

ATTACHMENT A

SCOTT J. RAFFERTY

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August 9, 2021

Ms. Charlene Robinson
Clerk, City of Victorville
14343 Civic Drive
PO Box 5001
Victorville, CA 92393-5001

VIA CERTIFIED MAIL

Re: Neighborhood Elections for Victorville City Council

Dear Ms. Robinson:

At the request of individual Latino electors residing in Victorville, Neighborhood Elections Now (NEN) gives notice that the City of Victorville is in possible violation of the California Voting Rights Act (CVRA) because its method of electing its council at-large dilutes the influence of the Latino community, including members of other classes protected by the Voting Rights Act of 1965, 52 U.S.C. §10301(b) who seek to vote in coalition with them. We ask that the Council transition to district elections because it is the most democratic system, which will promote competitive elections and ensure representation of the diversity of viewpoints, to the benefit of voters of all races. NEN notifies you with the expectation that the Council will work collaboratively to come into compliance. While our Latino members do not waive any rights to take future action, they do not initially threaten litigation. Therefore, any consideration of the City's liability under the CVRA in closed session should be agendaized, so that the public may provide comment.¹

Sixty-one percent of Victorville's population under the age of 18 are Latino. Almost all are American citizens. These young people represent the future of Victorville's economy, society, and electorate. The neighborhoods in which they are growing up have some distinct and significant challenges, but the adult citizens in those neighborhoods who speak and vote for their needs and values are submerged by the at-large system. The time has come for Victorville to embrace neighborhood elections, so that the council has the knowledge and accountability to represent all of its constituents.

¹ See Fowler v. City of Lafayette (2020) 46 Cal. App. 5th 360.

I. HISTORICAL BACKGROUND OF THE CALIFORNIA VOTING RIGHTS ACT

The late Congressman Don Edwards, was a key author of the Voting Rights Act of 1965. Ten years later, as Chairman of the House Subcommittee on Constitutional Rights, he supported extending the protections of the Act to language minorities, *i.e.*, Asian-Americans, Native Americans, and Latinos. As a result, Congress applied provisions of the Voting Rights Act to four counties in California on the same basis as the seven Southern states that it covered in 1965. But Congressman Edwards surprised civil rights activists when he privately told them that removing barriers to registration was not enough in the case of his home state. While reforms would make it easier for Anglos to vote, he predicted that Latino communities would not be incorporated into local political life until they had candidates from their own neighborhoods to support. He described a vicious cycle in which Latino neighborhoods were neglected by political parties, suppressing the Latino vote up and down the ballot. No one they know runs for office. No one asks for their vote. To increase Latino turnout, Congressman Edwards argued that it was essential to implement single-member constituencies.²

After 1965, the rest of the country voluntarily abolished most at-large elections³, but they persisted in California. In the 1980s and 1990s, numerous bills sought to abolish at-large in all but the smallest jurisdictions, but they faced certain veto by Republican governors. On local government issues, legislators often look to the League of Cities and California School Board Association. These organizations saw no reason for reform, perhaps reflecting memberships that were not very diverse. Only ½ of one percent of school board trustees in the State were Latino when the Legislature finally enacted the California Voting Rights Act (CVRA) in 2001.

II. SINGLE-MEMBER DISTRICTS GIVE NEGLECTED MINORITY COMMUNITIES DEDICATED VOICES ON GOVERNING BODIES.

After the repeated failure to enact bills to abolish at-large elections categorically and without regard to race, the Legislature took the approach of modifying the “effects

² Notes of this meeting are in my personal papers at the John F. Kennedy Library, but are not currently accessible due to the pandemic. <https://www.jfklibrary.org/asset-viewer/archives/SRPP>

³ In 1965, two-thirds of America’s largest cities elected at-large. Today, only one retains a pure at-large system. Forty-one state legislatures had multi-member districts. In 1982, the Supreme Court made it difficult to challenge legislatures that selectively used double and triple districts, often to dilute minority influence, by requiring a showing that it was possible to create a “minority-majority district.” Today, these hybrid plans persist only in New Hampshire and Vermont, and only because their assemblies are so large single member districts would have less than 3500 constituents.

test” in the 1965 federal law⁴ to the special circumstances of California.⁵ The CVRA dispensed with any requirement that a single minority demonstrate a majority of voters in a possible single-member district. It was also unnecessary to show that “white bloc voting” achieved the “usual defeat” of the minority-preferred candidate. All that was required was a showing that a minority group voted differently than the rest of the electorate. Elections Code, Section 14026(e). It is sufficient to demonstrate RPV using ballot questions that affected the rights and interests of the minority. Since racial and ethnic minorities, as a group, have different life experiences, values, needs, and priorities, “racially polarized voting” (RPV) is a nearly universal phenomenon.

Districting equalizes the voting power of minority neighborhoods. RPV is demonstrated by the statistical correlation between election results by precincts and the minority’s share of voters in that precinct. In racially homogenous jurisdiction, where the minority vote share in every precinct is exactly the same, RPV cannot be demonstrated even if individual Latinos do vote differently than non-Latinos, nor would districting be an effective remedy. Victorville is not such a case. If Latinos do share voting behaviors that are distinct from the at-large majority, a single high-Latino district improves representation for Latinos throughout the city. Eliminating winner-take-all slates makes the council more representative of all constituencies. Philosophical minorities and common interests (such as renters) are likely to have more concentrated influence in one of the districts. Without a dedicated voice, the interests of these communities may be unable to influence public policy.

III. AT-LARGE COUNCIL VOTING DEPRESSES LATINO TURNOUT UP AND DOWN THE BALLOT.

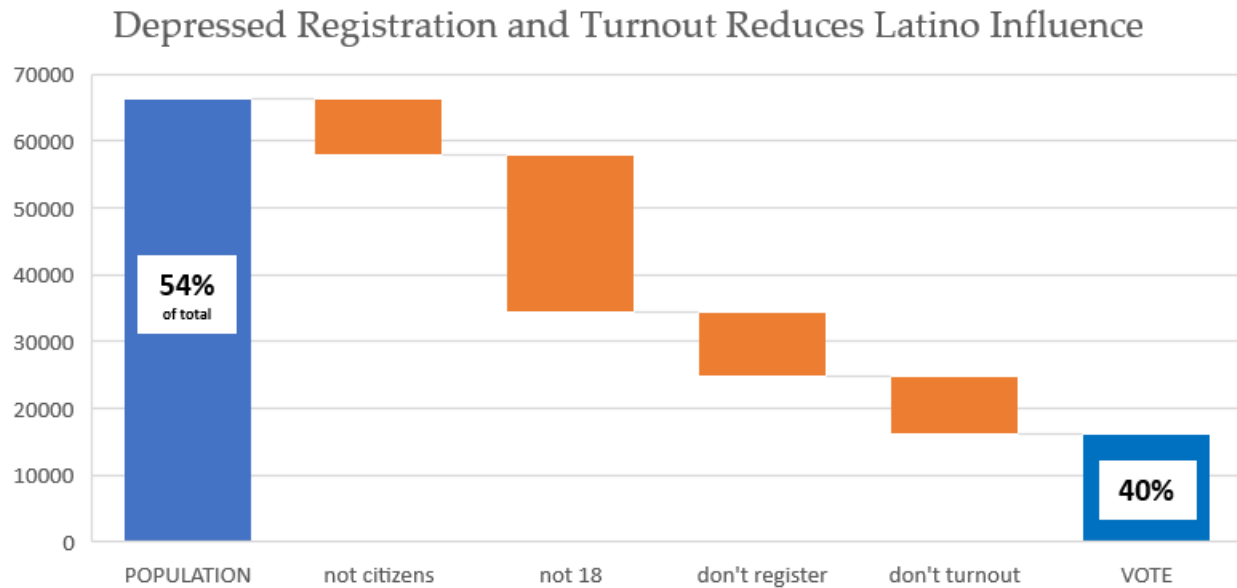
Unfortunately, Congressman Edwards’ prophecy has proven accurate in many California cities, especially those in the Inland Empire where the Latino population has grown substantially in recent decades. The 2020 presidential election was critical to Latino rights and interests. Overall turnout was the highest since 1960. In many parts

⁴ Section 2, 52 U.S.C. §10301(b), as amended by P.L. 97-205 in 1982.

⁵ At least until the beginning of this century, few white voters in the South supported Black candidates. Even fewer Black voters supported a white candidate when a Black was running. California politics were not so Black and white. There are many minorities in California, and they were used to forming coalitions. Anglos had a long tradition of supporting Latino candidates who were not the preference of the Latino community. In the 1990s, a young Abel Maldonado campaigned on the basis that voting for him would show that Santa Maria was “not racist” and help get a federal Voting Rights Act dismissed.

of the state, the differential in Latino turnout closes. This was not the case in Victorville, where only 47% of eligible Latino voters (adult citizens) cast ballots in any race.

The overwhelming majority of Victorville’s Latino are American citizens. For the reasons identified by Congressman Edwards, they are isolated and disengaged from local politics. Latinos, who form a majority of the population, constituted only 40% of the actual voters, even in the 2020 election. Low Latino turnout diminishes the influence of Victorville as a whole in state and federal legislative elections.



The effects are even more pronounced in the gubernatorial cycle. The 2018 midterm had higher than usual minority turnout, due to concern about national immigration policy. In the last “normal” midterm (2014), Latinos were a majority of citizens, but less than one-quarter of actual voters.

LATINO POPULATION AND VOTER PARTICIPATION

	2020 presidential		2014 midterm	
	count	share	count	share
population	66185	54%	64030	53%
citizens	57830	52%	55700	50%
citizens over 18	34459	47%	32020	44%
registered	24693	44%	14123	34%
voted	16221	40%	2841	24%
turnout		57%		9%

IV. THE 2018 ELECTION SHOWS EVIDENCE OF RACIALLY POLARIZED VOTING

The life experience and values of Latinos as a group (and of other minorities) is often distinct from the rest of the electorate; when it influences voting behavior, the results are described as “racially polarized.” RPV is not a bad thing, since it reflects the values of the minority being studied. When it exists, it should not be diluted, which generally occurs when any group with distinct voting preferences is subject to an electoral system that allows a larger geographical area to elect multiple representatives.

According to press reports, the city commissioned a study of racially polarized voting, which was inconclusive. NEN has analyzed the 2018 council election. Dr. Rita Ramirez was preferred in Latino precincts to a substantially greater degree than in white precincts. The inference of racially polarized voting is strong, greatly exceeding the standards of statistical significance set forth by the trial court in Kaku v. City of Santa Clara. Collectively, the group of Latino candidates who ran in the 2018 election were also disproportionately preferred by their own community.

Evidence of a significant difference between the votes of Latinos and the rest of the electorate on a ballot question or on a contest other than city council is also sufficient to support a violation of the CVRA. The City’s previous analysis occurred prior to the 2016 general elections, which included several state propositions affecting the rights of Latinos and other minorities. It is not surprising that these votes have shown RPV in many jurisdictions.

It is NEN’s normal practice to analyze a number of races over a period of time, and we expect to do so. We may provide additional evidence, although we do not wish to impugn or antagonize any of the incumbents. Whenever there is a strong Latino candidate of choice, it is mathematically necessary for some other candidates to be negatively polarized. This should not be misinterpreted as a statement about the qualities or intentions of those individuals; they are simply less preferred by the Latino electorate.

The CVRA protects voters, not incumbents. The presence of Latino members on the Council is neither automatically exculpatory (or even relevant) unless they establish that they are authentically chosen candidates of the Latino electorate.

V. THE COUNCIL SHOULD ALLOW THE PUBLIC TO DEFINE COMMUNITIES OF INTEREST.

A.B. 849 (2019), the FAIR MAPS Act, requires charter cities to use the following criteria in drawing districts:

- Compliance with the Constitution and federal law. This includes “substantial equality” of population, as measured by the census after an adjustment attributes incarcerated persons to their prior domicile.
- Geographic contiguity
- Respecting the integrity of communities of interest and minimizing their division. (Affiliation with parties, incumbents, or candidates may not be considered in defining these communities.)
- Identifiable boundaries, such as streets and natural and artificial barriers.
- Compactness, i.e., not bypassing nearby populations in favor of more distant ones
- Favoring or disfavoring any political party is prohibited.

The public will define the relevant communities of interest at the five required hearings. They may define these communities as they see fit, provided that none favors political parties or is based on support for a specific candidate. The public may consider the following factors:

- Neighborhoods are one of the essential building blocks, although they can be defined many ways.
 - As named and defined by developers or the real estate industry.
 - <https://www.neighborhoodscout.com/ca/victorville>
 - <https://nextdoor.com/city/victorville--ca/>
 - <https://www.areavibes.com/victorville-ca/best-places-to-live/>
 - [https://www.realtor.com/realestateandhomes-search/Victorville CA](https://www.realtor.com/realestateandhomes-search/Victorville_CA)
 - Any neighborhood associations recognized by the city.
<https://hoa-community.com/location/ca/victorville-ca/>
 - Assessment districts
<https://www.victorvilleca.gov/government/city-departments/public-works/assessment-districts-lmad-dfad-mad>
 - similar property values, as shown in county parcel viewer
<https://www.arcgis.com/apps/webappviewer/index.html?id=87e70bb9b6994559ba7512792588d57a>
- Common areas where neighbors congregate, including:

- School attendance areas, These may be aggregated to group high- and low-performing schools. Victor Elementary is divided into quadrants.
http://www.vesd.net/UserFiles/Servers/Server_440558/File/District%20Info/Quadrant%20Map/2019%2020%20Quad%20Map.pdf
- See also private ratings <https://www.neighborhoodscout.com/ca/>
<https://www.greatschools.org/>
<https://www.niche.com>
- Common transit sites
<https://vvta.org/google-maps-trip-planner/>
- Proximity to libraries, community centers, pools
<https://www.victorvilleca.gov/Home/ShowDocument?id=6171>
<https://www.victorvilleca.gov/government/city-departments/community-services/library>
- Shopping areas
https://www.yelp.com/search?find_desc=Shopping%20Centers%20and%20Malls&find_loc=Victorville%2C%20CA
- Community based organizations
<https://census.ca.gov/wp-content/uploads/sites/4/2019/09/CA-CENSUS-Community-Based-Organizations-and-Sector-Contacts.pdf>
- Similar housing values and characteristics
<https://www.zillow.com/homes/victorville/>
<https://bestneighborhood.org/best-neighborhoods-victorville-ca/>
- Common demographics
<https://www.neighborhoodscout.com/ca/victorville/demographics>
<https://statisticalatlas.com/place/California/Victorville/Race-and-Ethnicity>
- Zoning and land use
<https://www.victorvilleca.gov/home/showpublisheddocument/95/636655210529070000>
- Communities can be defined by the hazards they face, including:
 - Crime rates, as shown on maps
<https://www.crimemapping.com/map/ca/victorville>
 - <https://www.neighborhoodscout.com/ca/victorville/crime>
 - <https://www.city-data.com/crime/crime-Victorville-California.html>
 - Seismic hazards
<http://cms.sbcounty.gov/lus/planning/zoningoverlaymaps/geologicazardmaps.aspx>

- Wildfire hazard
<https://cms.sbcounty.gov/lus/FireHazardAbatement/FireHazardAbatementHome.aspx>
- CERCLA/Superfund remediation
<https://www.georgeafb.info/george-afb-cercla-120h-deed-restrictions/>
- Other jurisdictions
- All of Victorville is in the same assembly, state senate and congressional district; the city is also in the same elementary and high school districts, which each elect at-large.

Additional geographic data may be found at the following official sources:

<http://cms.sbcounty.gov/gis/Home.aspx> (county)

<https://scag.ca.gov/data-tools-geographic-information-systems> (council of governments)

<https://arcg.is/0uz5bv> (state)

<https://www.census.gov/quickfacts/fact/map/victorvillecitycalifornia/RHI725219>

(federal)

The first priority of districting should be to ensure that those who have not been fully represented as a result of the at-large system have a permanent, dedicated voice on the council. The communities with the greatest need are often those least visible to government and least effective at advocating at council meetings. High concentrations of children and immigrants increase these needs, which is why districts are apportioned by total population. If a corner of the city has one-fifth of the population, but only 5% of the active voters, they still deserve one-fifth of the attention of the council and one-fifth of the influence over decision-making.

Because it is clearly possible to draw at least one council district in which Latinos are a majority of eligible voters, there may be additional liability under the “effects test” in Section 2 of the federal Voting Rights Act. Our initial analysis suggests that Victorville satisfies the additional elements (sometimes called “Senate factors”) that Section 2 requires to establish voter dilution. Minority electors can initiate a civil action to enforce Section 2 without the prior notice that California Elections Code, Section 10010 provides for alleged violations of the CVRA.

VI. THE COUNCIL SHOULD RESOLVE TO CREATE DISTRICTS AND COMPLETE THE HEARING PROCESS

The city has 45 days from its receipt of this letter to resolve its intent to comply before the next regular election in November 2022, and any special elections that may

occur after the map is drawn. Normally there are two pre-map hearings followed by three hearings at which maps are presented. In order to sustain public attention, the hearing process must complete within 90 days, *i.e.*, the end of December 2021.

The Bureau of Census has committed to release the redistricting file on August 12, 2021, but an additional five weeks will be necessarily to adjust these files so that incarcerated persons will be counted at their previous homes. Since the census enumeration data does not include demographic data, it can only be used to determine the size of each district for the purposes of population equality. The FAIR MAPS Act normally requires four hearings to adjust the boundaries in light of the new population data. Elections Code, Section 21627.1.⁶

CONCLUSION

Neighborhood districts will make elections in Victorville more competitive, and the council more representative, to the benefit of all voters. I hope that the council will embrace this reform and look forward to working together to ensure that the public, including the Latino minority, contributes effectively to an open and successful transition process. We look forward to working with the City Council on a genuinely collaborative basis.

Sincerely,

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

Scott J. Rafferty

⁶ Elections Code, Section 10010(e)(3)(C)(i) allows an extension of up to 90 days, but requires a firm commitment to implement district elections in 2022. An extension does not appear to be necessary, but if the city is prepared to make that commitment, NEN may consider an extension. We will ask that the city commit to comply with the transparency requirements of the FAIR MAPS Act (Section 21628), notwithstanding subdivision (i). We would ask that the City provide real-time video access to the meetings, including the ability to make oral comments remotely or to have written comments posted.

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August 9, 2021

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VIA CERTIFIED MAIL 70190700000188944332 ✓
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Re: Neighborhood Elections for Victorville City Council

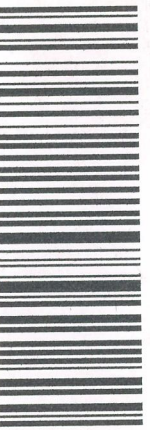
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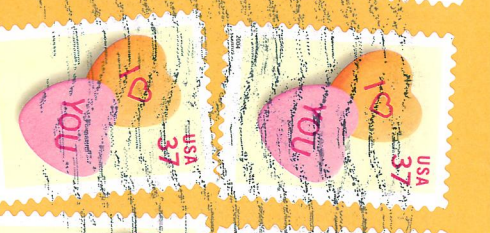
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¹ See Fowler v. City of Lafayette (2020) 46 Cal. App. 5th 360. Gov. Code, Section 54956.9(e)/



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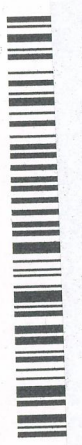
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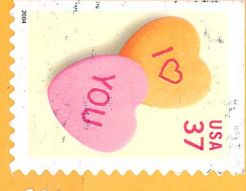
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