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February 4, 2020 1:17PM

VIA CERTIFIED MAIL 70180680000036640902 delivered February 6, 2020, 1:08pm

Mr. David Reid Clerk,

Folsom-Cordova

Unified School District

c/o Ms. Kellie Goldsmith, Executive

Assistant to the Superintendent

1965 Birkmont Drive

Rancho Cordova, CA 95742-6407

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

Dear Trustee Reid:

Neighborhood Elections Now, representing Latino voters in Rancho Cordova and Folsom, has asked the Bay Area Voting Rights Initiative to send this notice that the Folsom-Cordova Unified School District (FCUSD) may be in violation of the [California Voting Rights Act \(CVRA\)](#). The at-large method of electing trustees has impaired the ability of FCUSD's Latino minority to influence the outcome of trustee elections, in coalition with other language and racial minorities protected by the CVRA. Although 22 percent of FCUSD's students are now Latino,<sup>1</sup> there has never been a Latino trustee. Winner-take-all has also resulted in the chronic underrepresentation of Rancho Cordova, which has the highest concentration of immigrant and low-income families, of students who are learning English or have special needs, and of voters protected by the CVRA. The prospective plaintiffs can show racially polarized voting, which is the predicate for demonstrating that at-large elections are illegal, but race and Latino ethnicity should not be the predominant factor in designing the trustee areas.

Creating trustee areas will make elections more competitive in all parts of the district and will guarantee that the neediest neighborhoods always have a dedicated voice on the Board. Perhaps most critically, trustee area elections will ensure that whenever a difficult choice must be made, the Board has a trustee who is committed and accountable to each affected neighborhood. Even when there is contention over limited resources, each interest will entrust their member to represent their needs, interests, and values.

The absence of contested elections in three of the last four cycles is further evidence that FCUSD is simply too big for at-large elections. The expense of

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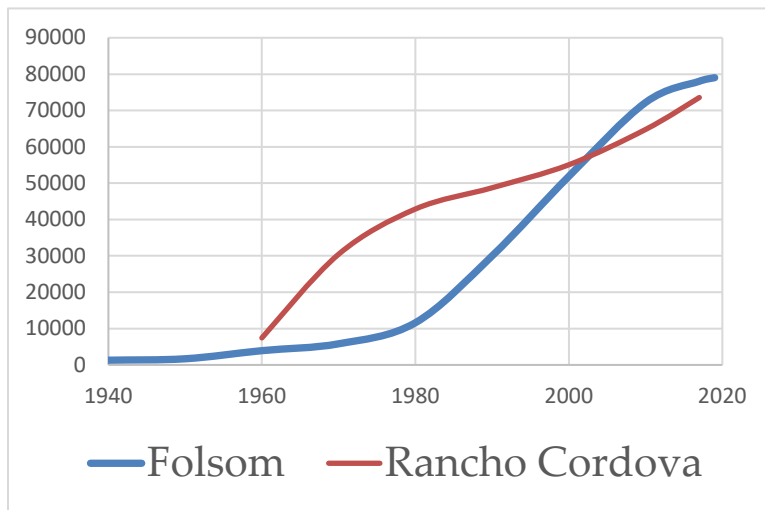
<sup>1</sup> <https://nces.ed.gov/programs/edge/TableViewer/acsProfile/2017;https://dq.cde.ca.gov/dataquest/dqcensus/enrethlevels.aspx?agglevel=District&year=2018-19&cds=3467330>

campaigning across a district of this size is formidable, particularly for grass-roots candidates from disadvantaged communities. Of the 61 unified school districts that are as large as FCUSD, no more than eight still elect at-large.<sup>2</sup> All but five cities larger than FCUSD have adopted district elections or are in the process of doing so.<sup>3</sup>

### FCUSD's HISTORY OF GROWTH AND DIVISION

FCUSD combines the city of Folsom, most of the city of Rancho Cordova, and unincorporated areas. Except for the former air force base at Mather, the unincorporated areas were almost uninhabited in 2010. Over its 70-year history, the two cities that it serves have grown at different times. The area incorporated as Rancho Cordova in 2003 experienced a building boom in the 1950s. The District did not open a high school in Rancho Cordova until 1963, although its population had surpassed Folsom five years earlier. Under the Lanham Act, FCUSD received federal funds to offset the impact of Mather Air Force Base. Instead of increasing capacity in schools in Rancho Cordova, the District bussed military dependents through the city to attend Folsom High School until 1988.<sup>4</sup> This provided the infrastructure that prepared Folsom for the growth it experienced in the 1990s. The District's most recent growth has been in the unincorporated areas east of Mather, which has been annexed from Elk Grove USD. This new housing is significantly more affluent than the older areas on Rancho Cordova.

FOLSOM/RANCHO CORDOVA POPULATION 1940-2020



This chart reflects population within the municipal boundaries, which do not completely correspond with FCUSD.

<sup>2</sup> San Francisco, San Juan, San Bernardino City, Chino Valley, Fontana, Hayward, Santa Clara, Torrance.

<sup>3</sup> Glendale, Santa Clarita, Hayward, Thousand Oaks, Huntington Beach.

<sup>4</sup> <http://web.archive.org/web/20090202111222/http://www.fcusd.org/BoardWeb/aboutour.htm> (retrieved Feb. 2, 2009).

In 1984, a major electronics company established a campus in Folsom. By 1992, it employed 2500, which doubled by 1995 and peaked at 7500 around 2000. Folsom has continued to prosper, in large part due to the excellence of its school system. Although the cities remain similar in total population, Folsom's median annual family income is now almost double that of Rancho Cordova (\$107k v. \$58k).<sup>5</sup> Fifteen percent of Rancho Cordova households are below the federal poverty rate, some live in trailer parks and aging housing stock in the area between Route 50 and Folsom Boulevard, which S.B. 535 designated as a "disadvantaged community."

In 1994, Folsom residents began a decade-long quest to jettison the schools in Rancho Cordova.<sup>6</sup> In 1996, they proposed Measure O, which would have required Rancho Cordova to honor all existing teacher contracts, but created a new district in Folsom that could negotiate from scratch.<sup>7</sup> The Board opposed the ballot measure, but two of the opponents were defeated for re-election and replaced with trustees from Folsom. When the measure lost by 62%, Folsom voters filed a futile lawsuit to remove all the no votes from Rancho Cordova.<sup>8</sup> When a district-wide bond failed in 2000, FCUSD borrowed \$7.8 million to finish a new high school in Folsom.<sup>9</sup> SB 1129 allowed Folsom to pass a bond measure that excluded Rancho Cordova schools.<sup>10</sup> The Board separated accounting and determination of school attendance areas, and administered developer fees earmarked for Folsom.<sup>11</sup>

None of these actions abated the demands by some Folsom residents to secede. In April 2002, the Board voted 4-1 to seek voter approval to dissolve the District. The only trustee from Rancho Cordova, Roger Benton, dissented and was defeated for reelection two years later.<sup>12</sup> The county board unanimously rejected the dissolution proposal.<sup>13</sup> In July 2004, a CDE staff report also recommended rejection, citing segregation. Folsom schools would be 21% minority, while Rancho Cordova would be

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<sup>5</sup> <https://datausa.io/profile/geo/folsom-ca/?compare=rancho-cordova-ca>

<sup>6</sup> Folsom's largest employer helped fund the secessionist movement. "Folsom vs Rancho Cordova in Measure O Feud," *Sacramento Bee*, March 11, 1996, N1. The lone dissenter campaigned for the measure on a high school campus, where she "angrily criticized" the Board's student representative who opposed dissolving the district and made another student cry. "Trustee Accused of Berating Student Dodges Censure," *Sacramento Bee*, March 18, 1996, B4.

<sup>7</sup> Don't Split Folsom Cordova, *Sacramento Bee*, March 14, 1996, B6.

<sup>8</sup> Suit: Count Just Folsom's Vote on Split, *Sacramento Bee*, April 10, 1996, B-1

<sup>9</sup> Trustees Await Report on Splitting District, *Sacramento Bee*, February 24, 2000

<sup>10</sup> District mulls 2 bond options - New law allows Folsom Cordova district to consider separate measures., *Sacramento Bee*, August 5, 2001. A series of Folsom-only bonds were defeated. Folsom City Council Rejects Plan For November School Bond Vote, *Sacramento Bee*, July 12, 2000

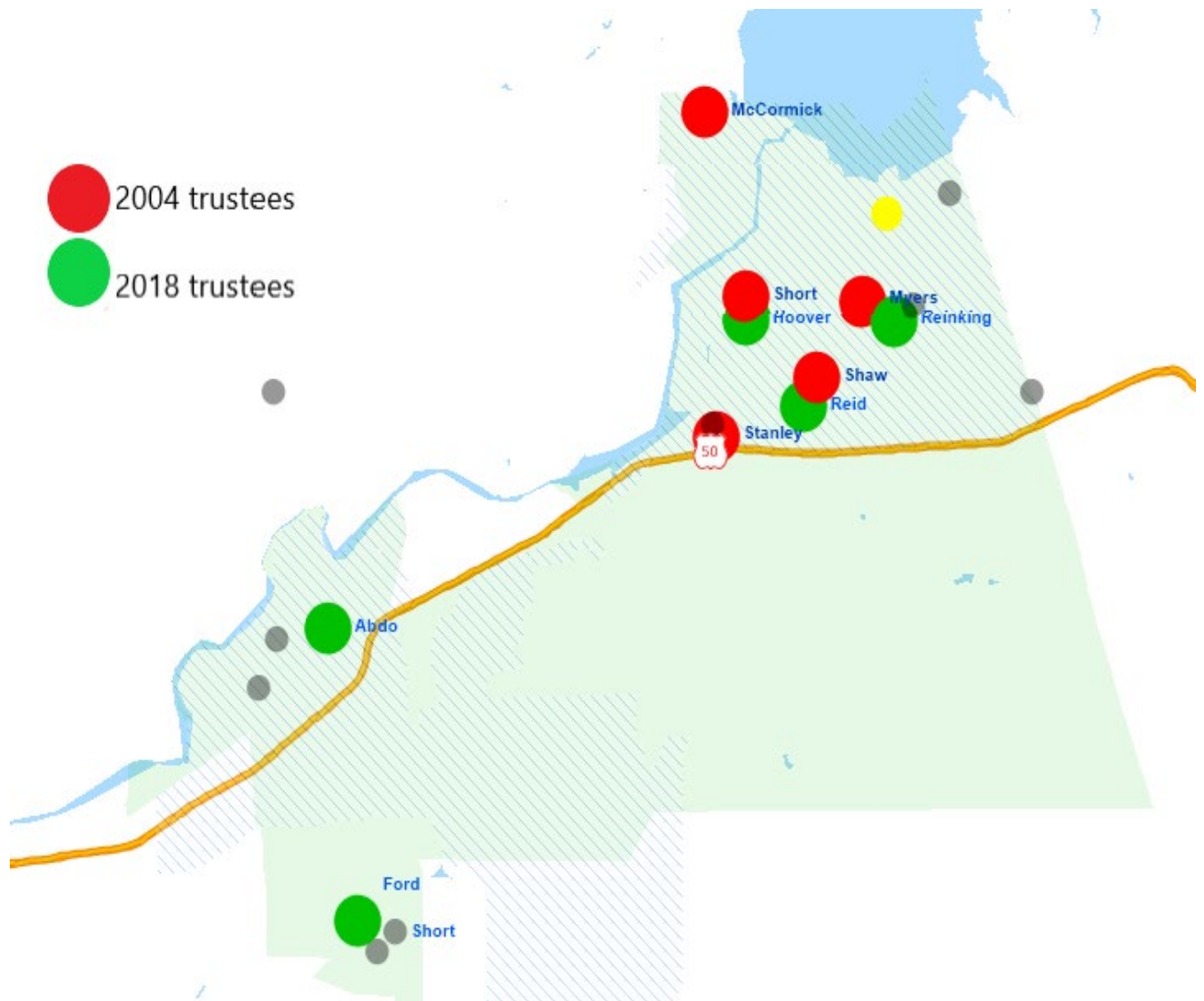
<sup>11</sup> Trustees eye split district - Review examines key factors in bid, *Sacramento Bee*, January 25, 2001, N1,

<sup>12</sup> Folsom Cordova board has surprise 3-way race, *Sacramento Bee*, October 4, 2004

<sup>13</sup> Staff report is against district split - State board is advised to reject petition to put Folsom Cordova measure on the ballot again., *Sacramento Bee*, August 14, 2004

43%, increasing to 54% within three years.<sup>14</sup> Although almost identical in size, the Rancho Cordova district would have nine times as many English learners and eight times as many students receiving reduced-price meals.<sup>15</sup> At the time the Board presented the dissolution petition, a Rancho Cordova elementary school was one of only nineteen statewide that was under CDE supervision.

Richard Shaw and Ed Short, elected in 2002, opposed the dissolution even though they lived in Folsom. Shaw helped organize an annexation from Elk Grove USD, which enabled FSUSD to build new schools in Mather, near where trustee Short later moved. Adding the growth in Mather, Rancho Cordova may again exceed Folsom after the next census.



<sup>14</sup> <https://www.cde.ca.gov/be/pn/im/documents/infoftabsfsdaug04item01.pdf#page=15>

<sup>15</sup> <https://www.cde.ca.gov/be/pn/im/documents/infoftabsfsdaug04item01.pdf#page=17>

At the time of the Board's submission of the petition to dissolve FCUSD, the trustees were concentrated in Folsom. The lack of geographic representation made the Board's decisions during this decade of division less well informed and, from the standpoint of Rancho Cordova constituents, less legitimate.

#### THE IMPACT OF AT-LARGE VOTING SINCE 2004

Folsom has dominated the Board since the dissolution petition was denied in 2004. JoAnne Reinking of Folsom defeated Roger Benton in November of that year. Benton returned in 2006 when Short and Shaw were reelected. In 2010, Benton moved out of the district and Zak Ford of Mather defeated three other new candidates.

The next three cycles were uncontested. In 2012 and 2014, all incumbents stood unopposed. When Theresa Stanley retired in 2016, Chris Clark ran and was appointed in lieu of election. He became the first trustee other than Roger Benton elected from Rancho Cordova in twenty years. In 2018, four candidates (all from Folsom) ran for three seats. The recent lack of competition is as unhealthy as were the divisive contests in prior years. In neither case has the District elected Board members who are representative of the diverse needs of its various communities.

Single-member districts ensure that every constituency has an advocate whom they can hold accountable for ensuring that the Board has the best possible understanding of their needs and values. Frequently, this enables a group to accept an imperfect solution for its needs or a less-than-complete remedy for a grievance. By contrast, at-large systems place every incumbent in constant competition, since they each have exactly the same job – convincing every voter that they always have the best answer for the entire district. This is not a structure that promotes negotiation or rewards compromise.

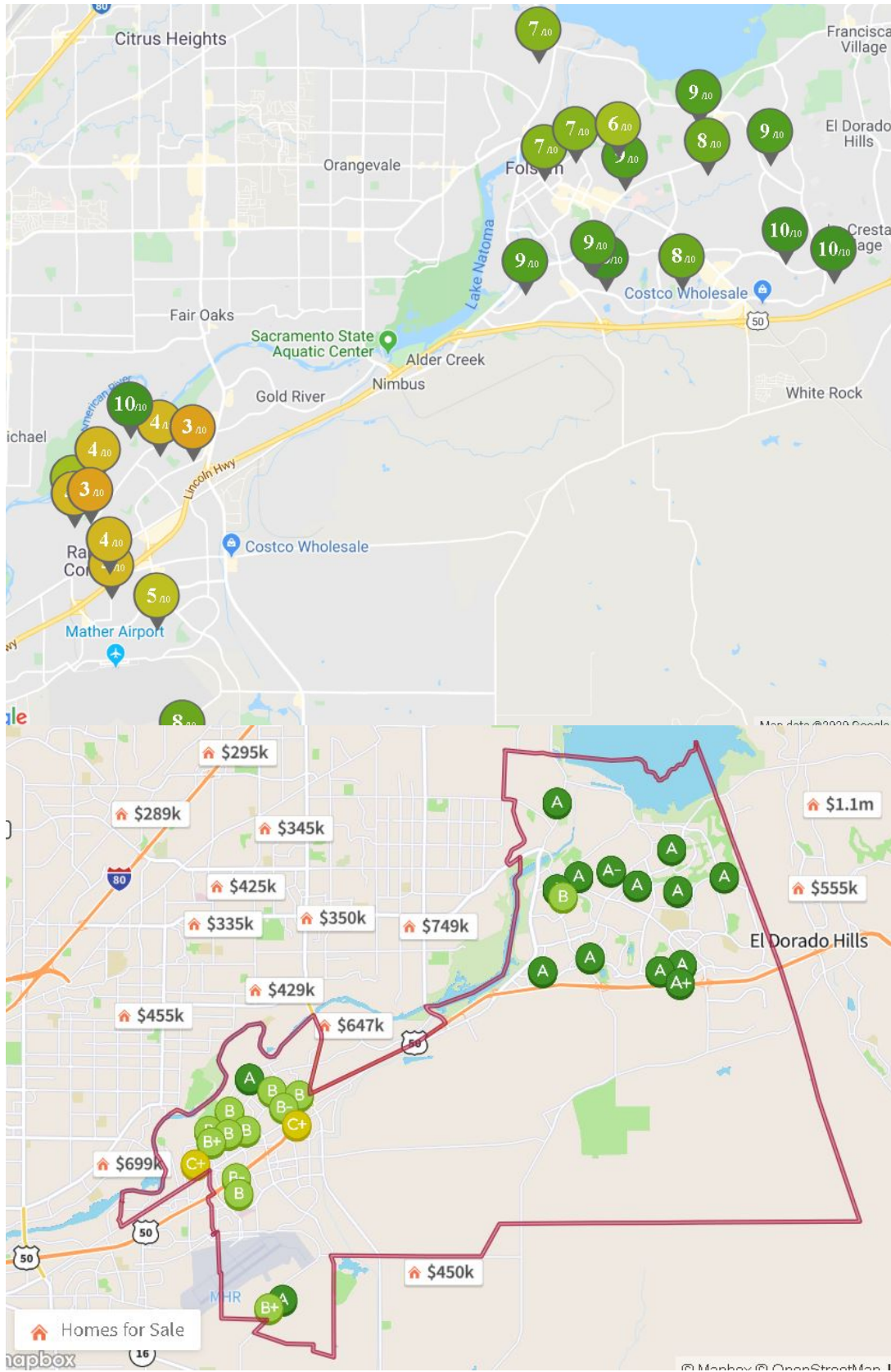
By contrast, the winner-take-all quality of at-large systems can heighten division and escalate conflict. Folsom has 55% of FCUSD's total population. As noted, however, its median family has twice the income of Rancho Cordova's. Over the past 25 years, it has fielded the majority of candidates and an even larger share of those elected. It has 61% of FCUSD's registered voters. Folsom voters constitute a clear majority that can purge the Board of every member whom they perceive as representing interests adverse to their community, which appears to have occurred in 1996 and again in 2004.

	Folsom (less prison)	as % of total CVAP/pop	Rancho C plus uninc.	as % of total CVAP/pop	Total	as % of total
2010 Latino Pop	6271	10%	10457	18%	17251	14%
2010 Pop	64836		52258		117094	
as % of total pop	55%		45%			
Black CVAP	475	1%	1531	4%	2006	2%
Asian CVAP	5958	13%	5601	14%	11559	14%
Latino CVAP	4040	9%	5707	14%	9747	11%
Total CVAP	45820		39780		85600	
as % of eligible voters	54%		46%			
registered voters	41139		25977		67116	
as % of registered voters	61%		39%			
actual voters - 2004	27456		15873		43328	
as % of actual voters	63%		37%			

Winner-take-all leaves the Board less capable of resolving equitable claims within the district or tailoring educational strategies to the needs of particular communities. Any trustee who advocates for a specific constituency, perhaps one that he knows well from experience in his own neighborhood, may face removal by the at-large majority. In times that force difficult choices, this vulnerability probably makes service on the Board a bit less pleasant, which may be one explanation for the paucity of contested elections since 2012. By contrast, electing trustees from each area of the district ensures every community that they have a dedicated advocate on the Board.

#### CONTINUING DISPARITIES WITHIN FCUSD

While private rating systems may be debated, they do abstract official state data and reflect the public's perception of school quality within the district. At every level, both Niche and Great Schools depict a view that students in Folsom obtain a better education than those who live in Rancho Cordova.



Drilling down into the state dashboard data supports a concern that achievement gaps continue to exist between schools in Folsom and those in old-town Rancho Cordova. But it also shows that Rancho Cordova schools have sustained lower suspension rates and higher graduation rates, especially for African-American and Latino students. A Board that is more representative of the District will have a deeper understanding not only of the challenges, but also of the successes, which each part of the District experiences.

RANCHO CORDOVA (13 school average)

	English	Math	Susp/Grad
all	2.8	3.0	3.4
white	3.1	2.6	3.8
Latino	2.4	2.0	3.7
black	1.8	3.2	2.2

DISTRICT (CDE calculation)

all	4	4	2
white	4	4	3
Latino	2	2	2
black	2	2	2

FOLSOM (14 school average)

all	4.7	4.8	3.7
white	4.6	3.7	3.6
Latino	3.7	3.5	3.3
black	0	3.2	1.0

THE CALIFORNIA VOTING RIGHTS ACT

Eleven percent of FCUSD’s eligible voters are Latino. If all these voters were in a single corner with one-fifth of the District’s population, Latinos could argue that the at-large system had impaired their ability to elect a candidate of their choice. Section 2 of the Federal Voting Rights Act would require a majority Latino trustee area. We have conducted a statistical survey of the district, which convinces us that it is not possible to create a majority Latino or Asian trustee area.

The CVRA prohibits at-large systems that “impair the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.” [Elections Code, Section 14027](#). As noted, the Latino community does not have a sufficient concentration to seek a majority Latino trustee area. As such, it does not expect a trustee area that will effectively enable it to elect the Latino candidate of its choice. Rather, it seeks to enhance “its ability to influence the outcome” of the election, working in coalition with other minorities and seeking support from sympathetic cross-over voters of all races who understand the particular needs of the minority trustee areas. [Elections Code, Section 14027, 14028\(a\)](#).

Even where a majority area is not possible, federal law prohibits any dilution of

minority influence, intentional or not, that results from “packing” them into a single area or “cracking” a minority community by splitting in among multiple areas. Race and Latino ethnicity should not be predominant factors in district and should be considered in conjunction with other socio-economic factors. Asian communities in Folsom may be very different in income and education from Asian communities in Rancho Cordova. The Board should focus on communities of all races that are underrepresented on the Board or have distinctive educational and economic characteristics. A.B. 350 requires school districts to sequence their elections so that the minority trustee areas elect in the presidential cycle, especially when this is the next election, since minority turnoff falls off dramatically in gubernatorial cycles. [Elections Code, Section 10010\(b\)](#).<sup>16</sup>

The predicate for the CVRA is “racially polarized voting,” which means that “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\(e\)](#). This is a nearly universal phenomenon. Latino families have different life experiences, different needs, and different values than other communities. Although they frequently vote in coalition with other minorities and with cross-over voters, their voting choices and behavior are different from those of non-Latino voters. We verified the existence of racial polarization between Latino and non-Latino, because the Legislature has published precinct counts of Latino voters, but not of African-American voters. As noted above, we believe these groups vote in coalition, which would increase the degree of polarization above the level that we detected.

Plaintiffs have compiled and examined elections for trustee since 2004, which shows that Latino have favored and disfavored various candidates, none of whom are Latino. While the evidence is compelling and, in the case of the 2018 election, timely, it can be misinterpreted. The fact that a candidate is statistically disfavored by the Latino community does not mean that he bears any animus or is not an effective representative for a segment of the District; a negative correlation may simply reflect the Latino community’s preference for a different candidate.

Since there has been only one recent contested election, the most probative data may come from ballot questions and other races. Where there are no Latino candidates, the statute directs analysis at “electoral choices that affect the rights and privileges of members of a protected class.” The clearest choice is the 2016 presidential contest, in

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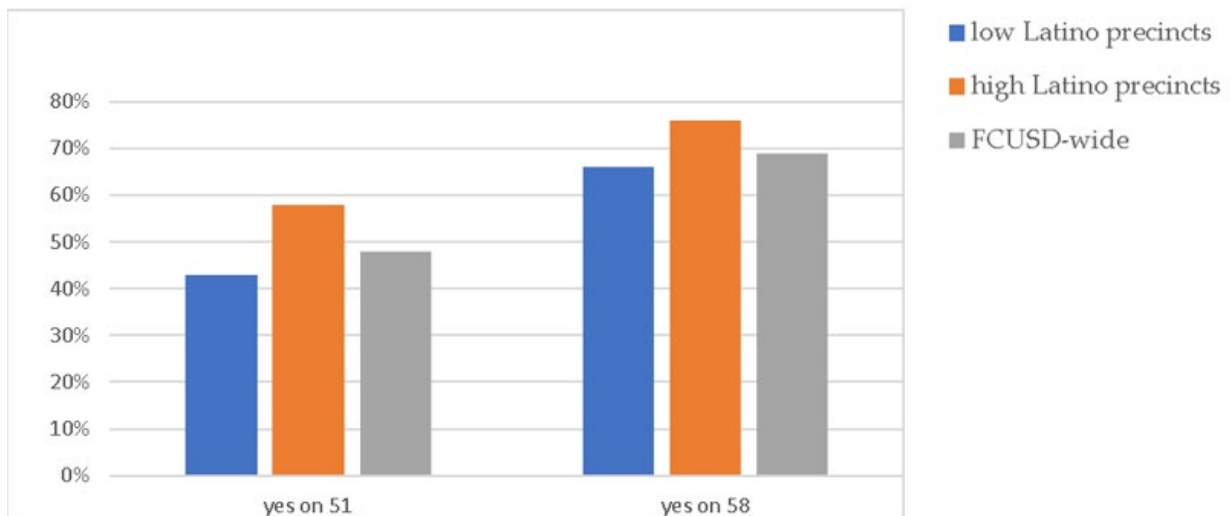
<sup>16</sup> “In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001, and it shall take into account the preferences expressed by members of the districts.”

which he nominee of a major party took positions that were widely perceived as adverse to the rights of Latinos. In the precinct with the fewest Latino voters, this candidate won more than 57% of the vote. In five adjoining precincts in Folsom which have the lowest percentage of Latinos, the candidate won a majority. In the five most Latino precincts, all in western Rancho Cordova, the candidate won less than 30%.

The 2016 election also showed that Latino voters in FCUSD differed significantly from the rest of the electorate on a number of ballot questions. Polarization was so significant that the traditional regression analysis produced results that were “out of bounds.” In other words, there are not enough Latino voters to explain t

the disparity. This almost certainly reflects the fact that Latinos acted in coalition with African-Americans and Asians. Together, they supported [Propositions 51](#) and [58](#) to a far greater degree than voters who were neither white nor Latino.

#### LATINO SUPPORT FOR PROPOSITIONS 51 and 58



#### CRITERIA FOR CREATING TRUSTEE AREA MAPS

Election by trustee area is a long-term reform, unrelated to the any specific incumbent or any potential challenger. This election cycle is a particularly opportune time to make the transition because candidates are more dispersed than they had been in previous cycles. It also provides an opportunity to revise boundaries after the 2020 election.

The size of each trustee area is based on total population, because FCUSD serves all students and taxpayers, whether they are entitled to vote or not. Latino neighborhoods may have great needs, but they often have larger than average numbers of residents who are not entitled to vote, either because they are not yet 18 years old or

are not yet citizens. Each area has 20 percent of the population and one trustee, even it has only 10 percent of the at-large vote.

A key objective is to give the area with the greatest educational and social needs a dedicated advocate on the Board. This area would likely include the [area between Folsom Boulevard and Route 50](#) that [S.B. 535](#) has designated as a “disadvantaged community,” as well as adjoining areas of Rancho Cordova. Until President Clark was elected in 2016, these constituents had not had a local trustee for many years.

There is one important exception to the rule of one-person/one-vote. Effective this month, persons who are incarcerated in state correctional facilities no longer count for purposes of redistricting. [A.B. 849](#) requires the state to create a database that will eventually allocate them to their domicile prior to incarceration. If FCUSD had transitioned to trustee areas last year, one of the Folsom trustees would have represented 25 percent fewer constituents than each of the other four trustees.

As noted above, the sequencing of trustee areas must allow for the minority areas to elect trustees during the presidential cycle, especially when this is the next election. Once this mandate is satisfied, we believe that the Board should consider electing trustees from areas at the expiration of the term of any incumbent who resides in the district and wishes to continue to serve.

#### PROCESS FOR TRANSITIONING TO TRUSTEE AREAS

To preserve its safe harbor, MDUSD must declare an intention to move to district elections within 45 days of its receipt of this letter. At this point, MDUSD 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\(a\)](#) (special districts); [Education Code, Section 1002](#) (county board); [Government Code, Section 34884\(a\)\(1\)](#) [[A.B. 278 \(2016\)](#)]. However, the strict procedures and criteria recently enacted for cities and counties do not expressly apply. [A.B. 849 \(2019\)](#). The mapping of trustee areas, the sequence in which trustees 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. §10301\(b\)](#).

Assuming the Board passes a resolution of intent to elect by trustee areas within 45 days of your receipt of this notice, it should start several concurrent processes in order to submit maps to the registrar by July 1, 2020. The Board will need to obtain a waiver of the statutory provisions regarding voter approval. The State Board of

Education has implemented a policy of granting waivers to the requirement that districting for purposes of complying with the CVRA be submitted to the voters for approval. See [Education Code, Section 33050.17](#). This requires a process of consultation with employee and parent groups. As a condition of this waiver, a school district must still obtain approval of its map from the county committee under [Education Code, Section 5019\(a\) or 5020\(d\)](#). Therefore, the Board should also schedule a meeting of the County Committee, so that it can approve the maps proposed by the Board at the conclusion of its hearing process and in time to submit to the registrar.

An action to comply with the California Voting Rights Act opens opportunities for other reforms in electoral practices and governance. Such changes might include increasing the number of board members to seven, or moving the third seat elected in the gubernatorial cycle to the presidential year.

The Board should examine its boundaries after the census. The Education Code requires school boards to use population data validated by the State Department of Finance, but in practice the state does not adjust census data at any level that is normally useful for redistricting. [Education Code, Section 5019.5](#). The Board may take two approaches to this late-cycle redistricting. It may consider census survey data and projections and attempt to draw lines that will remain well within the constitutional population variance, and limit any adjustments that are necessary after the census. Alternatively, it could view this process as a rough draft, focused on creating trustee areas capable of electing trustees in the most underrepresented areas. This approach could more legitimately accommodate short-term political factors, since the lines it draws will not endure until 2032. In this case, the Board could consider a citizens' redistricting commission to draw lines after the decennial census. West Contra Costa USD provides a model, since it chose this approach when its settled Section 2 claims last year. A distinguished retired federal judge will appoint parents and taxpayers qualified to represent the diversity of interests in the district.<sup>17</sup>

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<https://www.wccusd.net/cms/lib/CA01001466/Centricity/Domain/16/Joint%20Ex%20Parte%20Application%20for%20Entry%20of%20Judgment.pdf#page=34> Because WCCUSD was acting to remedy a CVRA violation, it modified some of the conditions set forth in [Elections Code, Section 23003](#). We would support a similar customization to meet the local needs of FCUSD.

CONCLUSION

The transition to trustee areas will improve the performance of the District by making its Board more fully aware of the needs of each community within its jurisdiction. More competitive elections will increase the representativeness of the Board and its accountability to the community, which may be more prepared to support bonds and parcel taxes. This is a reform that will benefit students, parents and taxpayers of all races, in Folsom, Rancho Cordova, and Mather.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Rafferty". The signature is written in a cursive style with a large, stylized initial 'S'.

Scott J. Rafferty

