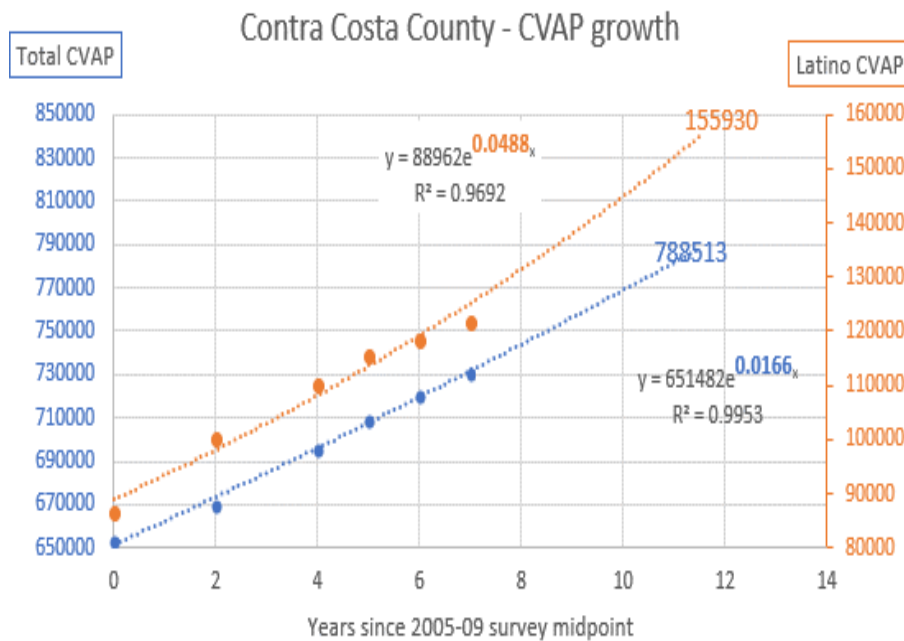
3 34. This results in a systematic undercount of Latinos when CVAP is interpreted as a
4 measurement of proportions of the current population. Berkeley researchers
5 demonstrated that the actual enumeration of Latinos statewide (citizens or not)
6 was 8% higher than the same statistic as estimated by the contemporary survey
7 tabulation used to generate CVAP.¹⁴ Another set of Berkeley researchers
8 recommended adjusting tract-level voting age population counts by the percentage
9 of adults county-wide who were enumerated as citizens in the PL94-171
10 tabulation.¹⁵ However, those data are also now eight years old. These problems
11 with CVAP are specific to the Latino community and appear to be particularly
12 acute in Contra Costa County. CVAP is based on sampling data, and typically has
13 an error range in the order of +/- 10%. It is a lagging measure, based on
14 observations that occurred as long as seven years ago. During this time, many of
15 the individuals observed have become citizens or turned 18. The distortion is
16 particularly acute where the population is growing. This chart, based on
17 projections from the California Civic Engagement Project at UC Davis, shows how
18 quickly the Latino share of adult citizens is growing countywide.

19
20
21
22
23
24
25 ¹⁴ Chapa, et al. "Estimating CVAP," UC Berkeley Warren Center, Table 3 at 6.

26 ¹⁵ Gobalet and Lapkoff, "The Judicious Use of CVAP Citizenship Estimates in Political Redistricting," (2015).



35. I developed a more precise adjustment for the systematic undercount caused by the staleness of the CVAC data. Review of the data indicated that the average age of Latinos had been lower than the rest of the population, but was converging over



time, so that the percentage of the Latino population under 18 was in decline. The tenure of Latino non-citizens in the United States is also increasing over time,

1 meaning that more of them could have obtained citizenship since they were
 2 observed in 2012-16. I performed exponential regression on CVAP at the county
 3 level for all 5-year surveys since 2005-2010. This yielded very high coefficients of
 4 determination (R^2), showing a consistent trend. In this circumstance, the reported
 5 values of the newest five-year survey can be reasonably associated with its
 6 midpoint in time (mid-2014). In the following graph the regression coefficient
 7 represents the compound growth rates for Latino and total CVAP, respectively.
 8 The Latino CVAP (on the secondary vertical axis on the right) is growing at a
 9 continuous rate of 4.88% a year, compared to only 1.66% for the total CVAP.

10 36. In 2016, for the first time in five years, the Civil Rights Division issued
 11 determinations regarding language under Section 203 of the Voting Rights Act.
 12 The require great detail about education levels. Due to the small size of the
 13 subpopulations, the census applied independent multinomial trials of Dirichlet
 14 regressions, with increased weights to logistic regression values over direct
 15 estimators for the smaller samples. This process revealed that compounded
 16 rounding errors had affected the source data, to the extent that last July, the census
 17 increased the estimate of Latino CVAP in our county by about .3%. The source
 18 data was the 2010-2014 ACS survey, and there is no indication that this correction
 19 was carried forward to the 2012-2016 survey, which had been released by not yet
 20 tabulated for CVAP.

	reported (2014 midpoint)	Sec. 203 correction (July 2017)	lag adjustment (2014-2018)	margin of error
Latino CVAP	10920	10957	13648	+/- 1077
Total CVAP	22546	22546	24295	+/-1509
	48%	49%	56.2%	45.6%-65.0%

26 After correcting this error and applying the differential growth rates to

1 compensate for the 4-1/2 year lag since the survey midpoint, the nominal value for
2 the current Latino share of CVAP in our Latino trustee area in 56.2 percent. At
3 this point, I calculated the range implied by standard sampling errors, using
4 calculations recommended by the Census Bureau and adopted by the Texas
5 Legislative Council¹⁶, which cannot be performed on Dr. Johnson's CVAP
6 estimates, because they do not use official census data, but data that have been
7 prorated into block-level tables.

8 37. As the analysis in paragraph 7 demonstrates, these error ranges explain the
9 material discrepancies between each of my CVAP values and those reported by Dr.
10 Johnson (for which error ranges cannot be calculated). This result from his practice
11 of using the "base layer of geography" that comes with the data in his software
12 package and "contains all the data" (at the block level). Johnson Dec. ¶13. The
13 package does not contain the margin of error field that the census published, and
14 prorates the data from the lowest geography officially calculated (block group) to
15 the smaller census block level. These data are not official, and result in overlay
16 misallocations and compound rounding errors that cannot be corrected or even
17 estimated.¹⁷

18 ¹⁶ The basic formulas to calculate errors for aggregated and derived data are

19
20
$$MOE_{agg} = \sqrt{\sum_c MOE_c^2}$$

21 and
$$MOE_{pro} = \frac{\sqrt{MOE_{hcvap}^2 - \left(\frac{hcvap}{cvap}\right)^2 * MOE_{cvap}^2}}{cvap}$$

22 <https://www.census.gov/content/dam/Census/library/publications/2008/acs/ACSGeneralHandbook.pdf#page=51>; Compass Guide for Data Users (2008), pages A9–A12;

23 https://tlc.texas.gov/redist/pdf/addendum_2011_Redistricting.pdf#page=3; "Estimating
24 CVAP, Addendum to data for 2011 redistricting in Texas," at 3;

25 https://www.ofm.wa.gov/sites/default/files/public/legacy/pop/acs/ofm_acs_user_guide.pdf
26 ACS Users' Guide Pub. No. 1 (rev. 2015).

¹⁷ In a published paper, Dr. Johnson effectively admits that he uses prorated and reaggregated data from his convenient data package, even when direct official estimates are available. "The

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1 38. As a proportion of the whole, undercounting the Latino population results in an
2 overcount for the white and black groups, which are older and more likely to be
3 native-born. Yet, on all Dr. Johnson's maps and for both blacks and Latinos, CVAP
4 is 5-10% lower than the minority percentage among actually registered voters. In
5 several parts of Contra Costa County, I have observed Latino registration rates 2%
6 above their proportion of citizen adults. The systematic undercount of Latinos in
7 CVAP, explained below, could explain a such differentials, but large discrepancies
8 between black adult citizens and registration counts are anomalous, especially
9 because the Latino undercount increases the reported black share of CVAP. CVAP
10 continues to be the preferred means for determining a black majority.

11 LACK OF PUBLIC INPUT

12 39. I represented plaintiffs in Concord and Antioch, and am currently doing so in
13 Antioch USD, Brentwood and Washington USD (West Sacramento), which are not
14 as far along. Although I was not always satisfied with their minority outreach at
15 the time, both Antioch and Concord had workshops at times and places that were
16 more convenient to the community. They had very substantial turnout at special
17 meetings. When the conducted hearings at regular meetings, they did so early in
18 the agenda. All had Spanish language materials. During this process, all parties,

19 _____
20 tables below display the CVAP data compiled from the 2010 to 2014 American Community
21 Survey (ACS) Special Tabulation data, which we have disaggregated to the Census Block level
22 of geography and then aggregated by City." ACS is survey data that provides values and
23 margins of error for various geographies, including cities. The official census value for a
24 typical city of 25,000 with a large Latino population might have a margin of error of 5% for
25 total CVAP and 10% for Latino CVAP. The census does not produce CVAP data below block
26 groups, which individually have 30%-50% margins of error. Allocation into blocks introduces
additional error, for which there are no official calculations. While margins of error do not
accumulate linearly, the official method of estimate standard error can still lead to large MOEs
when block groups are aggregated, which would be aggravated by rounding and allocation
errors when unofficial block prorations are used.

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1 including plaintiffs, moderated views and grew in respect for the viewpoints and
2 concerns other than their own. Concord incumbents initially resisted
3 implementation this year, but changed their minds after hearing from constituents.
4 Antioch councilman Tony Toscarino, who cast the lone dissent against the
5 resolution of intent, courageously cast the deciding vote in favor of the precincts
6 favored by the minorities when it was not in his political interest to do so. Dr.
7 Johnson's claim that community engagement occurs only when the plaintiffs are
8 recruited by statewide organizations does not explain these successes, because my
9 clients were not so sponsored.

10 40. By contrast, the first deliberation by the Board (February 28/March 1) was near the
11 end of a regular meeting after midnight. At all meetings, the public could only
12 comment for 2-3 minutes if they signed in at 6:30 and waited for three to almost six
13 hours, which few working parents can manage. Again and again, the Board
14 refused to schedule hearings at a fixed time early in the agenda. The June 13
15 meeting actually moved the item back in the agenda, placing it behind an hour-
16 long budget presentation on which no member of the public had asked to
17 comment. There were no Spanish language handouts until June 25, 2018, at the
18 very first workshops at which citizens were allowed to ask questions and make
19 suggestions to district staff. By then, it was too late to propose changes to the
20 maps, which the Board intends to choose this evening, two days later.

21 41. I have kept Dr. Fatima Alleyne informed. She serves as chair of the County Board
22 of Education, which sits as the County Committee on School Board Organization.
23 Plaintiffs do not believe that Education Code, Section 5019, excuses compliance
24 with CVRA, or requires the County Committee to order a ballot question invited
25 voters to decide whether to comply. It could be useful for the Committee to
26 review the maps in a public hearing. This is not its normal statutory function, but a

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1 role created by the SBE waiver that WCCUSD chose not to get. It does not appear
2 that the County Committee can meet before July 5 or 10, the deadline to submit
3 boundaries, or even July 16, the start of candidate filing. But if these dates are
4 extended, or a special election is planned for the spring, the plaintiffs would invite
5 the Court to seek the Committee's input. The attached letter from Dr. Alleyne
6 suggests that she and the Committee stand ready to help. [0068] Exh. 12.

7 DEFENSE COUNSEL'S FAILURE TO ATTEMPT SETTLEMENT OR TO
8 COMMUNICATE INFORMATION EFFECTIVELY WITH THE BOARD.

9 42. On February 12, 2018, Superintendent Matthew Duffy wrote me that the district
10 took my clients' concerns "very seriously" and added: "We will continue to keep
11 you informed of the District's progress and intentions regarding the matters
12 you have raised in your letter."

13 43. On its face, Res. 64-1718 appears to make a good faith commitment to attempt
14 compliance in 2018. However, immediately after introducing it to the Board and
15 public, counsel Freiman announced that no attempt was being made because he
16 had not prepared the waiver request to the State Board of Education. He stated
17 that the SBE told him the deadline was the same day, which was not accurate.

18 44. His associate assured me that a special meeting the next week would adopt both
19 resolutions. Mr. Freiman did not attend the next meeting, which descended in
20 chaos when his associate failed to support a parliamentary ruling by the president
21 that Mr. Freiman later admitted was correct.

22 45. The District's outside counsel failed to show the complaint to the Board, causing a
23 spectacle in which a divided Board voted for allow the trustee most opposed to
24 descend from the dais to review the complaint and ask me questions off-camera.

25 46. Three days following the Complaint, plaintiff proposed a settlement, but a trustee's
26 subsequent comments suggest that it was not timely conveyed. I unintentionally

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1 angered the president by politely responding to a strange settlement proposal sent
2 by the attorney without her knowledge. According to a former member of a board
3 served by Mr. Freiman, this violates his own protocols.

4 47. When litigation counsel appeared, they wrote a pleasant letter (April 17) seeking
5 an extension, while stating their understanding that “constructive discussions were
6 underway to resolve the dispute without resort to further litigation.” Once I
7 granted the courtesy extension, Attorney Spinelli wrote back that there would
8 never even be “private discussions.” On June 7, after the meeting where we agreed
9 to the ill-fated document “exchange,” he wrote that my clients would henceforth be
10 limited to “weighing in ... as members of the public.” The agenda for tonight’s
11 closed session (June 27) refers to a settlement, but there has been no discussion
12 with me. They propose to adopt one of their maps, but only “June 4” is precinct-
13 congruent, which the registrar demands for 2018 implementation.

14 RACIALLY POLARIZED VOTING

15 48. Defense Counsel Alison Winter conceded the only defense to state law liability
16 during a conference on May 22, 2018, stating that the resolution of intent rendered
17 the issue of racially polarized voting “moot.” This was discussed at length
18 between counsel in the courtroom and confirmed in an email exchange (2:46 and
19 3:19pm), which is available at the Court’s request.

20 49. Since 1965, WCCUSD has had three Latino trustees, Karen Ortega (elected in 1991),
21 Antonio Medrano (2002), and incumbent President Val Cuevas (2014). There have
22 been five black trustees, Charles Ramsey (1993), Adrienne Harris Pitts (1995),
23 George Harris (1999), Audrey Miles (2006), Tony Thurmond (2008), Elaine
24 Merriweather (2010), and Mister Phillips (2016). An Asian trustee (Karen Fenton)

1 was elected in 1997 and served two terms.¹⁸ Other than Charles Ramsey, no other
2 minority trustee has ever been reelected.

3 50. The demand letter provided graphic evidence of racially polarized voting in recent
4 elections that the District has never attempted to refute. [0010-0013] These
5 findings were summarized in the Complaint, ¶¶19-24. In the last three elections,
6 six black candidates, five Latinos, and one Asian have lost. Except for one Latino,
7 all received polarized support from their community. The white community was
8 strongly polarized in support of the white incumbents in the last midterm.

9 51. Although courts have recognized other methodologies, I used the regression
10 format specified by Dr. Johnson as the “Level II” (advanced) analysis that a
11 jurisdiction should perform in a paper he delivered on November 2, 2017. [0067]¹⁹
12 As of this morning, the District webpage admits: “The legal and statistical analysis
13 to determine whether there is racially polarized voting in the District has not been
14 done.” <https://www.wccusd.net/Page/10853>

15 52. Given the absence of any rebuttal evidence, I do not wish to volunteer further work
16 product that could limit the approach taken by an expert at trial. However, I have
17 compiled all election results since 2002 and have performed additional regression
18 analyses that will be made available if the Court requests.

19 “TOTALITY OF THE CIRCUMSTANCES”

20 53. The Senate Report on Section 2²⁰ set forth seven factors that are probative to show
21 that, under the “totality of the circumstances,” discriminatory effects impair the
22

23 ¹⁸ Fenton and two white members campaigned against Harris-Pitts in 1999, even though none
24 was seeking reelection. <https://www.sfgate.com/politics/article/West-Contra-Costa-School-Trustee-in-Fight-for-Job-2899693.php>

25 ¹⁹ <https://www.bbklaw.com/getmedia/ebbb4216-79c3-4d1f-8d2a-4d532fb23747/The-California-Voting-Rights-Act-What-To-Do-When-Your-Agency-Gets-a-Letter#page=26>

26 ²⁰ See Boyd & Markman, “1982 Amendments Legislative History,” 40 W&L L. REV. 1347 (1983)

1 political equality of the minority in ways that can be remediated. Because of
2 California's uniquely diverse population, the Legislature enacted CVRA to
3 dispense with any element needed to prove liability other than racially polarized
4 voting (factor 2). Section 14028(e) describes these factors as "probative, but not
5 necessary" to establish liability under state law.

6 54. Section 2 cases are therefore rare in California. Reversing the denial of a
7 preliminary injunction, Gomez v. City of Watsonville, 863 F.2d at 1419, considers
8 taking judicial notice of "pervasive discrimination against Hispanics" to satisfy (1)
9 (history of discrimination) and (5) (effects of discrimination) statewide. The Ninth
10 Circuit excused the absence of (4) exclusive slating and (6) racial campaign appeals.
11 At-large voting itself constituted a practice enhancing opportunities for electoral
12 discrimination, satisfying factor (3).

13 55. As noted in the complaint, ("CONSEQUENCES AND FACTORS THAT
14 REINFORCE DISCRIMINATION", Comp. ¶¶25-32), there is a history and legacy
15 of discrimination that continues to impair both groups, as a result of district
16 policies and extrinsic actions. These include inequitable distribution of resources
17 (*Id.*, ¶25), poor urban schools (*Id.*, ¶26), political demoralization (*Id.*, ¶30), an
18 unresponsive board (*Id.*, ¶32).

19 56. Unfortunately, Latinos and blacks suffer additional electoral devices. In the 2014
20 election, there were only seven Spanish-speaking poll workers in all of San Pablo.
21 The Legislature responded to this problem with AB 918, amending Election Code,
22 Sections 12303(d) and 14201(d) to provide, among other requirements, that, 14 days
23 before each election, the registrar post the precincts with officials offering
24 assistance in languages other than English. The registrar disregarded the new law
25 before this month's primary.

26 57. In the recent statewide primary, more than 300,000 mail voters were illegally

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1 omitted from the precinct lists. In Contra Costa, and to my knowledge no other
2 county, the registrar systematically deprives the voters of the right under Section
3 3015 to surrender their mail ballot, sign the register and scan their ballot, which
4 irrevocably precludes any challenge. This illegal practice disproportionately
5 affects minorities, including Spanish-speakers who may receive an English ballot
6 and wish to exchange in at the precinct for a nonprovisional ballot in their native
7 language. In June 2016, Secretary Padilla received a written commitment from the
8 registrar to comply with Section 3015, which he did not honor. In response, SB 286
9 amended Section 3015 to make even clear that voters turning in the mail ballot
10 “shall be entitled to vote a nonprovisional ballot.” This violation of the new law
11 led to an unprecedented number of provisionals and drop-offs, denying the first
12 county-wide black candidate of an election night victory. The voters who were
13 illegally required to vote provisionally tended heavily to support the black
14 candidate. Precinct results released on June 25, 2018, show that this extrinsic
15 contest was racially polarized.

16 58. Minorities may also be disproportionately disenfranchised by the practice of
17 rejecting mail, early, and drop-off ballots for alleged signature mismatch without
18 notice or an opportunity to be heard. Section 3019(c)(2). This practice was recently
19 declared to be unconstitutional in LaFollette v. Padilla, No. CPF 17-515931
20 (S.F. Sup. Ct. March 5, 2018). At least since 2014, the Contra Costa registrar has
21 refused to permit signature matching to be witnesses, or to provide notice to
22 disenfranchised voters, or to provide lists of mismatches so that political parties
23 can protect their members from serial disenfranchisement.

24
25 SUPPLEMENTAL EVIDENCE IN SUPPORT OF QUALIFICATION

26 59. As a graduate student at Princeton, I analyzed survey data on black voter

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1 participation collected during presidential elections from 1952 to 1972. This
2 resulted study was the basis for lobbying work I did with the Urban League, the
3 Joint Center for Political and Economic Studies, the Lawyers' Committee for Civil
4 Rights, and other groups to extend coverage of the Voting Rights Act to parts of
5 California and other jurisdictions with Latino populations. I also performed one of
6 the first statistical analyses demonstrating lending decisions considered the racial
7 composition of neighborhoods, a practice known as "redlining." I had graduate
8 internships at the Department of Labor, where I performed quantitative analyses to
9 justify the budget of the Work Incentives Program. I was later transferred to the
10 Associate Solicitor for Civil Rights to provide statistical support for the debarment
11 proceeding against Firestone, which was the largest enforcement action under
12 Executive Order 11246, prohibiting employment discrimination by federal
13 contractors. Many of these materials are on deposit with my papers at the
14 Kennedy Library, but have not yet been digitized.

15 60. I filed the first complaint adjudicated by the Compliance Review Commission of
16 the national Democratic Party against malapportionment of New Jersey's delegates
17 to the National Convention. As a result, the party rules required delegates to be
18 apportioned per capita based on population and party vote. I was also appointed
19 to serve on the convention rules committee, which wrote the party's affirmative
20 action rules. I served as the first chair of the New Jersey party's affirmative action
21 committee. Years later, in 2004, Senator Kerry appointed me to the steering
22 committee required by Elections Code, Section 6080, where I had responsibility to
23 recruit what became the most diverse delegation in party history.

24 61. While a student at Yale Law School, I was research assistant to Prof. Julius Getman,
25 during the preparation of his case book on discrimination. I also used logit
26 analysis to assess the impact of unfair labor practices on the outcome of union

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1 elections. This revised conventional views on the vulnerability of union organizing
2 campaigns and provided support for "card check."

3 62. The New York Department of Law sponsored my statistical testimony in the 1990
4 New York Tel rate case, which exposed corruption in affiliate transactions, leading
5 to what was believed to be the largest utility disallowance at the time. Following
6 the rate case, I designed and co-directed the retrospective audit that used sampling
7 methodology to identify the total economic loss resulting from unorthodox
8 transactions. The FCC relied on my testimony to impose the largest fine in its
9 history.

10 63. After that case, I pioneered a cost allocation methodology that enabled utility
11 accountants to use statistical methods to distinguish and separate utility costs from
12 competitive activities. This methodology was adopted by a number of state
13 regulatory commissions and was a model for provisions in the 1996 Telecom Act.
14 While I was Maryland's first director of telecommunication, the National
15 Association of Regulatory Utility Commissioners appointed me to serve on two
16 federal-state joint board that negotiated jurisdictional separations.

17 64. In dozens of regulatory cases, I have testified on rate base, cost-of-capital, affiliated
18 transactions, which often involve forensic examination of statistics. I received
19 additional training in financial concepts and quantitative analysis in Vevey, while I
20 was a management consultant at McKinsey & Co.

21 

22
23 Subscribed and sworn in Walnut Creek, California, this 27th day of June.

24
25
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