

CITY COUNCIL STAFF REPORT

DATE: February 12, 2019

TO: City Council/City Manager

FROM: Martin Lysons, City Attorney
By: Martin Lysons, City Attorney



SUBJECT: RESOLUTION NO. 2019-017 - PUBLIC HEARING: Discussion of District-Based Elections and Consideration of a Resolution Declaring the City of San Ramon's Intent to Transition from At-Large to District-Based Councilmember Elections, Outlining Specific Steps to be Undertaken to Facilitate the Transition, Estimating a Time Frame for Action; Specifying the Number of Districts; and Retaining Direct Elections for Mayor.

RECOMMENDED ACTION

Adopt a Resolution declaring the City of San Ramon's intent to transition from at-large to district-based elections, outlining specific steps to be undertaken to facilitate the transition, and estimating a time frame for action.

BACKGROUND/DISCUSSION

The City of San Ramon currently has an at-large election system, which means that the electors from the entire City choose each of the four (4) Councilmembers, and a directly elected Mayor. A district-based election system is one in which the city is geographically divided into separate districts, each with one Councilmember who resides in the district and is chosen by the electors residing in that particular district. The office of Mayor would still be elected at large.

The City received a certified letter on November 6, 2018, from attorney Scott Rafferty in Walnut Creek, California alleging that the City's system of at-large elections violates the California Voting Rights Act ("CVRA"). (See Attachment A). The letter alleges that "racially polarized voting" occurs in the City and states that the City should "consider this advice as an opportunity to engage the community in a collaborative process that avoids unnecessary litigation." The term "racially polarized voting" means voting in which there is 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 (Elections Code Section 14026(e)). Specifically, the letter asserts that the City's at-large electoral system dilutes the ability of Asians (a protected class) to elect candidates of their choice or otherwise influence the outcome of San Ramon's council elections and that, as a result, San Ramon's at-large electoral system violates the California Voting Rights Act.

ANALYSIS

The California Voters Rights Act (CVRA)

The CVRA was signed into law in 2002. The CVRA prohibits an at-large method of election that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election. The law's intent is to expand protections against vote dilution over those provided by the Federal Voting Rights Act of 1965 (FVRA). The law was also motivated, in part, by the lack of success by plaintiffs in California in lawsuits challenging at-large electoral systems brought under the FVRA. The passage of the CVRA made it much easier for plaintiffs to prevail in lawsuits against public entities that elected their members to its governing body through "at-large" elections. A plaintiff need only prove the existence of "racially polarized voting" to establish liability under the CVRA. Proof of intent on the part of voters or elected officials to discriminate against a protected class is not required.

As a result, cities throughout the State have increasingly been facing legal challenges to their "at-large" systems of electing City council members. Almost all have settled claims out of court by agreeing voluntarily to shift to district-based elections. Those that have defended CVRA challenges in the courts have ultimately either voluntarily adopted, or have been forced to adopt, district-based elections. The CVRA grants a prevailing plaintiff the right to recover reasonable attorneys' fees and expert witness fees. This has resulted in payment of substantial amounts of plaintiff's attorneys' fees by cities that have chosen to litigate the CVRA challenge. On the other hand, even if the City prevails, it cannot recover either attorneys' fees or costs. Also, the City would remain vulnerable to subsequent litigation brought under the CVRA by different plaintiffs.

Awards to plaintiffs' attorneys and expert witnesses have reportedly reached close to \$5 million. For example, in February 2015, the City of Santa Barbara reportedly paid \$900,000 in attorneys' fees and expert costs to settle its CVRA lawsuit. Another example is the City of Palmdale, which was ordered to pay plaintiffs' attorney's fees in excess of \$4,600,000 in its unsuccessful attempt to defend against a lawsuit brought under the CVRA. Staff is unaware of any city that has prevailed in defending its "at-large" system of election against a claim filed by any individual or group under the CVRA.

To date, multiple cities in Contra Costa County have received CVRA demand letters and have adopted Resolutions of Intention to transition to district elections. Those cities include Antioch, Concord, and Martinez, which have all finalized their district maps.

AB 350 Safe Harbor

On September 28, 2016, the Governor signed AB 350 into law, codified as Elections Code section 10010 (effective on January 1, 2017). The legislation attempts to provide a "safe harbor" from CVRA litigation for cities that choose voluntarily to transition to a district election system. If a city receives a demand letter, such as in San Ramon's case, the city is given 45 days of protection from litigation to assess its situation. If within that 45 days, a city adopts a resolution declaring the Council's intent to transition from at-large to district-based elections, outlining

specific steps to be undertaken to facilitate the transition, and estimating a time frame for action, then a potential plaintiff is prohibited from filing a CVRA action for an additional 90-day period. Thus, the legislation provides time (a safe harbor) for the City to assess and implement a transition to a district-based election system before a lawsuit may be filed. The legislation sets forth a number of steps a city must take in the effort to assess and transition to a district-based election system, including at least four (4) public hearings to determine district boundaries to adopt an ordinance establishing the districts. Under AB 350, a city's liability is capped at \$30,000 if it follows this process after receiving a CVRA notice letter and the plaintiff shows financial documentation substantiating the demand for reimbursement of costs of the work product generated to support the notice.

Process and Timing

As discussed above, the City received a certified letter on November 6, 2018, from Scott Rafferty on behalf of The Bay Area Voting Rights Initiative (BAVRI). Through a subsequent agreement, Mr. Rafferty and his clients and the City have agreed that the safe harbor set forth in Elections Code 10010(e), will continue to apply to the City provided it adopts a resolution of intent to transition to district elections by February 26, 2019 and considers an ordinance adopting district elections by July 1, 2019, thereby ensuring the new districts will be effective for the next City Council elections in 2020. Should the Council choose to adopt the Resolution of Intent to Establish District Elections at the public meeting of February 12, 2019 staff will begin the public outreach process to inform the community of the public hearings that will be held to draw the district maps. These meetings are scheduled to take place on the dates listed on the table below to draw the district maps. By law, no sitting San Ramon Councilmembers may have their terms extended or cut short through this process.

The attached proposed Resolution has the first election to include districts occurring in 2020. Two Councilmember seats will be contested in that election. After that election, based on the 2020 census, these district lines would be re-drawn for the 2022 election. The two remaining districts would have elections in 2022.

Under the law, if the City Council votes affirmatively to move to district elections, the City has 90 days in which to adopt an ordinance establishing the new districts. During that time, the City must hold two public hearings for input on district composition before maps are drawn, release draft maps at least 7 days before the next public hearing, hold two more public hearings on the draft maps, and then adopt an enacting ordinance.

Thus, the law provides a City 45 days from receipt of a CVRA demand letter in which to decide whether to adopt district-based elections and then another 90 days in which to pass an ordinance containing the new district lines and the schedule for their implementation, for a total of 135 days. However, plaintiffs and plaintiffs' counsel have agreed to permit the City more time to undertake these tasks in order to allow for newly-elected Council members to participate and maximize public input. A detailed schedule is Exhibit 1 to the Resolution, and presented below:

COUNCIL PUBLIC HEARING NUMBER	TOPIC	DATE
1	Public Hearing without maps to provide input on criteria to be used for drawing districts	Week of 3/11/19
2	Public Hearing without maps to provide input on criteria to be used for drawing districts Council to provide direction to demographer on desired criteria to use for drawing maps	Week of 3/25/19
3	Public Hearing with maps* produced by the demographer for consideration and feedback by the public and Council	Week of 4/22/19
4	Public Hearing with revised map(s)* produced by the demographer for consideration and selection of one of the published maps to be introduced as part of the ordinance to establish districts	Week of 5/13/19
5	Public Hearing on the Adoption of the Introduced Ordinance	6/11/19

* Map(s) must be published and made available 7 days before the hearing

The chart above displays the state mandated public hearings, should Council proceed with establishing election districts. Staff will perform public outreach, which will consist of press releases, social media outreach, and information on the City's website. In addition, the City will provide outreach specific to underrepresented communities in San Ramon to facilitate their participation in the District Elections process. As part of that specific outreach, the City will take steps to hold at least one of the public hearings in the Dougherty Valley to maximize community engagement in the east side of the city.

The attached proposed Resolution of Intent anticipates the City implementing voting by district in 2020 for the first time, subject to input from the public through the hearing process. This approach would allow for a better decision-making process, with more time for input from the City's residents and the newly-elected Council members.

FISCAL ANALYSIS

If the City Council concurs with Staff's recommendation, there will be significant staff time needed to transition to district-based elections and to administer the process including the need for at least four (4) public hearings to determine district boundaries and to adopt an ordinance establishing the districts. The City will also incur the costs for a demographer, elections consultant, and special legal counsel. Staff anticipates these costs being approximately \$125,000 and will be paid from the General Fund. Additionally, the City has agreed to reimburse the plaintiffs for their documented attorney's fees and costs up to a combined total of \$30,000. At

this time there is sufficient budget available to cover these costs and no budget amendment is necessary.

STEPS FOLLOWING APPROVAL

Following approval of the Resolution of Intention, staff will continue with its public outreach efforts, particularly in the underrepresented communities in San Ramon. In addition, staff will schedule specific dates, times, and venues for the public hearings listed in the above table, culminating in Council approval of the Ordinance establishing district elections on or before June 25, 2019.

ENVIRONMENTAL DETERMINATION

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines Sections 15320, 15378, and 15061(b)(3) as it is an organizational structure change and does not have the potential to result in either a direct or reasonable foreseeable indirect physical change in the environment.

ATTACHMENT:

Exhibit 1: Tentative Public Hearing Timeline for Adoption of District Elections Ordinance
A: Letter from the Law Offices of Scott J. Rafferty

RESOLUTION NO. 2019-017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAMON PUBLIC HEARING: DISCUSSION OF DISTRICT-BASED ELECTIONS AND CONSIDERATION OF A RESOLUTION DECLARING THE CITY OF SAN RAMON'S INTENT TO TRANSITION FROM AT-LARGE TO DISTRICT-BASED COUNCILMEMBER ELECTIONS, OUTLINING SPECIFIC STEPS TO BE UNDERTAKEN TO FACILITATE THE TRANSITION, ESTIMATING A TIME FRAME FOR ACTION; SPECIFYING THE NUMBER OF DISTRICTS; AND RETAINING DIRECT ELECTIONS FOR MAYOR.

WHEREAS, members of the City Council of the City of San Ramon ("City") are currently elected in "at-large" elections, in which each City Councilmember is elected by the registered voters of the entire City; and

WHEREAS, California Government Code Section 34886 in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an "at-large" system to a "district-based" system in which each council member is elected only by the voters in the district in which the candidate resides; and

WHEREAS, the City received a demand letter from Scott Rafferty, Attorney at Law, asserting that the City's at-large council member electoral system violates the California Voting Rights Act ("CVRA") and threatening litigation if the City declines to voluntarily change to a district-based election system for electing council members; the letter was dated November 5, 2018, and was received by certified mail on November 6, 2018; and

WHEREAS, under Elections Code Section 14028(a), a CVRA violation is established if it is shown that racially polarized voting occurs in elections. "Racially polarized voting" means voting in which there is 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 (Elections Code Section 14026(e)); and

WHEREAS, the California Legislature in amendments to Elections Code Section 10010, has provided a method whereby a jurisdiction can change to a by-district election system and cap its attorney's fees liability at \$30,000; and

WHEREAS, the City Council has directed staff to initiate the process to establish by-district elections to avoid costs associated with defending a lawsuit based on the CVRA, even if that lawsuit settles; and

WHEREAS, the City, Scott Rafferty, and his clients have agreed to extend the safe-harbor period under Elections Code section 10010(e) by which the City (1) may consider a resolution outlining its intent to transition to a district-based elections, to and including February 26, 2019, and (2) may consider for adoption an ordinance establishing district-based elections to and including July 1, 2019; and

WHEREAS, Scott Rafferty and his clients may not commence an action under the CVRA against the City until July 1, 2019, provided the City follows the deadlines set forth in the above recital;

WHEREAS, the City denies that its at-large council member electoral system violates the CVRA or any other provision of law; and

WHEREAS, despite the foregoing, the City Council has determined that the public interest would be served by transitioning to a district-based electoral system because of: 1) the extraordinary cost to defend against a CVRA lawsuit, 2) the risk of losing such a lawsuit which would require the City to pay the prevailing plaintiffs' attorneys' fees, and 3) the reimbursable costs and attorneys' fees would be capped at a maximum of \$30,000 by following the procedures set forth in Elections Code Section 10010 as amended by AB 350; and

WHEREAS, California Elections Code Section 10010 requires that a City that is changing from at-large to district-based elections shall do all of the following before a public hearing at which the City Council votes to approve or defeat an ordinance establishing district-based elections:

1. Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation;
2. After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted; and

WHEREAS, the City has retained special legal counsel (who in turn has retained an experienced demographer) to assist the City to develop a proposal for a district-based electoral system; and

WHEREAS, the adoption of a district-based electoral system will not affect the terms of any sitting Council Member, each of whom must be allowed to serve out his or her current term by law.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

Section 1. The City Council hereby resolves to consider adoption of an ordinance to transition to a district-based election system as authorized by Government Code Section 34886 for use in the City's General Municipal Election for City Councilmembers with a proposed implementation date of November 2020.

Section 2. The City Council directs staff to work with the City's special legal counsel, the demographer, and other appropriate consultants as needed, to provide a detailed analysis of the City's current demographics and any other information or data necessary to prepare a draft map that divides the City into voting districts in a manner consistent with the intent and purpose of the state and federal Constitutions, the California Voting Rights Act, and the Federal Voting Rights Act.

Section 3. The City Council hereby approves the tentative timeline as set forth in Exhibit 1, attached to and made a part of this resolution, for conducting a public process to solicit public input and testimony on proposed district-based electoral maps before adopting any such map.

Section 4. The timeline contained in Exhibit 1 may be adjusted by the City Manager as deemed necessary, provided that such adjustments shall not prevent the City from complying with the time frames specified by Elections Code Section 10010 and subsequent agreements with Scott Rafferty and his clients.

Section 5. The City Council directs staff to post information regarding the proposed transition to a district-based election system, including maps, notices, agendas and other information and to establish a means of outreach to receive public input and to answer questions from the public.

Section 6. This resolution shall become effective immediately upon its passage and adoption.

PASSED, APPROVED AND ADOPTED at the meeting held on February 12, 2019, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Bill Clarkson, Mayor

ATTEST:

Christina Franco, City Clerk

Exhibit 1: Tentative Public Hearing Timeline for Adoption of District Elections Ordinance

EXHIBIT 1

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* Map(s) must be published and made available 7 days before the hearing

SCOTT J. RAFFERTY**ATTORNEY AT LAW**1913 WHITECLIFF COURT
WALNUT CREEK CA 94506(202)-380-5525
RAFFERTY@GMAIL.COM

November 5, 2018

VIA CERTIFIED MAIL

RECEIVED

Hon. Greg Marvel, Clerk
 Members of the Board of Education
 c/o Superintendent Rick Schmitt (superintendent@srvusd.net)
 San Ramon Valley Unified School District
 699 Old Orchard Drive
 Danville, CA 94526

NOV - 6 2018

City Clerk
 City of San Ramon, CA

Ms. Renee Beck, City Clerk
 Members of the City Council
 City of San Ramon
 7000 Bollinger Canyon Road
 San Ramon CA 94583

Ms. Susan F. Brooks, District Clerk
 Members of the Board of Directors
 c/o William Ross, Esq. (wross@lawross.com)
 San Ramon Valley Fire District
 1500 Bollinger Canyon Road
 San Ramon CA 94583

Mr. Daniel McIntire, General Manager (mcintyre@dsrsd.com)
 Members of the Board of Directors
 Dublin San Ramon Services District
 7051 Dublin Boulevard
 Dublin, CA 94568

Ms. Marie Sunseri, City Clerk (Msunseri@danville.ca.gov)
 Members of the Town Council
 Danville Town Office
 510 La Gonda Way
 Danville, CA 94526

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

Dear Ms. Beck, Ms. Brooks, Mr. McIntire, Ms. Sunseri, and Elected Officials:

In 2001, the Legislature determined that the use of at-large elections (by cities and districts that are characterized by racially polarized voting) dilutes the influence of minority voting blocs. The CVRA created a private right of action to require the jurisdiction to elect its governing body from single-member districts. For example, Dublin Unified School District recently received a demand letter from the Southwestern Voter Registration Education Project, which led it to adopt districts.¹ On behalf the Bay Area Voting Rights Initiative ("BAVRI"), I give notice of our belief, supported by evi-

¹<https://www.dublin.k12.ca.us/cms/lib/CA01001424/Centricity/Domain/1/Shenkman%20Letter%20re%20CVRA.pdf>

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dence, that at-large voting dilutes minority electoral influence in the election of each of the legislative bodies in San Ramon Valley, thus violating [Elections Code Section 14047](#). Your councils and boards should consider this advice as an opportunity to engage the community in a collaborative process that avoids adversary litigation.

REGIONAL CONSIDERATION OF SINGLE-MEMBER CONSTITUENCIES

This may be the first proposal to consider and implement this reform on a regional basis. Doing so has both economies and synergies. Elections Code, Section 10010 permits an attorney to charge each jurisdiction up to \$30,000 for work performed in connection with the petition. Although I intend to represent the minority voters vigorously throughout the proceeding, unless there is litigation, the expense will likely be far below the cumulative limit. These fees are only a portion of costs that can be significant, especially for smaller jurisdictions. Despite the legislature's invitation to collaborate, jurisdictions often spend larger amounts to hire their own attorney and demographer. (Tiny Martinez budgeted \$60,000 for a defensive demographer and another \$45,000 for outside counsel, even though it only has 20,000 voters.²) Perhaps more critically, explaining the process to constituents requires a substantial commitment by the council and board members themselves; they must conduct a series of public hearings. Coordinating these processes will both streamline public input and improve its quality. As detailed below, an integrated approach will treat the San Ramon Valley as a political ecosystem and improve the quality of its democracy for each jurisdiction.

In this petition, BAVRI represents members of the Asian community, which is concentrated in San Ramon, Dublin and in unincorporated areas near the border between Contra Costa and Alameda Counties. The most recent officials estimate for citizens of voting age (CVAP) come from census survey data that are based on observations that occurred between 2012 and 2016. Since that time, the Census Bureau has estimated an increase in the Asian share of the total population.

	Population	Asian Population share	Adult citizen share
San Ramon	74365	45.6%	34.6%
Dublin (Alameda Cty portion of DSRSD)	54525	40.5%	30.5%
Danville town	43760	14.6%	12.2%
Norris Canyon Census Designated Place	1045	59.3%	58.9%
Camino Tassajara CDP	3455	48.6%	42.3%

² <http://www.cityofmartinez.org/civicax/filebank/blobdload.aspx?BlobID=16602#page=3>

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Blackhawk CDP	9470	24.0%	17.3%
Alamo CDP	16080	7.6%	6.9%
Diablo CDP	805	2.5%	2.9%
TOTAL	203505	33.5%	24.9%

Note: this does not include five additional precincts that are in either the school or fire district.

Subsequent sections of this letter discuss the right of the Asian community to an opportunity that is equal to that of the rest of the electorate to influence elections in favor of the candidates of its choice and why this entitles the community to district elections. The reform will increase opportunities for Asian candidates to run for local positions, and possibly to progress to higher office.

However, electing council and board members from actual neighborhoods has benefits for all residents. The legislature intended the low threshold for CVRA relief to create a strong presumption in favor of truly local elections, in part to counterbalance the effect of uniform legislation in a state as large and diverse as California. Although district elections are new to Contra Costa County, they are the norm in most of the state. In all of California, only one city (Irvine) with a larger population than San Ramon Valley Fire Protection District holds at-large elections.

The costs of running as a candidate in such large jurisdictions can be high. District elections can increase the candidate pool, by enabling grass-roots activists to run for office by knocking on neighbors' doors. Single-member constituencies makes your bodies more representative of localized communities of interest. Neighborhood board members are often more capable of generating support for parcel taxes and bonds.

These benefits are particularly important in the San Ramon Valley. In each of your jurisdictions, competition for office has not always been vigorous. Since none of the jurisdictions have term limits, the average age and tenure of its elected members is high. Few seek higher office. With the exception of Joan Buchanan's election to the Assembly in 2008, the region has been almost entirely represented by non-residents since Ellen Tauscher retired 20 years ago. Non-competitive at-large elections may explain why San Ramon Valley punches below its weight in county, state, and national politics.

The CVRA provides an opportunity to make organic changes to the electoral practices of a city or special district without the costs of a ballot question. [Elections Code, Section 10650](#) (special districts); [Government Code, Section 34886](#) (cities). Not only can a jurisdiction move from at-large to districted elections, but it can change the size of its board (within the relevant statutory limitations). It can add (or eliminate) an elected mayor, although this has not been required. School districts face the formality of applying to the State Board of Education for a waiver of the ballot question, but the

Petition to Comply with CVRA on a Regional Basis, page 4

State Board has granted at least 164 such waivers with little controversy. [Education Code, Section 5019\(a\) or 5020\(d\) \(voter approval required\); Section 33050 \(waiver\)](#)

STATUTORY REQUIREMENT FOR PROMPT CONSIDERATION

This petition has been filed on the eve of an election, so as to prevent this reform from becoming a partisan issue. The legal claim does not allege intentional discrimination and in no way relates to the merits of any individual incumbent or candidate. San Ramon will elect its first Asian council member tomorrow, since there are more vacancies than there are non-Asian candidates. This does not eliminate the need for a permanent reform or refute the legal predicate. Elections Code, Section 14028(a) limits the probative value of elections conducted after the petition is filed.

The timing of the petition also intends to make possible a negotiation to extend the demanding deadlines of the statute. Normally, the city or district must decide whether to adopt single member constituencies within 45 days, and then conduct at least five public hearings over a period of 90 days, in order to avail itself of a safe harbor from litigation (and to enjoy the \$30,000 fee cap).³ Under AB 350, passed in 2015, the fee cap is a quid pro quo for completing the entire process in 135 days or less (mid-March 2019). Prolonging this process generally increases the hours that I bill above the time that I can recover under the cap. However, I have accommodated jurisdictions that have shown a need to extend the deadline. Effective January 1, 2019, AB 2123 will limit any such extensions to three months and absolutely preclude agreements to defer implementation until after the census. While my client intends that your jurisdictions comply in the November 2020 election, we would consider negotiating an extended schedule for conducting the hearing and passing the required ordinance (or resolution), especially if you establish a joint redistricting commission (as proposed below).

The last regular meeting at which you can opt for the safe harbor is December 11, 2018 in the case of the city of San Ramon and San Ramon Valley Unified School District (SRVUSD), December 17, 2018 in the case of the San Ramon Valley Fire Protection

³ To preserve its safe harbor, the jurisdiction must declare an intention to move to district elections within 45 days. At this point, the city can have up to 90 more days to specify its plan. There must be a series of four public hearings, two before the city presents maps and two after. [Elections Code, Section 10010\(a\)](#). It is generally understood that the criteria correspond to those codified for population-based reapportionments and generally for municipalities: topography; geography; cohesiveness, contiguity, integrity, and compactness of territory; and community of interest. [Elections Code 22000\(a\); Government Code, Section 34884\(a\)\(1\) \[A.B. 278 \(2016\)\]](#). The mapping of districts, the sequence in which district members are elected, and other procedural change cannot have the effect of diminishing the ability of citizens of a race, color or language minority group to elect the candidates of their choice. [52 U.S.C. §10304\(b\)](#).

Petition to Comply with CVRA on a Regional Basis, page 4

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District (SRVFPD), December 18, 2018, in the case of Dublin San Ramon Community Services District (DSRCSD), and December 20, 2018 in the case of town of Danville. I am happy to extend the initial deadline in light of the holidays, but any further extensions not agreed by those dates would be subject to the restrictions of AB 2123. Absent an extension, the safe harbor will expire between March 11 and March 20, 2019.

EXPLANATION OF RACIALLY POLARIZED VOTING

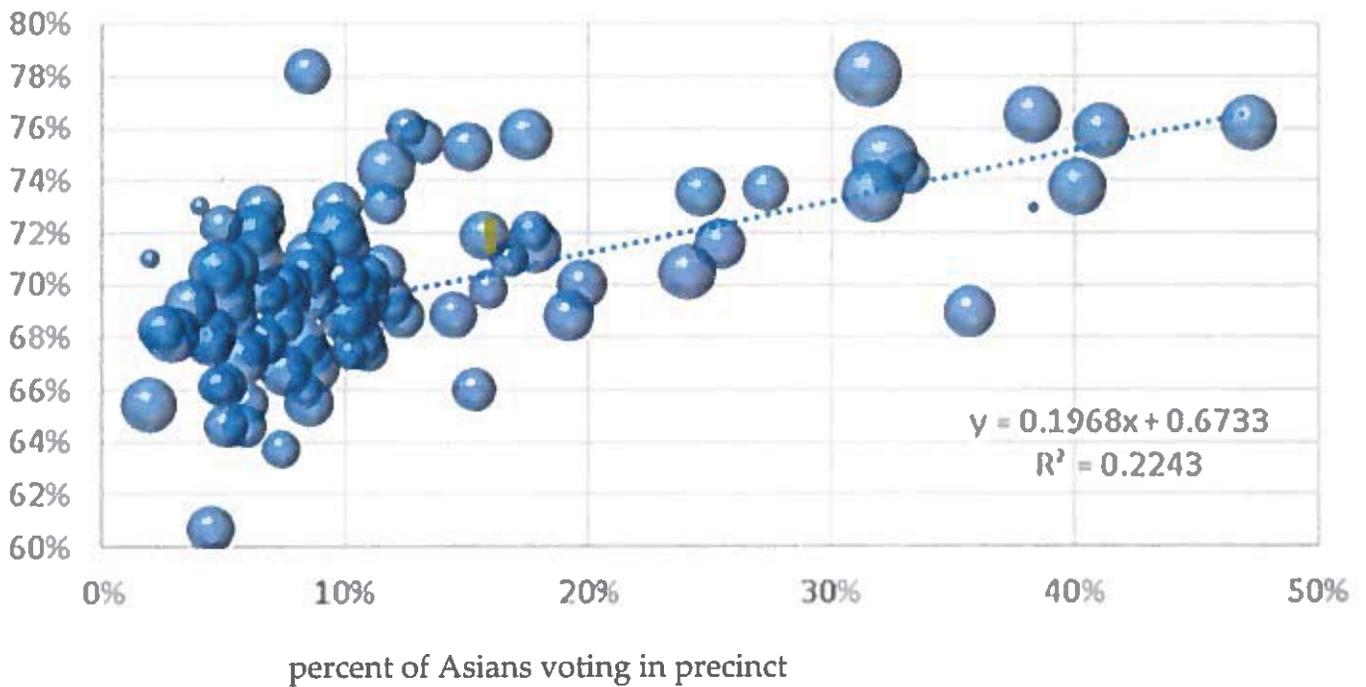
“The failure of minority candidates to be elected to office does not by itself establish the presence of racially polarized voting.” *Jaguero v. Palmdale*, (2014) 226 Cal. App. 4th 781. However, Elections Code, Section 14028(a) does require a showing of racially polarized voting. Racially polarized voting 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.⁴ 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. Asian voters 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.

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, but by much small margins in most San Ramon Valley precincts without large numbers of Asian voters. The correlation is even stronger when Latino voters (coded as non-Asian in this chart) are considered in alliance with the Asian community.

Support for Proposition 58 by San Ramon Valley Precincts

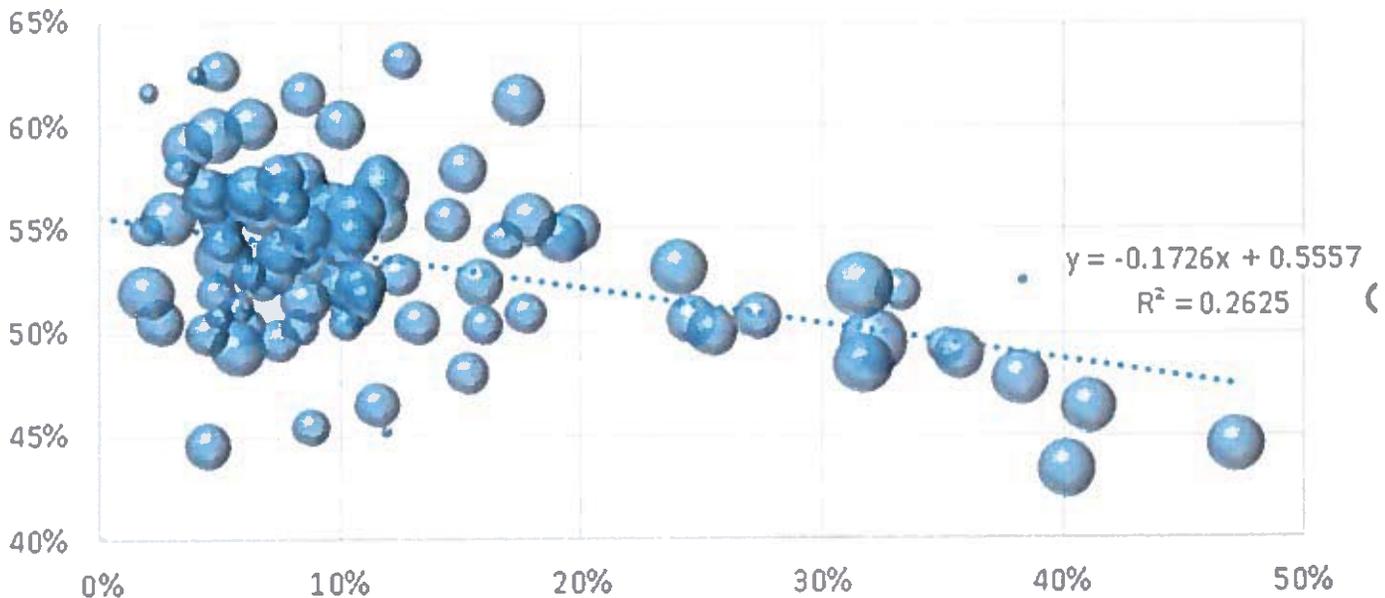
⁴ Elections Code, Section 14026(e): “a difference ... in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.”

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Proposition 64 on marijuana revealed that the Asian community was less enthusiastic than the rest of the electorate. The ecological regression of high-Asian precincts infers that a majority of Asian voters opposed the proposition.

Support for Proposition 64 by San Ramon Valley Precincts



Attachment: A: Letter from the Law Offices of Scott J. Rafferty (2019-017 : Resolution of Intent District-Based Elections)

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Once racial polarization is established, it is probative, but not necessary, to show that minority candidates have been disproportionately unsuccessful in the at-large system. [Section 14028\(e\)](#). The federal Voting Rights Act does not prohibit at-large voting unless it is possible to create at least one district that has a majority of minority voters. However, the California Legislature has a much stronger preference for single member constituencies. Wherever there is racially polarization, the jurisdiction must create single member districts that attempt to increase the influence of minority voting blocs. The approval of voters or the concurrence of individual cities within the district is not required.

HISTORY AND IMPACT ON ELECTIONS IN SPECIFIC JURISDICTIONS

It is difficult to perform “endogenous” analyses (that rely on races for the specific jurisdiction) because there are few recent minority candidates, except for the city of San Ramon. To some extent, this may reflect the demoralization of the Asian voter, which depresses Asian turnout and affects up-ballot races. In large part, it reflects the high cost and campaign burden of campaigning in a large district in a low-profile race for a high-performing district. The result is a lack of authentic representation for all communities. Reform will open opportunities to minority candidates and to a new generation of public officials.

San Ramon Valley Unified School District

SRVUSD is the jewel in the crown of southern Contra Costa County. It is the reason so many families, especially Asian families, have chosen to live here. Of the approximately 24 districts in California with larger student enrollments, only six elect at-large. Two are in the Bay Area (San Francisco and Fremont). Fremont has an Asian majority student enrollment and an Asian board president. None of these districts has the A+ rating given SRVUSD by Niche. Irvine Unified is similar in size and performance, and voted unanimously to conduct its first district elections this fall.

District	county	students	population	size	niche	Latino%	Black%	Asian%
San Francisco Unified	San Francisco	58,414	817,501	7	B+	33%	15%	6%
Santa Ana Unified	Orange	53,131	258,097	5	C+	81%	1%	7%
San Bernardino City Unified	San Bernardino	53,027	255,835	7	C-	60%	13%	4%
San Juan Unified	Sacramento	49,114	322,820	5	B-	14%	5%	5%
Fontana Unified	San Bernardino	39,470	178,493	5	C	75%	7%	4%
Fremont Unified	Alameda	34,208	218,172	5	A-	15%	4%	51%
San Ramon Valley Unified	Contra Costa			5	A+	7%	2%	27%
Mt. Diablo Unified	Contra Costa	31,923	255,055	5	B-	24%	4%	12%
IN TRANSITION								
West Contra Costa Unified	Contra Costa	30,596	240,308	5	C	32%	18%	19%
Irvine Unified School District	Orange	31,392	195,423	5	A+	10%	6%	38%

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The case for trustee area elections in SRVUSD is quite different than it has been in a nearby district that has resisted the reform. That district has serious performance and equity problems that may be ameliorated by giving the underrepresented community a voice on the Board. SRVUSD has no such challenges. But the incumbents have built a high level of performance into the administration of the District. That achievement is unlikely to be at risk if the reform results in turnover of long-term Board members.

No minority has ever been elected to the SRVUSD board. Only three of the last six elections have been contested. The current president was appointed in 2009 and reelected in 2010 and 2014. The past president was elected in 2006. The clerk was appointed in lieu in 2008, won election and 2012, and faced no opposition in 2014. When a two-term incumbent resigned six months before this election, the Board appointed Susanna Ordway, an Asian. Trustee Ordway and two other incumbents faced no opposition.

Prior to the recent appointment, the average tenure was over 10 years. No non-incumbent had won election since 2010. Two current members were appointed to unfilled terms and continued as incumbents. A third incumbent joined the Board by seeking an open seat without opposition.

In 2010, 2012, and 2014, there were contested elections, with only one additional candidate. In 2010, there was an open seat. In the subsequent contests, the incumbents campaigned together and defeated the challenger, even in 2014, when the challenger outspent all the incumbents combined. Although each challenger was a non-Hispanic white male, the pattern demonstrates the hurdle that an Asian candidate would face challenging long-time incumbents in a high-performing school district.

By appointing Trustee Ordway, the Board may have intended to recognize the value of having a representative of the Asian community. This sets the stage for an elected representative, who can serve as authentic choice of the Asian community.

San Ramon Valley Fire Protection District

SRVFPD has not had a minority trustee in recent history. In 2012, three non-Hispanic white candidates defeated Gerardo Peniche. In most other respects, the electoral history of SRVFPD resembles that of the school district. Only three of the last six elections have been contested, and all other candidates have been non-Hispanic whites. Two incumbents are appointees.

Dublin-San Ramon Community Services District

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Since 2004, Edward Duarte is the only non-incumbent to be elected trustee. He is also the only non-minority and the only resident of Contra Costa County to serve on the Board. The two non-Hispanic white male incumbents were elected in 2004 and faced a contested election in 2012. The two non-Hispanic white female incumbents were appointed in 2009 and 2015 and faced contested elections the year following their appointment. All live in Dublin. All are non-Hispanic whites, who comprise a minority of only 41 percent of Dublin's population.

At-large elections are particularly unfair to Contra Costa County, which accounts for approximately 40 percent of the voters and population of this special district. In the event that an insufficient number of candidates apply, an appointment is made by the Alameda County Supervisors. [Elections Code, Section 10515\(c\)](#). The Board can fill vacancies that occur in advance of an election, but they apparently feel no need for representation that is geographically or ethnically balanced, since in the last decade, they have picked two non-Hispanic whites from Dublin.

City of San Ramon

Asians outnumber non-Hispanic whites within the city of San Ramon (45.6% v. 42.1%). Yet the mayor and city council members are all non-Hispanic white males, one of whom has served continuously for 20 years. The mayor is serving his third term, after having served three terms on the school board.

San Ramon twice defeated efforts to move its municipal elections to November of even years. It adopted this change shortly before the Legislature required all jurisdictions with low turnout to use statewide election dates.⁵ All of the incumbents were elected by virtue of these off-year elections, the most recent of which (in 2013) had a turnout of 24 percent. The council used a previous off-year election (with a turnout of 23%) to convert one of the council seats to a mayor elected at-large. In San Ramon's only even-year election to date (2016), two of the white male incumbents still defeated two female Asian challengers. In fact, each of the incumbents beat each of the challengers in every precinct. This is not necessarily surprising given the demoralization of Asian voters, the difficulty of recruiting support for an unprecedented challenge by young Asian candidates, and the high cost of campaigning on a city-wide basis. There is no implication that these candidates could not have been more successful had they been able to focus their campaign within their own neighborhood community.

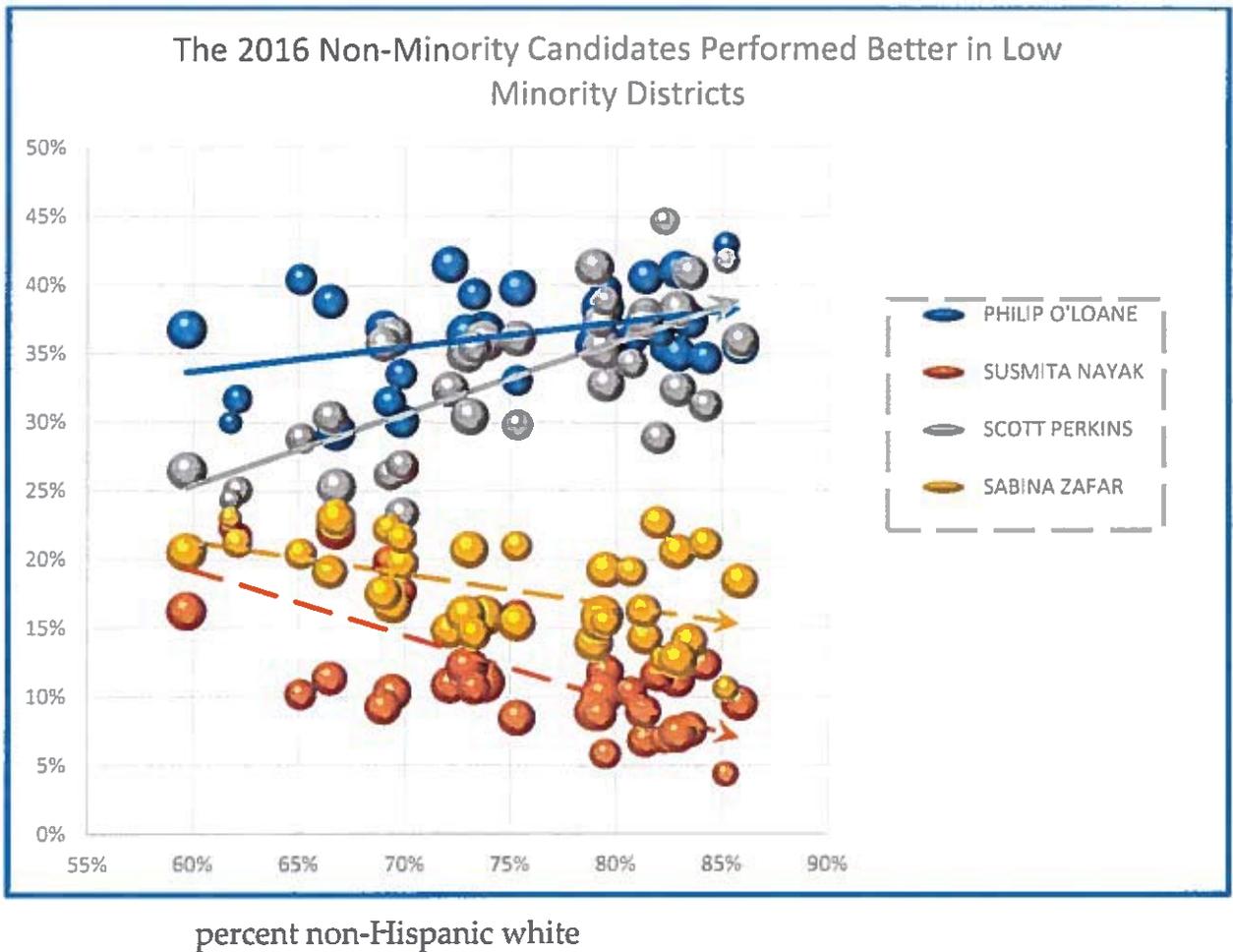
As the following chart shows, the Asian candidates fared significantly better in high-minority communities, while the white candidates gained their highest vote in precincts that had very few Asians or Latinos.

⁵ AB 415 (2015) added [Section 14050](#), et seq., the Voter Participation Rights Act.

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Town of Danville

Danville also has an all-white, non-Latino town council. Danville is not immune from racially polarized voting that is demonstrable throughout the San Ramon Valley and in most parts of California. However, there are some factors that would make Danville a lower priority on a standalone basis. Only 15% of total population is Asian; 7% Latino; and 2% black. Only about 20 percent of all adult citizens are minorities. This is no defense to CVRA litigation, and some attorneys have accepted cases against smaller jurisdictions or where minorities are small percentages of total population.⁶ These are not situations in which the high price of campaigning is a barrier to the entry of minority candidates.

	population	% Latino	% black	% Asian
Yucca Valley	20700	17%	6%	2%
Eureka	27191	10%	2%	6%
Twentynine Palms	25048	23%	9%	4%
Seal Beach	24168	13%	1%	9%

CVRA does not require that it be possible to create a district in which the protected group has a majority – or even a plurality large enough to guarantee influence. But the effectiveness of the remedy is a factor I consider in determining whether a case should be pursued. Asian community within Danville is concentrated in block groups in the East and South that could support an Asian minority district with a significantly higher share of adult citizens than was achieved in Martinez.

Ultimately, Danville is part of the larger political ecosystem of the San Ramon Valley. It has an opportunity to join in a regional reform at a substantially reduced cost. While it is not the primary focus of my clients’ concerns, it should consider the possible benefits of districting to all its residents. It would be my intention to limit any bill presented to Danville to the incremental cost of supporting its process.

ADDITIONAL BENEFITS AND CONSIDERATIONS

Although my client shares the Legislature’s desire not to defer districting until after the census results in 2021, the Legislature has also facilitated the creation of local independent redistricting commissions, which has become increasingly popular among citizens. A coordinated regional reform provides a basis for a joint or county-sponsored commission that provides an assurance of a districting process that is fair to

⁶ To cite the most extreme case, Desert Center Unified School District in Riverside County received a demand letter. It has a population of 163 adults, who may be liable for \$30,000 in attorneys’ fees plus implementation costs.

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both incumbents and potential challengers. 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.

Although the Legislature has promoted collaboration, many jurisdictions feel compelled to retain their own demographer and defense counsel, as if litigation were inevitable. While my clients have directed me to achieve an effective remedy for the entire protected class of Asian voters, this is not inconsistent with a map and implementation schedule that is customized to meet local needs. If requested, I can provide map options to the specifications of any incumbent, provided that there is also an opportunity to present the option proposed by the Asian community. In one ongoing proceeding, the map proposed by the school district's own demographer, who has very extensive experience, was rejected by the County Committee on School District Organization in favor of one that emulated our initial map. Our subsequent revision is widely favored in the community. I believe that a collaborative effort can minimize costs for all jurisdictions.

CONCLUSION

While you may choose to portray this as a "threat of litigation," it is an effort to engage in a collaborative process to comply with the CVRA on a basis that will likely satisfy most of office-holders and constituents, including those who currently have reservations. This is not an attempt to displace incumbents, but rather to make a seat at the table for the Asian community and possibly for any other neighborhoods that have been chronically underrepresented. It is attempt to equalize the protected group's ability to promote its candidates of choice, who may or may not be genetically Asian, but who reflects their values and authentic preferences. But it is more critically an opportunity to make local government in the San Ramon Valley more truly representative, to revitalize the engagement of the community in jurisdictions whose elections have been neglected, and to create opportunities for a new generation of political leaders that is as diverse as the growing population of the Valley.

Sincerely,



Scott J. Rafferty