



December 6, 2021

*Sent Via Email*

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c/o Clerk of the Board  
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**Re: Supervisorial Redistricting and Compliance with the Voting Rights Act**

Dear Members of the Riverside County Board of Supervisors:

The ACLU of Southern California sent a letter to the Riverside County Board of Supervisors (Board) on November 16 highlighting the need for the Board to adopt a map with two districts with majority Latino citizen voting age population (LCVAP) that would finally give cohesive Latino communities a real opportunity to elect candidates of their choice. We again urge the Board to comply with the federal Voting Rights Act of 1965 (Voting Rights Act or VRA) and adopt a map with two effective LCVAP-majority districts. Thus, the Board should adopt Map 1.4 because it is the only map that the Board is considering that has two effective LCVAP-majority districts.

**I. The County Must Adopt a Map with at Least Two Effective LCVAP-majority Districts**

Section 2 of the Voting Rights Act prohibits supervisorial district maps that dilute the voting strength of racial and ethnic minorities. *See* 52 U.S.C. § 10301(a). To avoid vote dilution, the VRA requires certain jurisdictions to draw districts that provide minority voters with an effective opportunity to elect their preferred candidates. To determine whether the Board must create these districts, a court would first examine the three *Gingles* preconditions: (1) whether the Latino community in Riverside County is sufficiently large and geographically compact to constitute a majority in one or more single-member district; (2) whether Latino voters are politically cohesive; and (3) whether bloc voting by the majority of voters usually prevents Latino voters from electing their preferred candidates. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). The second and third preconditions are known as racially polarized voting (RPV).

If these preconditions are established, courts then “consider[ ] whether on the totality of circumstances, minorities have been denied an equal opportunity to participate in the political process and to elect representatives of their choice.” *Abrams v. Johnson*, 521 U.S. 74, 91 (1997) (quotations omitted). Courts look at a series of factors, referred to as the “Senate Factors,” as part of this analysis. *Gingles*, 478 U.S. at 36-37. These factors include current and past discrimination, the extent of racial polarization, minority candidate success, and rough proportionality. *Luna v. Kern Cnty.*, 291 F. Supp. 3d 1088, 1131-32 (E.D. Cal. 2018). There is no requirement that any particular number of factors be proved, but courts have held that the extent of racial polarization and the extent to which minorities have been elected to

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public office are the two most important factors. *Id.* at 1132 (citations omitted). The United States Court of Appeals for the Ninth Circuit has also held that rough proportionality—“the relation of the number of majority-minority voting districts to the minority group’s share of the relevant population”—is the third most important factor. *Id.* (citing *Old Person v. Cooney*, 230 F.3d 1113, 1129 (9th Cir. 2000)).

The three *Gingles* preconditions are present in the County. The Latino community is numerous and compact. Latino voters make up 39.3% of the County’s citizen voting age population (CVAP)<sup>1</sup> and there are cohesive Latino communities on the westside of the County. It is possible to draw at least two compact districts on the westside where Latino voters make up more than 50% of the CVAP in each district, as evidenced by the Inland Empire Redistricting Hub’s community submission, Map 1.4. The County’s consultants<sup>2</sup> and the UCLA Voting Rights Project (UCLA VRP)<sup>3</sup> have also confirmed that there is RPV in Riverside County, meeting the second and third *Gingles* preconditions.

There is also extensive totality of the circumstances evidence that supports the need to adopt a map with two LCVAP-majority districts. Community testimony, socioeconomic data, and past and current discrimination against the Latino community in the County support a finding that the Latino community has less of an opportunity to participate in the political process. *See Clark v. Calhoun Cnty.*, 21 F.3d 92, 97 (5th Cir. 1994) (“it will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances”). Further, only one Latino candidate, Supervisor V. Manuel Perez, has ever been elected to the Board and this election was surrounded by special circumstances. Supervisor Perez was appointed to the Board in 2017 and was then elected as an incumbent in 2018. Courts routinely disregard these types of elections because they are not probative of a larger pattern of minority success. *See, e.g., Pope v. Cnty. of Albany*, 94 F. Supp. 3d 302, 340 (N.D.N.Y. 2015) (discounting race as due to special circumstances where successful minority candidate was an appointed incumbent); *Ala. State Conf. of the NAACP v. Alabama*, 2020 WL 583803, at \*4 (M.D. Ala. Feb. 5, 2020) (same). Supervisor Perez was also defeated in a racially polarized supervisorial race in 2014<sup>4</sup> and no other Latino supervisorial candidate has been elected in County history.<sup>5</sup> Finally, Latino voters comprise of 39.3% of the County’s CVAP, or roughly two-fifths of the CVAP, but there are currently no LCVAP-majority districts.

If the Board adopts Maps F or H,<sup>6</sup> which each only have one LCVAP-majority district, all three of the most important totality of the circumstances factors will weigh in favor prospective plaintiffs. *See, e.g., Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994) (noting that an important factor under a Section 2 analysis is whether “minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters’ respective shares in the voting-age population.”) (emphasis added). What’s more, prospective plaintiffs will be able to establish all three of the *Gingles* preconditions: as in the Kern County lawsuit from the 2011 redistricting cycle, it will be possible here to create a second LCVAP-majority district<sup>7</sup> and the County has already found that there is RPV. To avoid diluting the

<sup>1</sup> 2019 5-year American Community Survey (ACS).

<sup>2</sup> Dr. Christian R. Grose, Dr. Natalie Masuoka, Nathan Chan, and Matthew Nelson, Report on Racially Polarized Voting in Riverside County at 1 (Nov. 4, 2021), available at <https://bit.ly/3IDFt4Q>.

<sup>3</sup> Memorandum from UCLA VRP to Riverside County Board of Supervisors at 1 (Dec. 2, 2021), available at <https://bit.ly/3GjIFf3> [hereinafter UCLA VRP Memo].

<sup>4</sup> *Id.* at 5.

<sup>5</sup> Jeff Horseman, *Coachella Councilman V. Manuel Perez to Replace the late Supervisor John Benoit*, The Press-Enterprise (May 9, 2017), <https://bit.ly/3IpwGNU>.

<sup>6</sup> All references to Map F and H refer to the most recent versions released by the County.

<sup>7</sup> Notably, the court in *Luna* found that the 2011 map violated the VRA because, among other things, it did not contain a second LCVAP-majority district. 291 F. Supp. 3d at 1113, 1117; *id.* at 1105 (requiring a showing that it is possible for the Latino population to “constitute a majority in a second single-member supervisorial district”). The court came to this conclusion even though, at the time of the map’s adoption, Latino voters comprised only 30% of the County’s CVAP. *Id.* at 1133. This was because *Luna* involved a Latino population concentrated in the northern part of Kern County that had been cracked among two districts, similar to the westside Latino communities cracked by several districts in Maps F and

strength of Latino voters and violating the Voting Rights Act, the Board must adopt a map with at least two LCVAP-majority districts—roughly proportional to Latino voters’ respective shares of CVAP in the County. Map 1.4 is the only map under consideration that does this.

## II. Map 1.4 Complies with the VRA, While Maps F and H Dilute the Latino Vote

The Latino population on the westside of the County is large and compact, centered around two distinct areas: 1) Jurupa Valley and northwest Riverside, and 2) Mead Valley, Good Hope, Perris and Moreno Valley.<sup>8</sup> These Latino communities are separated from each other by areas south of where State Route 91 and Interstate 215 meet (hereinafter, 91/215 junction) that are more affluent and white with higher voter registration and turnout.<sup>9</sup> The distinct Latino communities are large and compact enough to comprise two effective LCVAP-majority districts, as evidenced by draft districts 2 and 5 in Map 1.4.

Maps F and H crack these cohesive communities into several districts so that Latino voters are the minority in all but one district that is just barely majority LCVAP. This district, draft district 1 in both configurations, is made even less effective by the inclusion of the largely white, affluent, and high voter turnout areas south of the 91/215 junction. Maps F and H place northwest Riverside on the northwest end of district 1, the affluent area south of the 91/215 junction in the middle of the district, and Perris in the southeast. In these configurations, Latino voters in Jurupa Valley are split from Latino voters in northwest Riverside and placed in district 2 and all or part of the Latino voters in Moreno Valley are split from Perris and placed in district 5. Given racially polarized voting in the County, if the Board adopts either Map F or Map H and cracks the Latino community, Latino voters on the westside will have no representation or less representation than their size merits.

The table below provides a demographic overview of the draft maps. It shows that Map 1.4 includes two LCVAP-majority districts. The first district, district 2, has an LCVAP of 51.2%, with 46.7% Latino registration and 43.8% turnout during the November 2020 election. The second district, district 5, has an LCVAP of 51.3%, with 46.5% Latino registration and 44% turnout during the November 2020 election. The average household income in both districts is less than \$60,000 a year. Map F creates only one LCVAP-majority district, district 1, at just 50.3% LCVAP and only 45.2% Latino registration and 41.7% turnout during the November 2020 election. Unlike either of the two LCVAP-majority districts in Map 1.4, the average income of district 1 goes up to \$67,958 because of the addition of affluent areas. Map H similarly creates one LCVAP-majority district, district 1, at just 50.3% LCVAP, with only 45.1% Latino registration and 41.8% turnout during the November 2020 election. Because of the addition of affluent areas, district 1 in Map H has an average household income of \$66,919.

Map	LCVAP-majority District	LCVAP <sup>10</sup>	Latino Reg. <sup>11</sup> (Nov. 2020)	Latino Turnout (Nov. 2020) <sup>12</sup>	Avg. Hshld. Income <sup>13</sup>
Map 1.4	District 2	51.2%	46.7%	43.8%	\$51, 519
Map 1.4	District 5	51.3%	46.5%	44%	\$59, 482
Map F	District 1	50.3%	45.2%	41.7%	\$67,958
Map H	District 1	50.3%	45.1%	41.8%	\$66,919

H. *See id.* at 1105 (showing that the 2011 Kern County supervisorial map cracked the agricultural communities around Delano and Wasco into districts 1 and 4).

<sup>8</sup> The CVAP data discussed in this paragraph is from the 2019 5-year ACS.

<sup>9</sup> The registration and turnout data discussed in this paragraph is from voter data by precinct from the Statewide Database. The household income data discussed in this paragraph is from the 2019 5-year ACS.

<sup>10</sup> LCVAP numbers in the table come from the County’s released draft maps with attached demographic data.

<sup>11</sup> Statewide Database’s Spanish surname registration data by precinct.

<sup>12</sup> Statewide Database’s Spanish surname turnout data by precinct.

<sup>13</sup> 2019 5-year ACS.

Although Maps F and H only include one LCVAP-majority district in a County where Latino voters are roughly two-fifths of the CVAP, draft district 1 is inexplicably a bare majority district that cuts off surrounding cohesive Latino communities on the two ends of the district. The VRA requires the Board to create effective LCVAP-majority districts, and a bare majority district that includes dissimilar affluent and high voter turnout areas decreases the effectiveness of the district. Courts routinely require jurisdictions to adopt maps that go above the 50% *Gingles* precondition threshold, particularly where, as here, the Latino registration and turnout in Map F and Map H's district 1 is unnecessarily low. *See Corbett v. Sullivan*, 202 F. Supp. 2d 972, 985 (E.D. Mo. 2002) (rejecting a remedial district that did not consider low voter turnout and voter registration); *Neal v. Coleburn*, 689 F. Supp. 1426, 1437 (E.D. Va. 1988) (finding that supermajorities in remedial districts were necessary as a corrective measure because socioeconomic disparities had resulted in depressed political participation rates).

### III. The County's Emphasis on District 4 is Misplaced

A presentation slide for the December 1 Riverside County Planning Commission meeting refers to draft district 4 in Maps F and H as a "Latino opportunity-to-elect district," apparently as evidence that Maps F and H comply with the VRA.<sup>14</sup> In both configurations, however, district 4 has roughly 38% LCVAP and had 33.2% Latino registration and 29.2% Latino turnout during the November 2020 election. Conversely, in all configurations district 4 has roughly 53% white CVAP, more than any other district in a County where white voters do not tend to support Latino-preferred candidates. November 2020 election data show even higher numbers: white voters comprised 65% of all registered voters and 69% of all votes cast in the district.<sup>15</sup> It is therefore incorrect to refer draft district 4 as Latino opportunity-to-elect district.

District 4 can best be described as an influence district, a district where minority voters, on their own, cannot elect candidates of choice but can still influence the outcome of an election. *See Bartlett v. Strickland*, 556 U.S. 1, 13-15 (2009) (noting that a district where Black voters comprise of 39% of the voting population is an influence or cross-over district, not an opportunity to elect district under the VRA). Influence districts are not required by the VRA, *LULAC v. Perry*, 548 U.S. 399, 445-46 (2006), and are not an effective remedy for vote dilution. Instead, the VRA requires the creation of districts where "a minority group comprises a numerical, working majority of the voting-age population." *Bartlett*, 556 U.S. at 13. Given polarized voting in the County, the Board must adopt a map with at least two districts where Latino voters constitute a working majority that, standing alone, have an opportunity to elect candidates of choice.

Past elections show that, when given a choice under normal conditions, most white voters in district 4 will not support the Latino-preferred candidate. This is evidenced by the 2014 supervisorial election where Supervisor John Benoit defeated then-candidate Perez. This race was racially polarized.<sup>16</sup> Governor Jerry Brown subsequently appointed Supervisor Perez to the Board in 2017.<sup>17</sup> Supervisor Perez ran again in 2018, this time with the benefit of incumbency. Voters again exhibited racial polarization during his race.<sup>18</sup> Nonetheless, Supervisor Perez, who is well-respected and had represented the area for more than a decade as a California assemblymember and as a Coachella City councilmember,<sup>19</sup> was finally elected to the Board in 2018. While these special circumstances do not minimize the achievements of Supervisor Perez, they do demonstrate why this specific election is not probative of a larger pattern of the success of Latino-preferred candidates. *See supra* Section I (discussion of special circumstances). Neither is the 2018 district 4 election probative of a larger pattern of Latino-preferred candidate success

<sup>14</sup> 2021 Riverside County Redistricting Map Summary – December 1, 2021, County of Riverside, *available at* <https://bit.ly/31qYQrj> (reference in row 4.C., Maps F and H).

<sup>15</sup> Registration and turnout data is from voter data by precinct from the Statewide Database.

<sup>16</sup> UCLA RPV Memo, *supra* note 3 at 6.

<sup>17</sup> Jesse Marx, *Gov. Brown Taps V. Manuel Perez as Riverside Cnty. Supervisor to Succeed the Late John Benoit*, The Desert Sun (May 9, 2017), <https://bit.ly/3m1jQMn> [hereinafter Desert Sun Article].

<sup>18</sup> UCLA RPV Memo, *supra* note 3 at 5.

<sup>19</sup> *See* Desert Sun Article, *supra* note 17.

on the westside, where three districts currently crack the Latino population and where there has never been a Latino supervisor in the County's history.

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The Board must adopt a map with at least two LCVAP-majority districts where Latino voters have an effective opportunity to elect candidates of choice. Compliance with the Voting Rights Act must take priority over almost all factors except equality of population. Map 1.4 shows that it is possible to draw a map with districts substantially equal in population and that complies with the Voting Rights Act. We therefore urge you to adopt Map 1.4. If you have any questions, feel free to contact us at [jgomez@aclusocal.org](mailto:jgomez@aclusocal.org) and [cvalencia@aclusocal.org](mailto:cvalencia@aclusocal.org).

Sincerely,

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