

**SCOTT J. RAFFERTY**

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March 7, 2021

Board of Supervisors  
105 East Anapamu Street  
Santa Barbara, CA 93101  
via electronic mail

REQUEST TO DELAY CONSIDERATION OF ITEM A-7

Dear Supervisors:

Given the independent status of the County's Redistricting Commission, Item A-7 is one of the few opportunities the Board of Supervisors has to take timely action to ensure that the Commission complies with its ex parte regulations and the transparency requirements imposed by the Brown Act, the Public Records Act, Elections Code, Section 21508(f), and County Code 2-10.9A(5). In order to ensure that I have a meaningful opportunity to comment on this item, I request that it be postponed until the County has completed its response to record request R001921-020821, filed one month ago. I relied upon the County's commitment to complete production by March 4, 2021, which would have provided me with an opportunity to make a meaningful public comment prior to the Board's approval of this proposed contract, currently agendized for the Board's meeting on March 9, 2021.

More is at stake than who serves as counsel to the Commission. For the reasons that I discussed by phone with County Counsel Ghizzoni last month, the conduct of the Commission's demographer, National Demographics Corporation (NDC), during this procurement and other matters over the past six weeks, has jeopardized the ability of the Commission to comply with legal requirements and to fulfill the mandate of the "You Draw the Lines" referendum. As suggested by the Commission's extraordinary focus on litigation risk, non-compliance with procedural requirements and with the Voting Rights Act of 1965 has long-term budgetary implications for the County. Please advise me as soon as possible on Monday, March 8, 2021, if the Board is prepared to delay action. In the event that the Board cannot accept a delay, please include this communication in the agenda record, along with any additional comment that I may be able to prepare prior to 5PM, March 8, 2021, based on the limited documentation provided to date.

The independent commission would be fortunate to have either Mr. Woocher or I assist them as legal counsel. I spoke positively on the record regarding Mr. Woocher and Prof. Levitt, who would assist him on this contract. I had no prior knowledge of

public comment (3), which challenge Mr. Woocher's eligibility. I understand that a related writ petition may be heard in superior court. The challenge was first stated in an ex parte communication to the Commission made 2-1/2 hours before the interviews by the Neilsen Merksammer firm. This communication, which was not disclosed until several days after the interviews, cast aspersions against me as well as Mr. Woocher. Mr. Woocher was given an opportunity to defend his reputation. I was not. Mr. Woocher was also given an opportunity to revise his proposal, which I was not. If I had received notice of the allegations prior to the interviews, I would have altered my interview responses very substantially and would have sought a postponement to permit revision of my proposal.

I was the low bidder and the only proposal not to include a litigation team. However, the Commission focused on litigation risk to an extraordinary (and in my view inappropriate) degree. Consistent with the few precedents set by independent commissions, I believed the counsel has two basic functions - (1) to advise the Commission on best practices for transparency and effective public outreach in the preparation for and conduct of public hearings, including but not limited to rigorous compliance with the Brown Act, the Public Records Act, Section 21508 and (2) to write a report defending the compliance of the Commission's final map with the Voting Rights Act of 1965, the Fair Maps Act, and other constitutional and statutory requirements. I am well qualified to perform each of these tasks, as are Msrs. Woocher and Levitt. This would normally provide a very high level of protection against litigation, but only if the Commission allows the counsel to exercise clear direction and control over NDC on issues of legal compliance. As I expect to detail in further comments, that condition has not existed to date.

Compliance with Section 2 of the federal Voting Rights Act is essential. In my view, it would be inappropriate for any demographer to participate in closed session evaluations of the attorney who will ultimately determine whether his map is in compliance with the Voting Rights Act. It is unusual for a public entity to stipulate that a trial would likely find it to be in violation of Section 2 of the federal Voting Rights Act. NDC placed West Contra Costa USD in that position by preparing a series of non-compliant maps, leading to more than a year of litigation. For this additional reason, NDC should have recused itself from closed session and avoided the additional actions that it took to prejudice my application.

Sincerely,

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

Rafferty to Santa Barbara County Supervisors, Request to Delay A-7, page 2

Scott J. Rafferty

**Ramirez, Angelica**

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**From:** Scott Rafferty <rafferty@gmail.com>  
**Sent:** Monday, March 8, 2021 4:19 PM  
**To:** sbcob  
**Cc:** Ghizzoni, Michael; Fredric Woocher; Nelson, Bob; County Executive Office; Williams, Das; Fischer, Gina; Hart, Gregg; Alexander, Jacquelyne; Lavagnino, Steve  
**Subject:** Written Comment on Item 7A  
**Attachments:** 210308 Rafferty to Board re item 7A.pdf

**Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.**

Please distribute the attached to the Board. Thank you.

Scott Rafferty  
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mobile 202-380-5525



# SCOTT J. RAFFERTY

## ATTORNEY AT LAW

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March 8, 2021

Board of Supervisors  
105 East Anapamu Street  
Santa Barbara, CA 93101  
via electronic mail

Dear Supervisors:

National Demographics Corporation (NDC) has acted both as demographer and administrator for the Santa Barbara County Independent Redistricting Commission, which has been in the process of selecting a new counsel. The new attorney will have two essential functions: (1) to advise the Commission on best practices for transparency and effective public outreach in the preparation for and conduct of public hearings, including but not limited to rigorous compliance with the Brown Act, the Public Records Act, Section 21508 and (2) to write the report defending the compliance of the Commission's final map with the Voting Rights Act of 1965, the Fair Maps Act, and other legal requirements. NDC should not have participated in closed sessions, or otherwise influenced, the selection of the attorney responsible for certifying that its map complies with the Voting Rights Act.

NDC has made these comments necessary by impugning my eligibility to serve the Commission as counsel simply because I have been an "advocate" representing voters. Attorneys are advocates, and the defense of voting rights is the essential purpose of this commission. NDC misleadingly claims that I have only "work on the plaintiffs' side" in "all those jurisdictions."<sup>1</sup> "You Draw the Map," the title of the referendum statute, refers to voters. As NDC admits, it represents only incumbents and never voters. Representing cities and counties in legislative redistricting is representing incumbents, which is what the Commission was created to avoid. By contrast, I have prepared and advocated for maps on behalf of minority voters in dozens of California jurisdictions, usually resulting in the creation of minority-friendly districts without litigation. NDC should not have told the Commission to deprecate my qualifications because I have represented voters and not incumbents.

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<sup>1</sup> Minutes, January 27, 2021, p.5 <https://countyofsb.org/asset.c/6023#page=5> See also video 58:04 "Comm.: I don't know if this is a personnel issue that we need to talk about in closed session but Doug may have some feedback there. DJ: sure happy to clarify I actually know a number of the attorneys that are bidding on this well uh scott and I consider his friends respect him. He was on the plaintiff side in all those jurisdictions and uh NDC doesn't do plaintiff side work. So I know him, uh and we work together from opposite sides as I was mentioned earlier he's only been on the plaintiffs' side. Chair Morris: "Yet he said very nice things about you."

Rafferty to Santa Barbara County Supervisors, Response to Prejudicial Conduct and Comments by NDC, page 2

NDC is very familiar with the only case decided in court, Ruiz-Lozito v. West Contra Costa USD. For more than a year, its principal, Dr. Douglas Johnson, denied the existence of a majority-Latino district in WCCUSD. For the first time in California history, a county committee on school district organization rejected a trustee area map submitted by a district. Eventually his own client admitted that its at-large system would be found to violate Section 2 of the Voting Rights Act had the case proceeded to trial, which had occurred only three times in California. Exhibit 1.<sup>2</sup> The Court adopted plaintiffs' map, only marginally adjusted from the demonstration map that we presented the day after we filed the action – with an offer to settle for \$20,000, less than 3% of the cost NDC would eventually inflict on its client. Part of the remedy was WCCUSD's agreement to be the first school district in the nation to establish an independent redistricting commission. Exhibit 1, pp.6-9. This is a significant qualification that no other bidder can claim. I would bring integrity and credibility to the Commission, whose actions to date threaten to discredit the model of independent districting.

NDC abused its role as administrator and prejudiced this procurement by failing to post an unsolicited letter reflecting favorably on my work in support of minority voting rights. Dr. Johnson of NDC complained to League of Women Voters that the letter included references to NDC maps and his court testimony that constituted a "slanderous hatchet job." Although I played no role in the preparation of this document, its allegations are substantial and well documented. Dr. Johnson's objections lack support or merit. Dr. Johnson's intimidation of this truthful public input, and NDC's misleading attempt to associate LWV's January 6, 2021 email with different document received at a later date, are inconsistent with his subsequent participation in this procurement. In two other cases, NDC – acting as administrator – improperly withheld information critical to this procurement, including an ex parte attack on me and Mr. Woocher sent to the Commission by the third bidder 2-½ hours before the interviews, but posted only after the decision was made.<sup>3</sup> Fairness required notice and a delay to enable Mr. Woocher and I to prepare a response. NDC had not disclosed that it worked with this third firm in over 120 matters.<sup>4</sup>

My experience in helping cities convert from at-large elections is extraordinarily relevant, especially in cases where I have achieved a consensus in support of a district map. These conversions are almost always more challenging than redistricting, since

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<sup>2</sup> Exhibit 1 contains excerpts of the judgment. The entire judgment is available on the WCCUSD website. <https://www.wccusd.net/cms/lib/CA01001466/Centricity/Domain/16/Joint%20Ex%20Parte%20Application%20for%20Entry%20of%20Judgment.pdf#page=12>

<sup>3</sup> <https://countyofsb.org/asset.c/6031>.

<sup>4</sup> Defense Exhibit 288, Covington v. NC, <https://www.nccourts.gov/assets/inline-files/LDTX288.pdf?KryF6gG7teLiTLGY4OqjOpUD.1e52md#page=4>

incumbents in at-large jurisdictions are usually more clustered. By contrast, in every CVRA case, NDC's presentation insists that providing incumbents "continuity in office" is a legitimate objective, often explicitly proposing to "avoid[] pairing." Exhibit 2. He has applied this principle in the most extreme cases, such as Martinez, San Ramon Valley USD, and New Jerusalem ESD.

The first part of these comments addresses NDC's gerrymanders, including those described in the letter from the LWV that NDC interdicted, as well as other anti-Latino or anti-Asian maps that I have opposed because they do not comply with federal law. The second part addresses NDC's violations of transparency requirements, in addition to the failure to post the LWV comments, and its substantively incorrect legal advice, including a remarkable opinion letter suggesting that Santa Barbara County could use its "charter" to override state law. As recently as last week, NDC undercut legal advice from the current attorney that Commissioners must avoid ex parte communications wherever possible. NDC's track record of anti-minority maps, and its disregard for transparency laws, each represent serious challenges to the integrity of the Commission's ultimate product and threaten to embroil the County in the very litigation that it was created to avoid.

NDC's violations of transparency are antithetical to the purpose of the Commission. Its performance as administrator and its challenges to the current attorney have not only compromised the integrity of this procurement; they threaten to embroil the final product of the Commission in protracted litigation and to discredit the entire model of independent redistricting. Since I stand accused by Dr. Johnson and Chair Morris of being an "advocate" for complying with voting rights, I believe that NDC should be removed as demographer and administrator before any attorney can restore the Commission's ability to fulfill its mandate with integrity.

I. NDC Should not Have Participated in the Procurement or Other Support of the Commission Given its History of Gerrymanders and Exceptional Criticism from Courts.

According to his resume, Dr. Johnson became Legislative Director to a Member of Congress the same year he graduated from college.<sup>5</sup> This extraordinary accomplishment reflects his skill in advocating for incumbents in legislative hearings. As the current attorney has tried to explain, the Commission should strive to function as a "quasi-judicial" body. Courts have questioned his ability to function credibly as an expert witness sworn to tell the truth and subject to cross-examination.

A. LWV's Complaints About NDC Are Well Documented.

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<sup>5</sup> See H.R.Doc. 104-235, "Statement of Disbursements of the House of Representatives," Jan. 1996, p.1218.

Rafferty to Santa Barbara County Supervisors, Response to Prejudicial Conduct and Comments by NDC, page 4

Last week, the County confirmed that it received Exhibit 3 attached that the LWV attached to an email dated January 6, 2021.<sup>6</sup> This six-page letter protests the no-bid selection of NDC and requests an RFP. NDC posted the email but associated it with a much shorter letter submitted on a later date.

I had nothing to do with the preparation of Exhibit 3, a letter that the LWV sent to the Commission, but was involved in three of the cases.

In dozens of redistricting plans and CVRA conversions Johnson and his team have sought to draw districts with one singular goal: allowing incumbent lawmakers to retain their political power. In their own presentations, they would state that one of the objectives was “continuity in office” – specifically protecting incumbents. It is no surprise that the Mayor [of Lompoc] would have good things to say about Johnson and NDC – regrettably for the wrong reasons.

The LWV letter goes on to criticize NDC’s involvement in the following matters.

1. Covington v. North Carolina, a redistricting case in which LWV says “Johnson’s misleading testimony had to be thrown out”<sup>7</sup>
2. “dozens of cases in which Johnson and NDC has led cities in efforts to fight against districted elections” “NDC and Johnson have been primary opponents of the CVRA... with huge costs to the local jurisdictions they represented”
3. Luna v. Kern County, a section 2 case in which LWV says Johnson “misled the court and supported plans which diluted [Latino] voting power”<sup>8</sup>
4. Redwood City, where LWV says Johnson denied a second Latino majority district, which was created “after much delay and at great cost”<sup>9</sup>

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<sup>6</sup> [countyofsb.org/asset.c/5941](http://countyofsb.org/asset.c/5941) p.7

<sup>7</sup> LWV cites <http://pulse.ncpolicywatch.org/2019/07/25/did-hofeller-draw-nc-maps-before-redistricting-process-judges-throw-out-expert-testimony-claiming-he-didnt/#sthash.Mc7pIV2G.dpbs> (Supp. Exh. 12). The mainstream press corroborates this account. <https://www.newsobserver.com/news/politics-government/article233105817.html> (Supp. Exh. 13) Actual report [https://www.brennancenter.org/sites/default/files/legal-work/Covington\\_Expert-Report-of-Douglas-Johnson.pdf](https://www.brennancenter.org/sites/default/files/legal-work/Covington_Expert-Report-of-Douglas-Johnson.pdf) See p. 29. Court ruling: 283 F.Supp.3d 410 (2018)

<sup>8</sup> LWV cites <https://www.latimes.com/local/lanow/la-me-kern-county-voting-rights-20180331-story.html> Actual ruling: [https://scholar.google.com/scholar\\_case?case=15102114084226947772&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=15102114084226947772&hl=en&as_sdt=6&as_vis=1&oi=scholar) 291 F.Supp.3d at 1108, 1115 (Judge Drodz adopts plaintiffs’ recommendations after noting differences in Johnson data). 291 F.Supp.3d at 1137 (argument regarding Latino education lacks merit). 291 F.Supp.3d at 1138 (rejects economic evidence as insufficient). Although NDC data is typically inaccurate, Judge Drodz’s criticisms are less severe than other courts.

<sup>9</sup> LWV cites <https://climaterwc.com/2019/03/20/latino-group-decries-lack-of-representation-in-redwood-city-district-election-map/>

Rafferty to Santa Barbara County Supervisors, Response to Prejudicial Conduct and Comments by NDC, page 5

5. In WCCUSD, “Johnson and NDC drew lines that had to be redone after a court found he had intentionally weakened the voting power of Latinos... [t]his change was made only after [I] sued the agency.”
  6. NDC’s “non-participation has been a condition of a legal settlement” with City of Alhambra.
  7. “a judge said [NDC’s Martinez map (Exhibit 4)] was such a gerrymander that it ‘verges on self-parody’ and was drawn only to protect incumbents... four of the incumbents live within 1/8th of a mile of each other.”<sup>10</sup>
  8. NDC’s Roseville map “was found to be devised entirely for the purposes of protecting incumbents.”<sup>11</sup>
- B. NDC is a Litigation Magnet that Exposes Section 2 Jurisdictions to Extraordinary Legal Risk

Martinez and Roseville did not have sufficient concentrations to create a district in which a minority had a majority of eligible voters (or even more than 25%, which some federal courts have recognized as the threshold for an influence district). Roseville adopted its districts less than a month before the Fair Maps Act became effective. NDC admits that it designed the Roseville map so that “no area was dominated by a single council member.” This technique attempts to preserve the status quo by creating homogenized districts which similar ethnic and political profiles. It is antithetical to the new Fair Maps Act, which improves minority representation by requiring that communities of interest be kept within a single district when possible.

By contrast, federal law requires Santa Barbara to create a Latino-majority district. In WCCUSD and other cases, NDC has created maps that violate federal law, in some cases intentionally discriminating against Latino or Asian minorities.

1. The Reverse Racial Gerrymander in San Ramon Valley

In the Doherty Valley community in San Ramon, approximately 60 percent of eligible voters are Asian, mostly naturalized citizens who had low voter participation. For San Ramon Valley USD, NDC split this community by using what the district called a “tentacle” to connect just enough Asians from Doherty Valley with portions of

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<sup>10</sup> LWV cites <https://www.mercurynews.com/2020/02/05/judge-may-force-martinez-to-change-its-city-council-districts-lawsuit-headed-to-trial/> See also <https://martinezgazette.com/sources-farias-recruited-lawyer-to-target-martinez/> actual ruling: <https://trellis.law/ruling/MSC18-02219/SANCHEZ-VS-CITY-OF-MARTINEZ/20190503b5ab66>

<sup>11</sup> LWV cites <https://www.sacbee.com/article237968189.html>  
<https://www.sacbee.com/article237968189.html>

Rafferty to Santa Barbara County Supervisors, Response to Prejudicial Conduct and Comments by NDC, page 6

Danville six miles away to create a school trustee area that was 50.1% Asian.<sup>12</sup> Exhibit 5. The Danville portion of this composite district includes gated communities that are older and much whiter, as well as a strong, white incumbent. Exhibit 5A. Perhaps out of embarrassment, the incumbent chose not to run. The Asian community influenced the election of a more friendly candidate.

The SRVUSD trustee area violates the Fourteenth Amendment because race was the predominant factor. The contorted map was so intentionally discriminatory that the District referred to pseudo-Asian trustee area as a “puzzle piece.”<sup>13</sup> Asian voters were unable to afford the cost and delay of Section 2 litigation.

By contrast, the City of San Ramon created a genuine Doherty Valley district. San Ramon elected its first two Asian council members after receiving the petition I helped Asian voters prepare. In a study written by Dr. Johnson, he admits that 8 of 31 jurisdictions in which he was involved failed to increase the number of minority officials elected. Protecting every incumbent limits opportunities for change.

## 2. Richmond – Eliminating a Majority Latino District as a Calculated Risk

Richmond was the first city required to comply with the Fair Maps Act. The Council appeared poised to adopt Map 103d,<sup>14</sup> a modification of plaintiffs’ proposed Map 101c<sup>15</sup> that retained an open seat in which Latinos had a majority of eligible voters. In the final meeting, they adopted Map 115b,<sup>16</sup> which placed most of the Latino community in a sub-majority district in which a Black incumbent claimed residency. NDC and Richmond’s special counsel denied an absolute duty to comply with Section 2, rationalizing that liability was a matter of risk assessment.<sup>17</sup> Again, they were correct in calculating that minority voters were unwilling or unable to litigate.

## 3. New Jerusalem – Preemptive Districting with a Conflict of Interest

New Jerusalem ESD district schools serve 29 students in rural San Joaquin County, but also supervises charter schools.<sup>18</sup> The website continues to identify Dr. Jeff

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<sup>12</sup> “tentacle”: Audio, Feb. 14, 2019, 25:29.

<sup>13</sup> “puzzle piece”: Video, Feb. 14, 2019, 1:19:45. <https://youtu.be/NrIGw2EF9Sc?t=4743>

<sup>14</sup> <http://www.ci.richmond.ca.us/DocumentCenter/View/51917/Map-103d?bidId=>

<sup>15</sup> <http://www.ci.richmond.ca.us/DocumentCenter/View/51936/Map-101c-Received-from-Rafferty-1-7-2020?bidId=>

<sup>16</sup> <http://www.ci.richmond.ca.us/DocumentCenter/View/51732/115b?bidId=>

<sup>17</sup> Council Meeting - 1/14/2020 - Jan 14th, 2020 (granicus.com) (video link inoperative as of March 8, 2021).

<sup>18</sup> These include home-based and online programs in other parts of the state that NJESD approved before the Legislature outlawed districts from sponsoring charters outside their boundaries.

NJESD’s governance attracted attention when community members criticized social media posts by its superintendent as “violent and racist.” <https://fox40.com/news/local-news/san-joaquin-county-parents-describe-social-media-posts-from-educators-as-violent-racist/> after the superintendent posted a picture of

Rafferty to Santa Barbara County Supervisors, Response to Prejudicial Conduct and Comments by NDC, page 7

Tilton as deputy superintendent in charge of charter school services. He may have left this position, because NDC also claims him as an employee.<sup>19</sup>

NDC preemptively created three trustee areas in 2018, even though the district has only 1800 voters. The three Anglo trustees live in the west side of the area, surrounded by Latino workers. More than a third of the voters (most older Anglos without children) live at a single street address (San Joaquin River Club) on the eastern edge of the district. Instead of having an area of their own, NDC divided River Club three ways to protect each of the incumbents on the other side of the district.

The most extraordinary aspect of NJESD's map (Exhibit 6) – and perhaps any district map – is the fact that it crosses I-5 to place a single home into trustee area 1, and that home is the residence of an incumbent trustee. As may have been the case in NJESD, this gerrymander was so embarrassing that trustee Petz did not seek reelection.

#### C. Dr. Johnson Has Faced Extraordinary Criticism from Almost Every Court Before Which he Has Offered Live Testimony.

Although all experts face occasional criticism from judges, it is unusual to have consistently harsh accusations levelled in most or all cases in which one has appeared. Last year, a three-judge panel in Common Cause v. Lewis<sup>20</sup> (¶647) summarized Dr. Johnson's performance, reporting that every court before which he appeared in person "rejected his methodologies, analogies and conclusions."

Dr. Johnson has testified as a live expert witness in four cases previously, and the courts in all four cases have rejected his analysis. Tr. 1886:21-1891:14; *see Covington [v. No. Carolina]*, 283 F. Supp. 3d at 450 (finding "Dr. Johnson's analysis and opinion . . . unreliable and not persuasive"); Luna v. County of Kern, 291 F. Supp. 3d 1088, 1137 (E.D. Cal. 2018) (holding that defendants' argument based on Dr. Johnson's analysis "lacks merit"); Garrett v City of Highland, 2016 WL 3693498, at \*2 (Cal. Super. Apr. 06, 2016) (finding Dr. Johnson's methodology "inappropriate"); Jauregui v City of Palmdale, No. BC483039, 2013 WL 7018375, at \*2 (Cal. Super. Dec. 23, 2013) (describing Dr. Johnson's work in the case was "unsuitable" and "troubling"). This Court joins these other courts in rejecting Dr. Johnson's methodologies, analyses, and conclusions.

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a man firing a machine gun on Facebook, in response to a suggestion by his wife (also employed by the district) that "country boys" would "wait in trees" to kill "rioters."

<sup>19</sup> NJESD: [https://njesd-ca.schoolloop.com/pf4/cms2/view\\_page?d=x&group\\_id=1535349885507&vdid=i9f1ycdq3hq](https://njesd-ca.schoolloop.com/pf4/cms2/view_page?d=x&group_id=1535349885507&vdid=i9f1ycdq3hq)

NDC: <https://www.ndcresearch.com/jeff-tilton/> His name appeared during closed sessions.

<sup>20</sup> Wake Cty., N.C. Superior Court Sept. 3, 2019 Common-Cause-v.-Lewis-trial-court-decision-9.3.19.pdf

Of even greater concern than these criticisms is Dr. Johnson's failure to correct practices that the courts have condemned. In Garrett v. City of Highland, Judge Cohn explained Dr. Johnson's use of an arbitrary 11% inflation of his measure of Latino voting strength. Exhibit 7. This was one of several disparities between NDC and official data that plagued the WCCUSD proceeding. Just last month, NDC filed a declaration in Robles v. City of Ontario using the same discredited calculation.

D. The NDC Experience Before the Arizona Commission Involved a Bidder and Was not Fairly Represented on the Record.

The third bidder stated during her interview that she successfully defended the map created by the Arizona Independent Commission after the 2000 census. She does not appear to be one of the many out-of-state attorneys who assisted local counsel in defending the Commission. That defense was not successful. The Superior Court overturned the map, citing critical errors by Dr. Johnson. The statute required the promotion of competitive districts where there was no substantial detriment to compactness. Dr. Johnson did not even test for compactness "because no one asked him to." The Court explicitly questioned his "expertise," and criticized his exposure to the addresses of legislators and Members of Congress, which occurred on two occasions. Exhibit 8. In her written application, the third bidder admits that she was not the attorney for the Arizona Commission, but "provided legal counsel to the consultant for the Commission." Exhibit 9. This may have been Dr. Johnson, with whom she has since worked in 120 matters. *See* fn.4, *supra*.

II. NDC's Administration Has Compromised the Commission, Especially with Regard to Compliance with Disclosure and Other Legal Requirements.

1. Dr. Johnson's Legal Analysis of the "Santa Barbara Charter."

Dr. Johnson is not licensed to practice law, but, on November 9, 2021, he did opine on the "complicated set of County Charter and State Statute provisions" that he believed governs the extent to which the Commission can adjust population data. Exhibit 10. He provides an extensive citation to the Santa Barbara County Charter, which simply does not exist. He also ignores the California Constitution, Article XI, Section 4(a), which reads: "Charter counties are subject to statutes that relate to apportioning population of governing body districts."

In his final paragraph, he appears to reassure a commissioner concerned that college students who normally reside in Isla Vista may have been overlooked by the census. He suggests that the entire 10% population deviation that he claims is "presumptively constitutional" may be dedicated to underpopulate this district. College students were enumerated in the "group quarters" count, which is a different



process the results of which are currently being reviewed by the new census director.<sup>21</sup> The 10% benchmark is not a safe harbor and cannot be used to advantage a particular group. To the extent there is any leeway, all potentially undercounted populations (*e.g.*, farmworkers, homeless, infants) would be entitled to consideration.

## 2. Withholding Document Material to the Procurement.

Some demographers interpreted the “request for interest” as an attempt to demonstrate that there were few available options to retaining NDC. Interim Chair Morris’ cryptic disclosure that he had spoken with a reporter about the status of NDC’s contract only added to this mystery.<sup>22</sup> As spokesman, Mr. Morris could have made, posted, and referred the reporter to a public statement. Concerns about the authority of incoming counsel to maintain the administrator within the bounds of appropriate legal constraints and administrative practices was a major concern in preparing for my interview. Therefore, I sought the responses to the RFI for potential replacement demographers, which was due at 2PM the day of the interviews. Dr. Johnson declined to provide it, so I did not know if any alternative demographers were willing to serve.

The third bidder should have been disqualified for sending the *ex parte* message at 4PM on the day of the interview, which attempt to disparage Mr. Woocher and me. *See* Exhibit 11. By failing to bring this development to our attention before the interview, NDC compromised the process in favor of the bidder (with whom NDC had worked in 120 proceedings). *See* fn.4, *supra*.

## 3. Continuing Uncertainty Regarding Ex Parte Contacts and Posting Policies

At the meeting on March 3, 2021, Mr. Churchwell properly suggested that Commissioner strive to treat the process as “quasi-judicial” and commended the Santa Barbara City Council Procedure 4.14.5 “to avoid and discourage *ex parte* contacts if at all possible.” It is usually possible to avoid initiating or responding *ex parte*, which would limit disclosable items to statements that others spontaneously make to Commissioners. He was correct to point out that the ordinance, 2.09A(h), does not limit the scope of *ex parte* communications, so communications proposing topics or soliciting a Commissioner’s impression or level of interest should be reported or responded to in public. It is equally critical that the Commission make information posted on its website more easily accessible (and timestamped).

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<sup>21</sup> <https://www.census.gov/newsroom/blogs/director.html> Feb. 2, 2021: “The fact that some facilities emptied in the spring due to the pandemic, has caused issues with our GQs enumeration... As a result, we re-contacted thousands of facilities and have brought in new data sources”

<sup>22</sup> <https://www.countyofsb.org/asset.c/6023>

Rafferty to Santa Barbara County Supervisors, Response to Prejudicial Conduct and Comments by NDC, page 10

Bylaw II, 7 suggests that a person can request that a communication to the Commission not be posted. This is not consistent with Government Code, Section 54954.1, which requires public disclosure once a majority of the legislative body has received a document relevant to an agenda item. Commission may provide for anonymous submission, but the substance of any substantive written communication should be posted. Otherwise, the ex parte rule would be devoid of any meaning, as the most significant efforts at influencing the Commission could be exempted from disclosure at the behest of the influencer.

CONCLUSION

It would be an honor to serve the Commission, but the more important issue is to restore integrity and impartiality to this process. Commissioners should be agents of the voters collectively, charged with collecting, distilling and reconciling their input to create a coherent and compliant map. In the case of Santa Barbara County, compliance with Section 2 of the federal Voting Rights Act is a serious constraint, and potentially grounds for controversy.

On January 27, 2021, Chair Morris observed that I "said very nice things about [Dr. Johnson]." *See* fn.1, *supra*. What I stated in my application was that he does what his client instructs, which is true, and sometimes leads to positive results.<sup>23</sup> But Dr. Johnson is a poor choice for demographer in a jurisdiction with complex issues of minority vote dilution. He often tells incumbents what they want to hear or makes claims about the law designed to satisfy their political ambitions. An independent commission needs to have a demographer who is committed to impartiality and transparency and is prepared to speak the truth. The Commission needs experts who can testify credibly, even when cross-examined.

NDC's track record of gerrymanders, including intentional discrimination against minority voters will embroil the final map in litigation, unless the Commission engages an alternative demographer or subjects NDC's draft maps to very strict legal review.

Sincerely,



Scott J. Rafferty

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<sup>23</sup> This was the case in Folsom-Cordova USD, where Dr. Johnson prepared an excellent map after the Board rejected relying on an order purporting to provide immunity from CVRA enforcement.

EXHIBIT 1

1 **SPINELLI, DONALD & NOTT**  
A Professional Corporation  
2 Domenic D. Spinelli, SBN: 131192  
601 University Avenue, Suite 225  
3 Sacramento, CA 95825  
Telephone: (916) 448-7888  
4 Facsimile: (916) 448-6888  
Email: [domenics@sdnlaw.com](mailto:domenics@sdnlaw.com)

5 Attorneys for Defendants  
6 West Contra County Unified School District

7 Scott Rafferty, Esq.  
1913 Whitecliff Court  
8 Walnut Creek, CA 94596  
Telephone: (202) 380-5525  
9 Email: [rafferty@gmail.com](mailto:rafferty@gmail.com)

10 Attorney for Plaintiffs  
Linda Ruiz-Lozito and Bay Area Voting  
11 Rights Initiative

12 IN THE SUPERIOR COURT OF CALIFORNIA  
13 IN AND FOR THE COUNTY OF CONTRA COSTA

14 LINDA RUIZ-LOZITO  
15 AYANA YOUNG  
16 BAY AREA VOTING RIGHTS INITIATIVE

Case No.: C18-00570  
*Case assigned to Dept. 12 for all purposes*

17 Plaintiffs,  
18 vs.

**STIPULATION AND [PROPOSED]  
JUDGMENT**

18 WEST CONTRA COSTA UNIFIED  
19 SCHOOL DISTRICT

20 Defendants,

21 \_\_\_\_\_ /  
**[FEES EXEMPT PURSUANT TO  
GOVERNMENT CODE SECTION 6103]**

22  
23 The parties to the above-entitled action, Plaintiffs LINDA RUIZ-LOZITO and BAY AREA  
24 VOTING RIGHTS INITIATIVE, and Defendant, WEST CONTRA COSTA UNIFIED SCHOOL  
25 DISTRICT, by and through their respective attorneys of record, set forth their stipulations to resolve  
26 this matter and hereby request judgment be entered under the following terms and conditions:  
27

I. INTRODUCTION

1  
2 A. This lawsuit filed on March 21, 2018, involves a challenge under both the California Voting  
3 Rights Act of 2001, Elections Code §14025 et seq: ("CVRA"), and Section 2 of the Voting Rights  
4 Act of 1965, as amended, 52 U.S.C. §10301 ("Section 2"), to the current method of the West Contra  
5 Costa Unified School District ("WCCUSD" or "Defendant") for electing its trustees. Under the  
6 current system, trustees are elected "at- large" by all of the voters in WCCUSD. Plaintiffs claim that  
7 racially polarized voting in at-large trustee elections dilutes the voting strength of Latino and African-  
8 American citizens and thereby impairs their ability to participate in the political process, to elect  
9 candidates of their choice, and to influence the outcome of elections. Plaintiffs claim that the at-large  
10 system results in a denial or abridgement of their right to vote, and that WCCUSD must elect each of  
11 its trustees from distinct trustee areas, which are mutually exclusive and collectively exhaust its  
12 territory.

13 B. On March 21, 2018, the Board of Trustees ("Board") for West Contra Costa Unified School  
14 District passed a resolution (Resolution No.: 64-1718), stating the Board's intent to move to trustee  
15 area elections. (See Exhibit A attached hereto.)

16 C. Defendant filed its Answer, generally denying the allegations and asserting affirmative defenses  
17 on July 6, 2018.

18 D. On August 13, 2018, the parties stipulated that the three trustee seats that were to be elected at  
19 the state-wide general election on November 6, 2018 would be for two-year terms, so that elections  
20 by trustee area could be implemented through the entire district at the state general election of  
21 November 3, 2020. (See Exhibit B attached hereto.)

22 E. On September 12, 2018, the Court entered an Order upon the parties' Stipulation in accordance  
23 with these terms. (See Exhibit B attached hereto.)

24 F. As a result of the continued negotiations, and in exchanging various proposals, the parties have  
25 agreed on a trustee area map to be used for the November 2020 election, attached hereto as Exhibit

26 C.

27 //

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1 succeeding his or her election. On September 12, 2018, upon application of the parties  
2 to this action, this Court ordered that trustees elected on November 6, 2018 would serve  
3 shortened terms, so that trustees would be elected from each of the five trustee areas on  
4 November 3, 2020.

- 5 4. Board elections are conducted by an "at-large method of election" within the meaning of  
6 Elections Code § 14026(a)(1). All voters, regardless of where they reside within  
7 WCCUSD, vote for their preferred trustee candidates, and candidates who receive the  
8 most votes are elected to Board.
- 9 5. Plaintiff Linda Ruiz-Lozito is registered to vote and resides within the boundaries of  
10 WCCUSD. Plaintiff is a member of a "protected class" as the term is defined in  
11 California Election Code § 14026.
- 12 6. WCCUSD acknowledges that the plaintiffs demonstrated that a protected class is  
13 sufficiently large and geographically compact to constitute a majority of citizens of  
14 voting age within one trustee area.
- 15 7. The community referred to in paragraph 7 is cohesive and capable of electing its  
16 candidate of choice within this trustee area.
- 17 8. During the negotiation process, the parties have jointly developed the remedial map  
18 attached hereto as Exhibit C, which is compliant with state and federal voting rights  
19 laws, and will be used on November 3, 2020, when residents of WCCUSD will elect  
20 trustees from each area using the attached remedial map. The Trustee Areas [4] and [5]  
21 on this map will elect trustees to two-year terms in November of 2020. Trustee Areas  
22 [1], [2], and [3] will continue to serve four-year terms.
- 23 9. WCCUSD acknowledges that if this case were to go to trial, the Plaintiffs would likely  
24 prevail on their CVRA and Section 2 claims as pled in the Complaint.
- 25 10. As a result of this litigation, the Board's Resolution (Exhibit A), the Stipulation and  
26 Order between the parties (Exhibit B), and the agreed and legally compliant remedial  
27 map (Exhibit C), the parties agree that these elements combined provide a conversion of  
WCCUSD's existing at-large method of electing trustees into a system in which each of

JUDGMENT

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Based upon the foregoing stipulations and upon the facts and law applicable to this case, and with good cause appearing, the Court hereby orders judgment as follows:

- 1. It is hereby ordered adjudged and decreed that the next regular election for Defendant’s Board of Education shall be “Trustee Area-based”, as follows:
  - A. The attached remedial map (Exhibit C), which is in compliance with state and federal voting rights laws, and which will be used for the November 3, 2020 election.
  - B. In the November 3, 2020 election, the district will elect trustees from each area using the remedial map (Exhibit C).
  - C. The Trustee Areas [4] and [5] on the remedial map (Exhibit C), will elect trustees to two-year terms in the November 3, 2020 election, and thereafter four-year terms commencing with the November 2022 election.
  - D. Trustee Areas [1], [2], and [3] on the remedial map (Exhibit C), will serve four-year terms commencing with the November 3, 2020 election.
  - E. As a result of this litigation, the Board’s Resolution (Exhibit A), the Stipulation and Order between the parties (Exhibit B), and the legally compliant remedial map (Exhibit C), the Court finds that these actions combined remedy the allegations in Plaintiff’s Complaint.
- 2. It is further adjudged and decreed that Defendant is permanently enjoined from imposing, applying, holding, tabulating and/or declaring the results of any further at-large elections and/or the results thereof, for any positions on its Board of Education beginning in the November 3, 2020 election.
- 3. It is further ordered that WCCUSD will pay Plaintiffs’ counsel, Scott Rafferty, \$280,000.00 for all attorneys’ fees, costs and expenses for this case upon entry of this Stipulation and Judgment. This, in addition to a previously paid amount of \$30,600.00, represents all fees, costs and expenses due and owing to Plaintiffs’ and their counsel from Defendant in this action.

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4. Pursuant to the parties' Stipulation and Exhibit D to this Stipulation and Judgment, the District shall establish an independent redistricting commission ("Commission") to prepare trustee areas for the November 2022 election.

5. It is further adjudged and decreed that this Court retains jurisdiction to interpret and enforce this Stipulation and Judgment and to adjudicate any disputes regarding implementation or interpretation of this Stipulation and Judgment. The Court's retained jurisdiction will end on November 3, 2020.

The Clerk of the Court is directed to enter this Judgment.

IT IS SO ORDERED, ADJUDGED AND DECREED.

**CHARLES S. TREAT**

Dated: MAR - 6 2019

Hon. Charles S. Treat

## Exhibit D

### INDEPENDENT REDISTRICTING COMMISSION

1. WCCUSD ("District") shall establish an independent redistricting commission ("Commission") to prepare trustee areas for 2022. To ensure that the Commission will be free of political influence and representative of the District's diversity, its seven (7) members shall be appointed by a retired judge to be selected by counsel for Plaintiff and Defendant ("Selection Judge").
2. The Superintendent shall solicit and accept written nominations for appointment to the Commission in accordance with this provision no later than January 1, 2021 to March 1, 2021. Individuals or organizations desiring to nominate persons for appointment to the Commission shall do so in writing to the Superintendent. The Superintendent shall remove from the pool any individual who does not comply with the conditions set forth in Elections Code section 23003, subdivisions (c) and (d). The Superintendent shall transmit the names and relevant information regarding all remaining nominees, along with the names of the individuals and organizations that made such nominations to the Selection Judge. The Selection Judge shall appoint seven (7) individuals to serve as members of the Commission no later than May 1, 2021. The Selection Judge shall use his/her best efforts to appoint people who will give the Commission racial, geographic, social, and ethnic diversity, and who, in its judgment, have a high degree of competency to carry out the responsibilities of the Commission and a demonstrated capacity to serve with impartiality. The Selection Judge will select one member from each current trustee area and two members from within Contra Costa County excluding the boundaries of the District. If one member from each current trustee area cannot be selected, and/or two members from within Contra Costa County excluding the boundaries of the District, the Selection Judge can select a member from within the District boundaries. The Commission shall not be



comprised entirely of members who registered to vote with the same political party preference, pursuant to Elections Code section 23003, subdivision (f). Persons who accept appointment to the Commission shall, at the time of their appointment, file a written declaration with the Clerk of the Board stating that they will not seek election as District trustee prior to 2028. Any vacancy in the Commission after the Commission is constituted shall promptly be filled by the Selection Judge, following the same procedure and using the same criteria established herein.

3. Within sixty (60) days after the members of the Commission are appointed, the Commission shall adopt a budget and submit it to the Board. The Board shall appropriate to the Commission and to the Superintendent the funds necessary for the Commission to accomplish its task, including paying for an expert demographic consultant.

4. The Commission shall conduct an open and transparent process that ensures full and meaningful public participation. The Commission shall adopt procedures sufficient to ensure that any communication it receives directly or indirectly from incumbent trustees is reduced to writing and posted on the internet. The Commission shall provide public notice of and hold five public hearings, one in each current trustee area, at which all residents will have equal opportunity to comment on the drawing of district lines. The Commission shall make every reasonable effort to afford maximum public access to its proceedings, setting times and locations that assure accessibility to members of protected classes. Notice of and translation services at each public hearing shall be provided in Spanish.

5. Members of the Commission shall comply with the terms of Election Code 23003, subdivisions (e) and (g), and shall be subject to West Contra Costa Unified School District's Conflict of Interest Code.

6. After the public hearings, and no later than October 1, 2021, the Commission shall, in consultation with its demographic consultant, prepare a preliminary map and accompanying report (“Preliminary Plan”) dividing the District into five trustee areas. Those trustee areas shall be used for all future elections of Trustees, including their recall, and for filling any vacancy in the office of member of the Board until such time as new trustee areas are established for the 2032 election. The Commission shall draw the proposed district boundary lines of the District pursuant to the criteria set forth in the following order of priority:

- a. Compliance with the United States Constitution, including reasonable equality of population within each trustee area.
- b. Compliance with the Federal Voting Rights Act, first by establishing or maintaining trustee areas containing a majority of members of a protected class to the extent legally permissible, and then by considering any extent to which trustee areas containing a near majority of a protected class, or a majority of protected classes that act in coalition, would provide those protected classes with the opportunity to elect their candidates of choice and to influence elections on a basis more equal to the opportunity enjoyed by the rest of the electorate
- c. The additional requirement of state law that population be as nearly equal as possible, using the 2020 census and any population figures validated pursuant to Education Code 1002, subdivision (b), and 5019.5, subdivision (a).
- d. Trustee areas will be drawn using the factors authorized in Education Code 1002, subdivision (a): (1) Topography; (2) Geography; (3) Cohesiveness, contiguity, integrity, and compactness of territory; and (4) Respect for geographic integrity of neighborhood

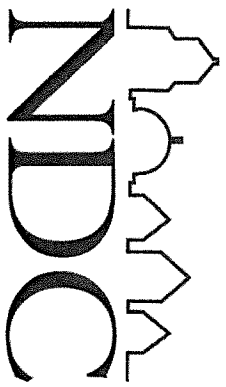
and any community of interest, (including those of racial, ethnic, and language minorities) to the extent possible without violating any of the preceding provisions.

7. The Commission shall not consider the place of residence of any incumbent or political candidate in defining trustee areas. Trustee areas shall not be drawn for the purpose of favoring or discriminating against an incumbent, candidate, or political party pursuant to Elections Code 23003, subsection (k).

8. The Commission shall file the Preliminary Plan with the Superintendent, who shall make it publicly available. The Preliminary Plan shall contain a map with a depiction of the trustee areas and a report that outlines the bases on which the Commission made its decisions regarding trustee area boundaries, including its compliance with the criteria stated above. The Commission shall comply with Elections Code 23003, subdivision (j), regarding public hearings and map publication, except as otherwise set forth herein. After having heard comments from the public on the Preliminary Plan, the Commission may make any revisions. The Commission shall then approve a Recommended Plan by majority vote of all members. The Commission must file the Recommended Plan with the Superintendent by January 1, 2022.

9. The Board shall hold at least one (1) public hearing on the Recommended Plan before its adoption by the Committee. After having heard comments from the public on the Recommended Plan, the Commission may make any revisions. The Commission, possessing the power to adopt the trustee areas of the District, will then adopt a Final Districting Plan of its choosing by majority vote at a public hearing. If legally required for implementation of the Final District Map, the Board shall then promptly approve the Final Districting Map.

10. No change in the boundary or location of any district by redistricting as herein provided shall operate to abolish or terminate the term of office of any member of the Board prior to the



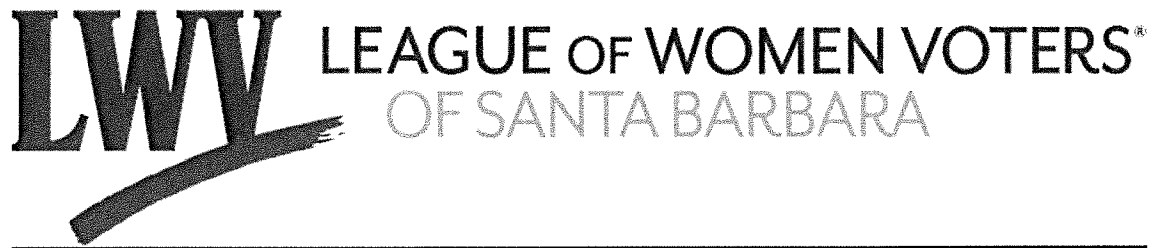
# Districting Rules

Federal Laws (Requirements)	Traditional Redistricting Goals
<ul style="list-style-type: none"> <li>❑ <b>Equal Population</b> <ul style="list-style-type: none"> <li>❑ No more than a 10% difference between the total population of the largest and smallest zones</li> </ul> </li> <li>❑ <b>Federal Voting Rights Act</b> <ul style="list-style-type: none"> <li>❑ Neighborhoods that are heavily Latino, Asian-American, African-American, or Native American cannot be divided in a way that dilutes their voting strength</li> </ul> </li> <li>❑ <b>No Racial Gerrymandering</b> <ul style="list-style-type: none"> <li>❑ Race cannot be the “predominate” factor</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❑ <b>Respect “communities of interest”</b></li> <li>❑ <b>Compact, Contiguous, and following Visible (Natural &amp; man-made) boundaries</b> <ul style="list-style-type: none"> <li>❑ Keep the zone borders relatively easy for voters to understand</li> </ul> </li> <li>❑ <b>Respect voters’ choices / continuity in office</b> <ul style="list-style-type: none"> <li>❑ Try to avoid pairing current Board members, where possible</li> </ul> </li> <li>❑ <b>Accommodate Planned future growth*</b></li> </ul>

EXHIBIT 2

*\* Planned future growth will be a factor in 2021 redistricting, but is not a factor this year (since little growth will occur before 2020 election).*

EXHIBIT 3



January 6, 2021

Santa Barbara Redistricting Commission  
County Executive Office  
105 E. Anapamu Street, Suite 406  
Santa Barbara, CA 93101  
Via email: [redistricting@countyofsb.org](mailto:redistricting@countyofsb.org)

**SUBJECT: Selection of Counsel and Demographer**

Dear Commissioners,  
The League of Women Voters of Santa Barbara (LWVSB) is a non-partisan, political organization. We encourage informed and active participation in government, work to increase understanding of major public policy issues, and influence public policy through education and advocacy.

On behalf of LWVSB, I would like to congratulate you on your selection of the additional commissioners to serve on the first ever Santa Barbara County Independent Redistricting Commission. This is a great responsibility which will have impacts for the next decade and beyond.

As you begin your terms, I call upon you to review the language of County Code Sec. 2-10.9A establishing the commission, the state Fair Maps Act under California Elections Code § 21500, and best practices from other counties and cities that have implemented independent redistricting processes. The first step is engaging in an open, transparent process to identify the best legal counsel and demographic services available through the solicitation of proposals through a Request for Proposals/Request for Qualifications process.

**We have the following comments regarding the upcoming selection of your Legal Counsel:**

Last year, we and others called your attention to the fact that Santa Barbara County is the only county independent redistricting commission that has not

used a transparent RFP process to select your legal counsel and demographer. As a result, the Board of Supervisors appointed interim counsel, and solicited RFP's for legal services. Proposals are due this week.

We will just raise one concern we have heard about your interim legal counsel. Churchwell White LLC is a firm that has stood against the California Voting Rights Act (CVRA), denying claims by minority communities as they seek to use districting as a means to empower their community in local elections. Their work in the City of Santa Clara has sought to diminish the voting power of the growing Asian American community.

<https://www.svvoice.com/santa-clara-had-expert-voting-rights-litigator-on-contract-but-trusted-600000-defense-to-attorney-with-limited-cvra-experience-and-a-lucrative-municipal-law-practice/>

**We hope you agree that the commission should have legal counsel that shares a common goal of empowering communities and strengthening voting rights – not one that is actively fighting against the laws created to protect these rights.**

**We have the following comments regarding the selection of the demographer:**

After hearing numerous concerns from the public regarding the County's issuance of a sole source/no bid contract for demographic services to National Demographic Corporation, the initial five commissioners stated their interest in using an RFP process for demographic services but deferred the question until all members of the commission had been chosen.

As you likely know, redistricting can serve to empower communities, sometimes at the expense of others. Given the inherent push-pull nature of redistricting, it becomes even more important that all participants share a common belief that the process was open, transparent and most of all fair. It could be very unfortunate to enter into this redistricting with a demographer and legal counsel, when the public has raised serious concerns about their ability to be fair, open, and impartial, without a review of all possible options.

As to your demographer, the issue is multilayered, and even more critical as they will be the ones holding the pen as you draw lines.

You have already received input from the community about hidden Republican ties of your current Demographer, Doug Johnson of National Demographics Corporation and the Rose Institute. During the 2011 California Redistricting process, the submission from Johnson and NDC (applying under League of Women Voters of Santa Barbara | 328 E Carrillo St., Suite A | Santa Barbara | CA | 93101

their Rose Institute banner) was rejected because of omissions in their application regarding partisan conflicts and failure to disclose their partisan activities and funding. A simple Google search will find descriptions of your demographer, such as:

**Santa Maria Times:** "Rose Institute advises Republicans on redistricting."

**Sacramento Bee:** "The conservative Rose Institute."

**The Los Angeles Times:** "The Republican-oriented Rose Institute."

**California Journal:** "Rose was a group used by Republicans and largely shunned by Democrats." and even Johnson himself stated "We have a reputation for being conservative."

Since 2011, the work done by Doug Johnson and National Demographics has become even more partisan. In their most egregious work to come public (and it is noteworthy that most partisan work is not public), the Republican Party of North Carolina hired Johnson in a case, *Covington v State of North Carolina*, which was a clear case of both racial and partisan gerrymandering. The media widely reported on Johnson's misleading testimony that had to be thrown out by a three-judge panel. <http://pulse.ncpolicy-watch.org/2019/07/25/did-hofeller-draw-nc-maps-before-redistricting-process-judges-throw-out-expert-testimony-claiming-he-didnt/#sthash.J1dgAu9H.dpbs>

While this should be a major red flag, the greater problem has been NDC and Doug Johnson's reputation within their local redistricting.

Like Churchwell, NDC and Johnson have been the primary opponents of the California Voting Rights Act, taking millions of taxpayer dollars in challenges to the state law, which have often been settled out of court, with huge costs to the local jurisdictions that they represented.

There are dozens of cases in which Johnson and NDC have led cities in efforts to fight against districted elections. The only silver lining is that in every single case they have lost, or the jurisdiction settled before the court was required to issue a final ruling.

Johnson and NDC have also fought empowerment of the Latino community in California. Most recently, Johnson testified in support of Kern County in a lawsuit against Latino civil rights groups which were calling for an additional Latino Majority Minority district in their supervisorial lines. This case, led by the Mexican American Legal Defense and Education Fund (MALDEF) and civil rights leader Dolores Huerta, was successful in finding that the County of Kern and Johnson, had misled the court and supported plans which diluted

the voting power of the minority Latino community, forcing a mid-decade re-districting, an unprecedented delay in an election, and creation of a new Latino seat. <https://www.latimes.com/local/lanow/la-me-kern-county-voting-rights-20180331-story.html>

In another case of denying the Latino Community proper representation, Johnson and NDC failed to create a second Latino district in **Redwood City**: <https://climaterwc.com/2019/03/20/latino-group-decries-lack-of-representation-in-redwood-city-district-election-map/>. In this case, Johnson told the city that a second Latino majority-minority district could not be created and so, upon his advice, the city moved forward with maps. Then, after a threat from civil rights attorney Kevin Shenkman, Johnson was forced to reverse his prior statements, causing the city to have to reopen the process and begin considering maps that reflected the need for proper Latino representation. Ultimately, two majority-minority districts were drawn, after much delay and added cost to the city and the community.

Again, in **West Contra Costa**, Johnson and NDC drew lines that had to be redone after a court found he had intentionally weakened the voting power of Latinos. <https://richmondconfidential.org/2019/03/07/a-final-trustee-area-map-emerges-as-lawsuit-resolves/>. Like in Redwood City, this change was only made after another attorney, Scott Rafferty sued the agency.

The behavior of Johnson and NDC has become so predictable in regards to these Civil Rights violations that when the City of Alhambra entered a settlement agreement after facing a lawsuit over the creation of districts, that agreement specifically stated "Parties recognize that the City will require the services of a qualified demographer to assist that process; and that demographer will not be National Demographics Corporation or its principals, officers or employees." It is amazing that a specific firm's non-participation has been a condition of a legal settlement.

Aside from their partisanship, and their opposition to the state and federal voting rights acts, Johnson and NDC have one last and potentially most important calling card: incumbent protection.

In dozens of redistricting plans and CVRA conversions Johnson and his team have sought to draw districts with one singular goal: allowing incumbent lawmakers to retain their political power.

The most outlandish of all these is the districting in the **City of Martinez** that a judge said was such a gerrymander that it "verges on self-parody"



and was drawn only to protect incumbents: <https://www.mercuryn-ews.com/2020/02/05/judge-may-force-martinez-to-change-its-city-council-districts-lawsuit-headed-to-trial/>

You can see the Martinez map, and the where four of the incumbents live within 1/8<sup>th</sup> of a mile of each other, here:

<https://www.facebook.com/297781150711778/photos/a.323325638157329/323326121490614/?type=3&theater>.

This work protecting incumbents continued in the **City of Roseville** where a Johnson created plan was found to be devised entirely for the purposes of protecting incumbents. <https://www.sacbee.com/article237968189.html> Both Martinez and Roseville, in reaction to their incumbent gerrymanders, have since been forced to use an independent redistricting commission. And they will be required to follow the Fair Maps Act, a policy that forbids incumbent gerrymandering and was written largely in response to the work being done around the state by NDC. It would be horribly ironic if this same individual was brought into our community to run a redistricting that is supposed to be seen as "independent."

It should be recognized that your commission did receive a very positive letter in support of Johnson and NDC as your demographer from the Mayor of the **City of Lompoc**. So, we did some research. And, yet again, this was a CVRA conversion in which multiple public plans were submitted, some of which put incumbents into the same district. But every map created by NDC, including the final approved map, protected every incumbent council member. In their own presentations, they would state that one of the objectives was "continuity in office" – specifically protecting incumbents. It is no surprise that the Mayor would have good things to say about Johnson and NDC – regrettably for the wrong reasons.

If you want to have your independent redistricting process be respected by the public, you should take immediate action.

An open transparent RFP process will allow you to obtain additional information about your prospective counsel and demographer, and alternatives available to you. We would also encourage you to invite attorneys like Kevin Shenkman and Scott Rafferty, and members of the public to provide you with information regarding qualified counsel and demographers. It is undeniably better to get this feedback now rather than wait for them to bring a lawsuit later.

**The League of Women Voters of Santa Barbara is asking you to please open a public RFP process for your demographer as you have done with your legal counsel, and to please move quickly. There is still time to do a robust search and interview your options for a demographer, as other independent commissions have done. There are several very qualified law firms and demographic service companies in California and nationally who would likely bid if there is an open, transparent and competitive process.**

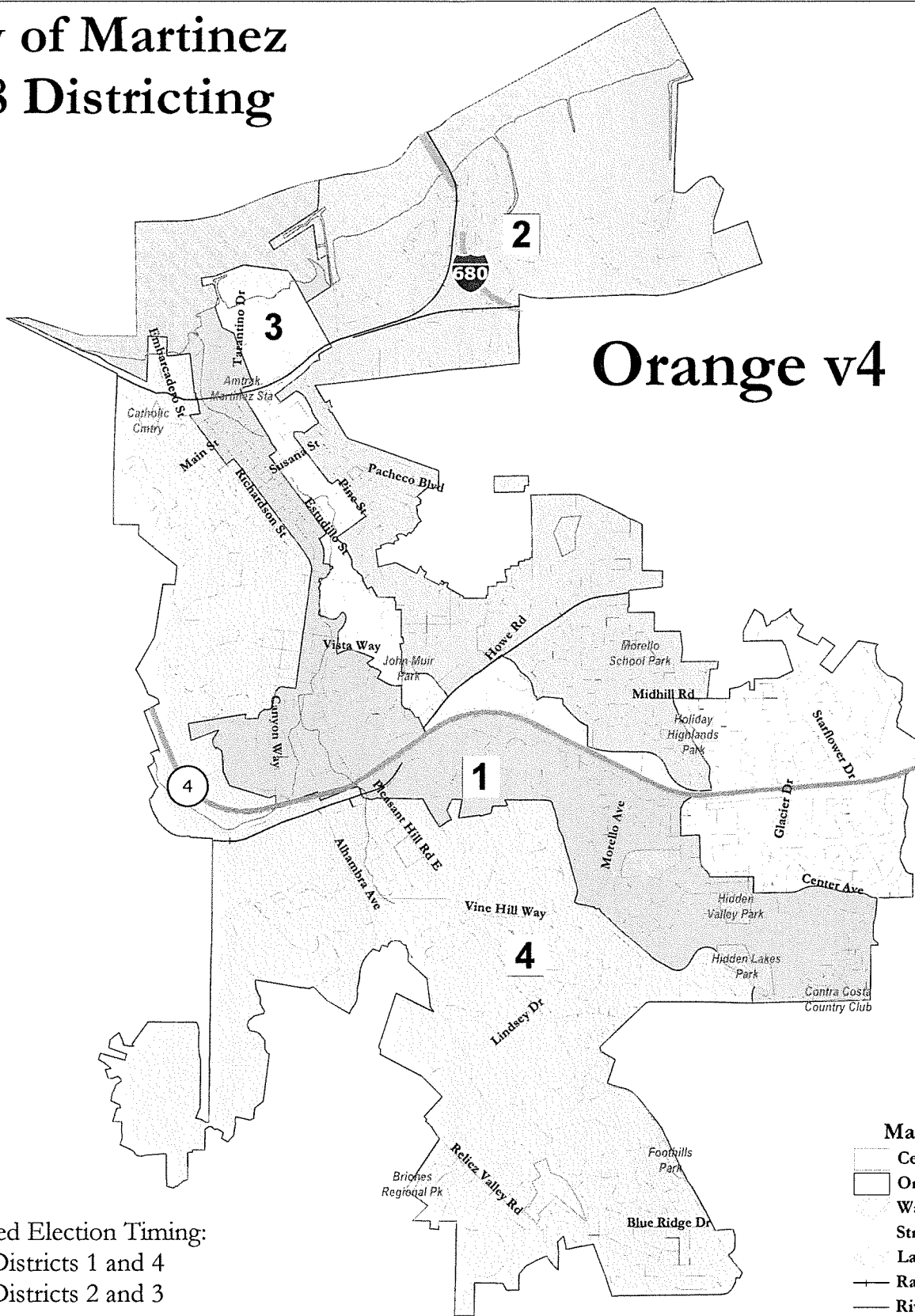
**Please contact league member Mary Rose at [mary.rose@maryrose.cc](mailto:mary.rose@maryrose.cc) if you have questions or need more information.**

Thank you for your attention to this very important matter.



Vijaya Jammalamadaka  
President, LWVSB

# City of Martinez 2018 Districting



## Orange v4

Suggested Election Timing:  
2018 - Districts 1 and 4  
2020 - Districts 2 and 3

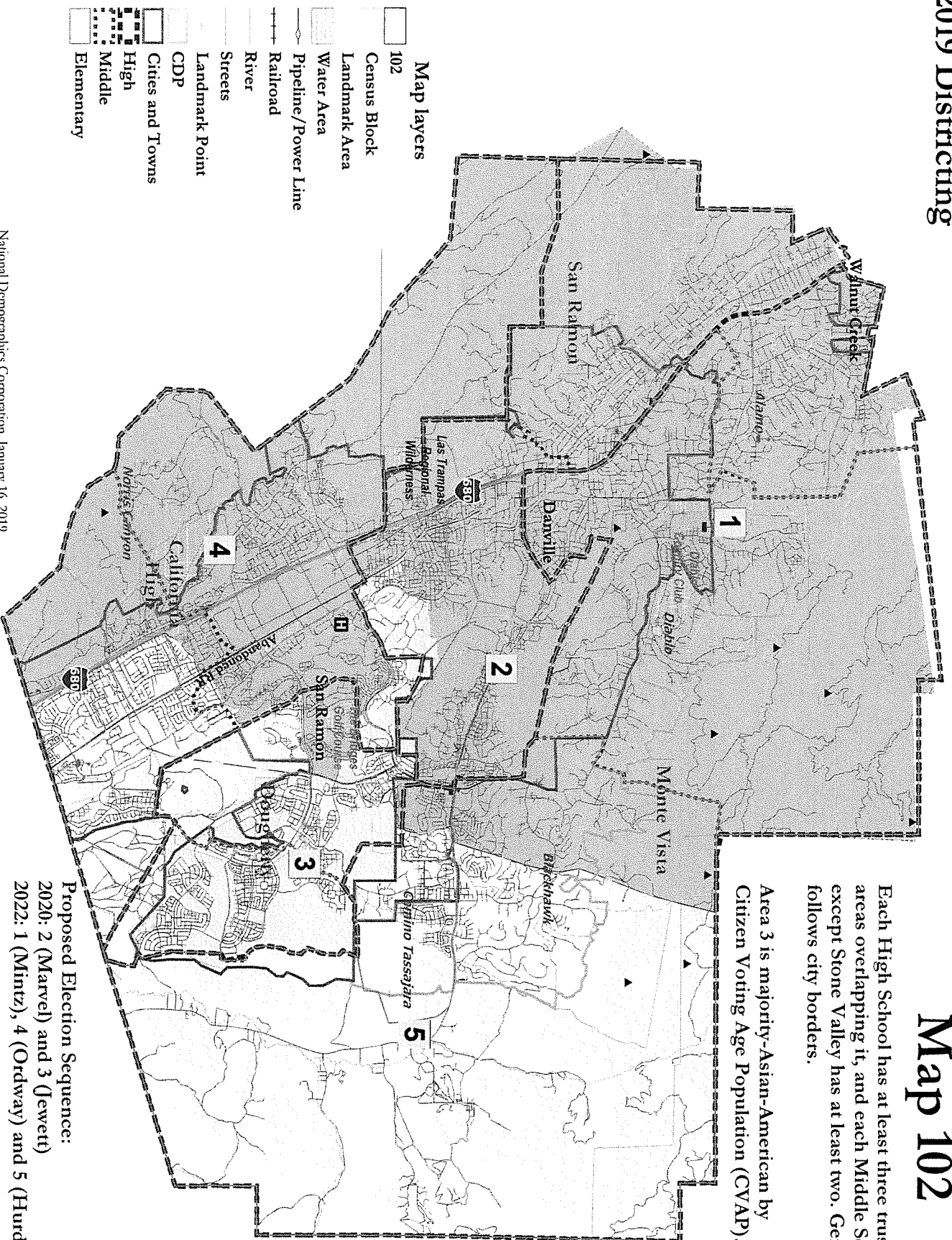
- Map layers**
- Census Block
  - Orange v4 Split
  - Water Area
  - Streets
  - Landmark Area
  - Railroad
  - River

# San Ramon Unified 2019 Districting

## Map 102

Each High School has at least three trustee areas overlapping it, and each Middle School except Stone Valley has at least two. Generally follows city borders.

Area 3 is majority-Asian-American by Citizen Voting Age Population (CVAP).



- Map layers**
- 102
  - Census Block
  - Landmark Area
  - Water Area
  - Pipeline/Power Line
  - Railroad
  - River
  - Streets
  - Landmark Point
  - CDP
  - Cities and Towns
  - High
  - Middle
  - Elementary

**Proposed Election Sequence:**  
 2020: 2 (Marvel) and 3 (Jewett)  
 2022: 1 (Mintz), 4 (Ordway) and 5 (Hurd)

### San Ramon Unified - Draft Map 102

District		1	2	3	4	5	Total
Ideal	Total Pop	28,981	28,800	28,293	29,104	28,207	143,385
28,677	Deviation from ideal	304	123	-384	427	-470	897
	% Deviation	1.06%	0.43%	-1.34%	1.49%	-1.64%	3.13%
Total Pop	% Hisp	6%	7%	6%	9%	9%	7%
	% NH White	82%	77%	33%	57%	62%	62%
	% NH Black	1%	1%	3%	3%	2%	2%
	% Asian-American	10%	14%	55%	29%	25%	26%
Citizen Voting Age Pop	Total	21,627	20,101	17,071	18,707	18,052	95,558
	% Hisp	6%	5%	6%	7%	10%	7%
	% NH White	85%	80%	39%	61%	65%	67%
	% NH Black	1%	1%	3%	3%	3%	2%
	% Asian/Pac.Isl.	7%	14%	51%	28%	21%	23%
Voter Registration (Nov 2016)	Total	21,641	20,310	14,013	16,651	18,835	91,450
	% Latino est.	5%	6%	7%	9%	8%	7%
	% Spanish-Surnamed	4%	5%	6%	8%	7%	6%
	% Asian-Surnamed	6%	8%	31%	15%	16%	14%
	% Filipino-Surnamed	1%	1%	2%	2%	2%	1%
	% NH White est.	87%	84%	55%	70%	71%	75%
	% NH Black	1%	1%	3%	3%	3%	2%
Voter Turnout (Nov 2016)	Total	17,639	16,605	10,931	13,312	15,044	73,533
	% Latino est.	4%	6%	7%	9%	8%	7%
	% Spanish-Surnamed	4%	5%	6%	8%	8%	6%
	% Asian-Surnamed	6%	8%	30%	14%	15%	13%
	% Filipino-Surnamed	1%	1%	2%	2%	2%	1%
	% NH White est.	88%	84%	56%	72%	72%	76%
	% NH Black	1%	1%	3%	3%	3%	2%
Voter Turnout (Nov 2014)	Total	11,311	10,107	4,828	7,414	7,779	41,439
	% Latino est.	4%	5%	7%	7%	6%	5%
	% Spanish-Surnamed	3%	5%	6%	6%	6%	5%
	% Asian-Surnamed	5%	6%	25%	11%	10%	10%
	% Filipino-Surnamed	1%	1%	2%	1%	1%	1%
	% NH White est.	90%	86%	61%	78%	79%	82%
	% NH Black est.	0%	1%	4%	2%	3%	2%
ACS Pop. Est.	Total	29,992	29,547	32,296	29,322	27,724	148,882
Age	age0-19	26%	30%	37%	28%	29%	30%
	age20-60	46%	47%	53%	56%	52%	51%
	age60plus	28%	24%	10%	16%	19%	19%
Immigration	immigrants	12%	15%	40%	30%	26%	25%
	naturalized	74%	69%	65%	59%	63%	65%
Language spoken at home	english	86%	84%	50%	63%	66%	70%
	spanish	4%	2%	3%	4%	5%	4%
	asian-lang	4%	7%	29%	19%	16%	15%
	other lang	6%	8%	18%	15%	13%	12%
Language Fluency	Speaks Eng. "Less than Very Well"	3%	4%	15%	11%	11%	9%
Education (among those age 25+)	hs-grad	30%	29%	26%	30%	36%	30%
	bachelor	42%	44%	39%	39%	38%	40%
	graduatedegree	27%	25%	32%	28%	23%	27%
Child in Household	child-under18	34%	41%	61%	41%	44%	44%
Pct of Pop. Age 16+	employed	56%	58%	66%	69%	62%	62%
Household Income	income 0-25k	6%	5%	6%	5%	7%	6%
	income 25-50k	9%	6%	7%	9%	9%	8%
	income 50-75k	9%	10%	8%	10%	8%	9%
	income 75-200k	37%	44%	42%	52%	49%	45%
	income 200k-plus	40%	36%	37%	25%	27%	33%
Housing Stats	single family	92%	94%	79%	69%	86%	84%
	multi-family	8%	6%	21%	31%	14%	16%
	rented	15%	12%	28%	33%	20%	22%
	owned	85%	88%	72%	67%	80%	78%

Total population data from the 2010 Decennial Census.

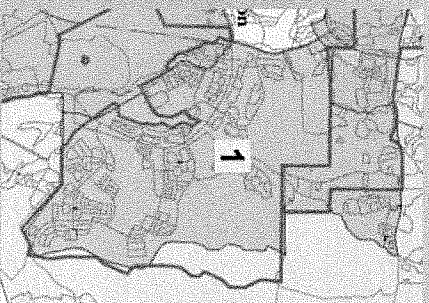
Surname-based Voter Registration and Turnout data from the California Statewide Database.

Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5-year data.

You can't connect DV to an incumbent without overpopulating the trustee area, but DV (or nearby CT) can support its own very compact majority Asian trustee area.

	101	102	103	104/105	community "Core DV"
gerrymandered for	Hurd	Jewett	Jewett	Ordway	no one
2020 election?	no	yes	yes	no	yes
presidential cycle?	no	yes	yes	no	yes
Excess population in 2010 census	3%	none (-1%)	1%	2%	none (-5%)
Excess population in 2012-16 census data	11%	8%	10%	12%	6%
Asian % of eligible voters	53%	51%	52%	51%	56%
Asian % of registered voters	33%	31%	29%	30%	35%
DVHS cracked into how many areas?	3	4	2	3	n/a

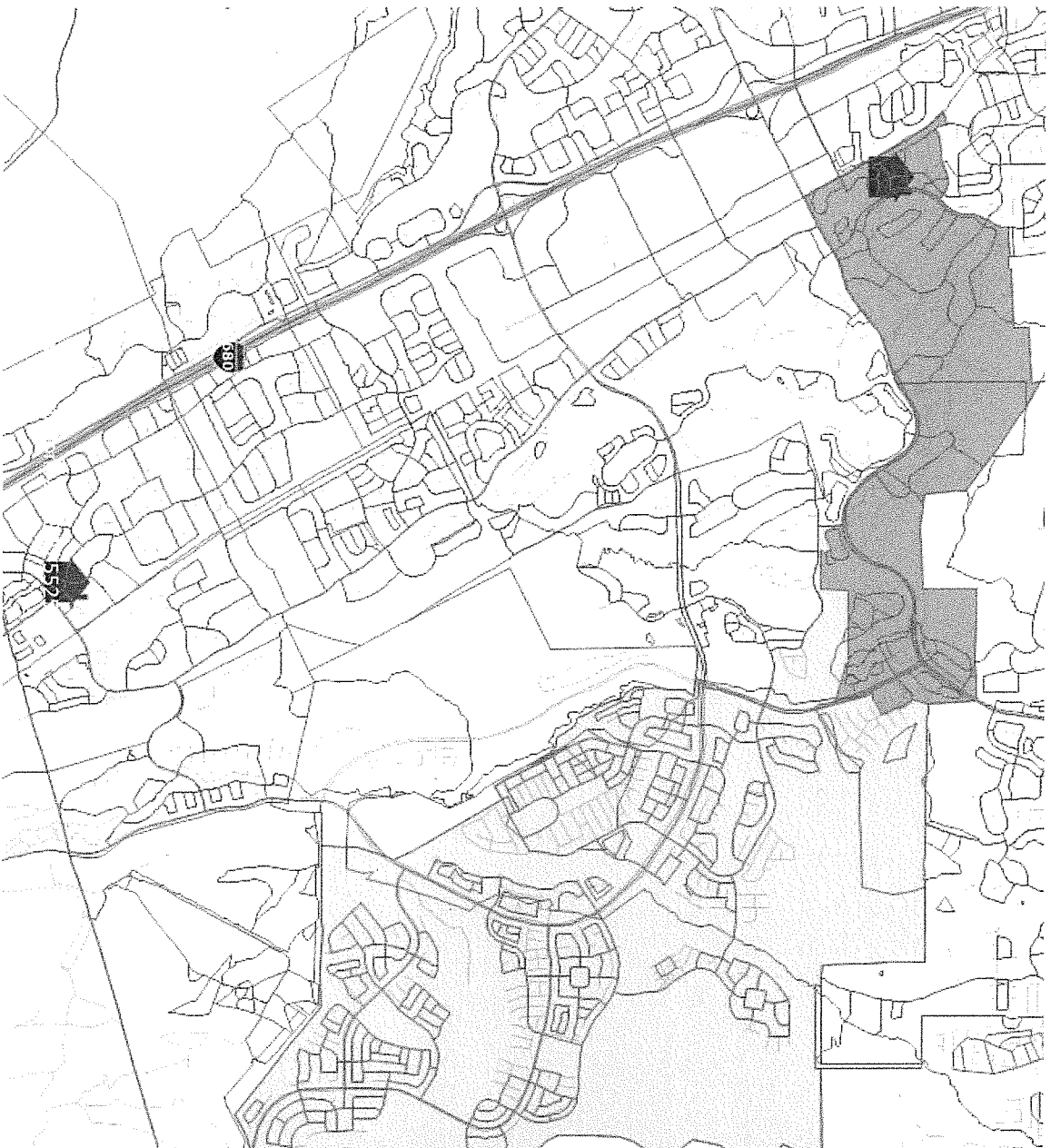
Scott Rafferty rafferty@gmail.com 202-380-5525



[Link to full map](#)

SRVUSD gave us only two hours to prepare a demonstration map. It reduces the excess population while staying within 5% of ideal using the 2010 census. It attempted to accommodate the 2 high school rule by adding the 2 northern block groups, but omitting them and adding the large blue block group provides a similar population.





Area 3 combines an incumbent's high-turnout neighborhood (Southwest Danville) with just enough of Dougherty Valley to create a majority Asian trustee area.

These two areas have no community of interest.

Tract 3451.14      Tract 3551.11

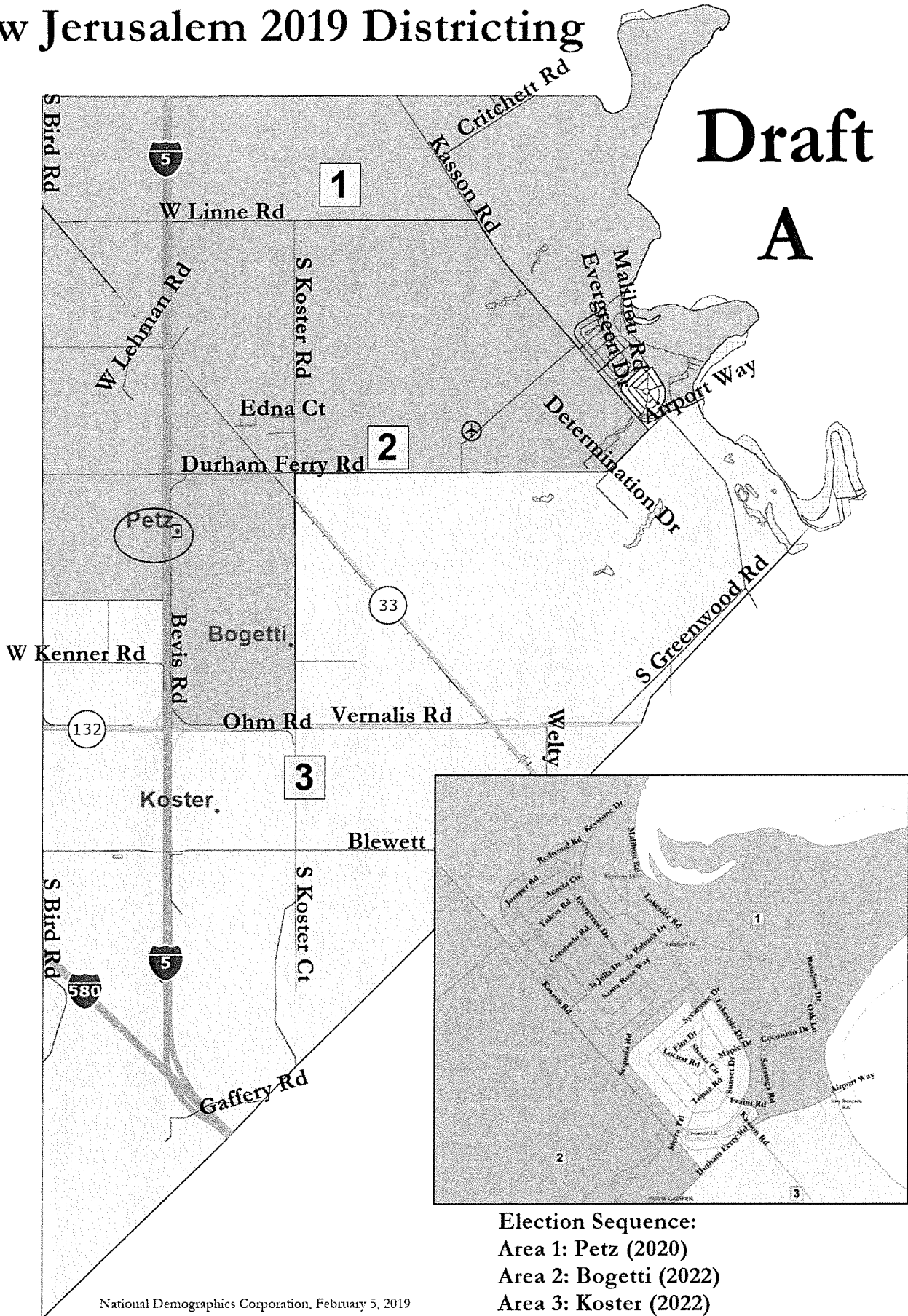
**W      Dougherty  
Danville Valley**

Average age	50	33
-over 65	25%	5%
Own home	91%	52%
Employed (if over 25)	49%	96%
Speak only English at home	91%	41%
B.S. or B.S.E.	38%	53%
School-age in home	14%	30%
Born in U.S.A.	86%	52%



# New Jerusalem 2019 Districting

# Draft A



## New Jerusalem Elementary - Draft A

District		1	2	3	Total
Idcal	Total Pop	590	595	655	1,840
613	Deviation from idcal	-23	-18	42	65
	% Deviation	-3.75%	-2.94%	6.85%	10.60%
Total Pop	% Hisp	29%	26%	26%	27%
	% NH White	67%	68%	70%	68%
	% NH Black	0%	0%	1%	0%
	% Asian-American	2%	2%	2%	2%
Citizen Voting Age Pop	Total	397	413	462	1,273
	% Hisp	18%	13%	16%	16%
	% NH White	74%	80%	78%	77%
	% NH Black	0%	0%	0%	0%
	% Asian/Pac.Isl.	5%	4%	4%	4%
Voter Registration (Nov 2016)	Total	625	283	178	1,086
	% Latino est.	14%	15%	18%	15%
	% Spanish-Surnamed	13%	13%	16%	13%
	% Asian-Surnamed	3%	4%	7%	4%
	% Filipino-Surnamed	2%	0%	1%	1%
	% NH White est.	81%	81%	70%	79%
Voter Turnout (Nov 2016)	Total	482	222	143	846
	% Latino est.	13%	13%	17%	14%
	% Spanish-Surnamed	12%	12%	15%	12%
	% Asian-Surnamed	4%	4%	8%	4%
	% Filipino-Surnamed	1%	0%	1%	1%
	% NH White est.	83%	82%	71%	80%
Voter Turnout (Nov 2014)	Total	300	139	86	525
	% Latino est.	10%	11%	7%	10%
	% Spanish-Surnamed	9%	10%	6%	9%
	% Asian-Surnamed	3%	1%	0%	2%
	% Filipino-Surnamed	3%	0%	0%	2%
	% NH White est.	84%	88%	88%	85%
ACS Pop. Est.	Total	511	505	576	1,593
	Age				
Age	age0-19	17%	15%	18%	17%
	age20-60	68%	70%	67%	68%
	age60plus	15%	15%	15%	15%
Immigration	immigrants	10%	9%	10%	10%
	naturalized	37%	36%	38%	37%
Language spoken at home	english	74%	74%	74%	74%
	spanish	19%	19%	19%	19%
	asian-lang	4%	4%	4%	4%
	other lang	3%	3%	3%	3%
Language Fluency	Speaks Eng. "Less than Very Well"	9%	8%	9%	9%
Education (among those age 25+)	hs-grad	61%	62%	61%	61%
	bachelor	9%	8%	9%	9%
	graduatedegree	3%	3%	3%	3%
Child in Household	child-under18	20%	19%	20%	20%
Pct of Pop. Age 16+	employed	30%	27%	30%	29%
Household Income	income 0-25k	25%	25%	25%	25%
	income 25-50k	19%	20%	19%	20%
	income 50-75k	20%	20%	20%	20%
	income 75-200k	30%	29%	30%	30%
	income 200k-plus	6%	6%	6%	6%
Housing Stats	single family	99%	99%	99%	99%
	multi-family	1%	1%	1%	1%
	rented	24%	24%	24%	24%
	owned	76%	76%	76%	76%

Total population data from the 2010 Decennial Census.

Surname-based Voter Registration and Turnout data from the California Statewide Database.

Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5-year data.

EXHIBIT 7

2016 WL 3693498 (Cal.Super.) (Trial Order)  
Superior Court of California.  
San Bernardino County

Lisa GARRETT, Plaintiff,  
v.  
CITY OF HIGHLAND, California; and does 1-100. Inclusive, Defendants.

No. CIVDS 1410696.  
April 6, 2016.

**Corrected Judgment**

Kevin L. Shenkman (SBN 223315), Mary R. Hughes (SBN 226622), John L. Jones II (SBN 225411), Shenkman & Hughes, 28905 Wight Road, Malibu, California 90265, Telephone: (310) 457-0970.

R. Rex Parris (SBN 96567), Ashley Parris (SBN 239537), R. Rex Parris Law Firm, 43364 10th Street West, Lancaster, California 93534, Telephone: (661) 949-2595, Facsimile: (661) 949-7524.

Milton C. Grimes (SBN 59437), Law Offices of Milton C. Grimes, 3774 West 54th Street, Los Angeles, California 90043, Telephone: (323) 295-3023, Attorneys for Plaintiff.

David S. Cohn, Judge.

9. To estimate the Latino proportion of the voters who cast ballots in recent elections in Highland experts offered by both Plaintiff and Defendant started with matching the names of voters with the U.S. Census Department's list of Spanish surnames. This is an accepted method of estimating the proportion of Latinos in a large group. While the parties agree that this method of Spanish surname matching tends to underestimate the Latino proportion of a group, they disagree on the amount of that underestimation. Defendant's expert, Douglas Johnson, increased his estimates of the Latino proportion of voters by approximately 11% based on the 1990 Colby-Perkins study that investigated the error rates of Spanish surname matching in each State. Plaintiff's expert, David Ely, criticized that 11% adjustment because it is based on an outdated study that was not focused on the City of Highland, and the demographics of Highland in 2016 are significantly different than those of California, or any other State, in 1990, in ways that impact the accuracy of Spanish surname matching. The Court agrees with Mr. Ely. Adjusting the estimates from Spanish surname matching, for the purpose of comparing those estimates to the thresholds of exclusion is inappropriate. Nonetheless, even if the Spanish surname matching estimates of the Latino proportion of the electorate were increased as suggested by Mr. Johnson, the conclusions of this Court would be the same.

EXHIBIT 8 – ARIZONA 2004 Decision

Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Commission, CV 2002- 004380, Maricopa County Sup. Ct., Order of Jan. 16, 2004.

<https://azredistricting.org/2001/2004legfinal/2004LegCourtOrder.pdf>

24. On August 17, 2001, despite three Commissioners' previous statements recognizing that the Commission was required to consider competitiveness in adjusting district boundaries before releasing its Final Draft Map, Commission adopted its Final Draft Map without even considering, let alone favoring, competitiveness. Ex. 142 at pp. 6, 13; Ex. 190 at p. 6:3 - 25; 9:3 - 25; Ex. 435 at pp. 147 - 152; 11/13/03 Trans. pp. 78:22 - 79:8 (Doug Johnson)

46. Recognizing that neither the Commission itself, nor its consultant NDC, had the expertise to analyze the competitiveness of maps, the Commission hired a competitiveness expert, Dr. Michael McDonald to analyze and advise the Commission as to competitiveness. Adams Depo. pp. 47:18 - 48:13; 11/13/03 Trans. p. 5:13 - 16; 60:2 - 9 (Doug Johnson).

96. Nor did the Commission use the objective Polsby Popper or Perimeter measures of compactness to determine whether the proposed changes in the Hall-Minkoff Plan caused significant detriment to the compactness of districts. As shown by Doug Johnson in his testimony, compactness tests can be run on Maptitude in just a few seconds, but that was never done because no one asked him to run those tests. 12/09/03 Trans. pp. 145:23 - 148:7; pp. 172:3 - 175:5 (Doug Johnson). Instead, as Doug Johnson testified, the Commission used the arbitrary "I know it when I see it measure." 12/09/03 Trans. pp. 172:6 - 175:19 (Doug Johnson).

109. Despite this clear prohibition set forth in § 15, on or around September 4, 2001, shortly after adopting the Final Draft Map, the Commission's attorneys admittedly provided information to members of NDC and Dr. McDonald indicating the locations of all of the legislative and congressional incumbents in the proposed districts of the Final Draft Map in violation of Proposition 106. Exs. 298, 361, 362, 363, 383. 110. In April 2002, three months after the Commission completed its initial submission to the DOJ, the Commission, including its map-drawing consultant, Doug Johnson, again obtained information regarding the location of incumbents. Exs. 383, 415

## EXHIBIT 9

Anne Rierson, Deputy County Counsel  
County of Santa Barbara  
January 15, 2021  
Page 3

personnel who would be assigned to advise the Commission have been counsel in each one of the listed matters.

In addition to its extensive experience, the firm's redistricting attorneys possess (1) thorough knowledge of GIS systems, (2) training and experience operating such systems to develop redistricting plans, (3) thorough knowledge of demographic data sets used in the redistricting process, and (4) knowledge of the statistical methodology associated with voting rights litigation, all of which enable the firm to more precisely advise its clients on redistricting matters and potential exposure to voting rights litigation.

Of particular importance to its representation of the Santa Barbara County Independent Redistricting Commission, Nielsen Merksamer's redistricting lawyers have perhaps unparalleled experience among California firms with redistricting legislation and commissions. This experience includes:

- **State of Arizona Independent Redistricting Commission:** Ms. Leoni provided legal counsel to the consultant to the Commission concerning all aspects of the 2001 first ever citizen-commission redistricting of the state's Congressional and legislative districts including United States Attorney General preclearance under Section 5 of the federal Voting Rights Act, attending all commission meetings providing legal opinions on all aspects of the process and participating in the litigation successfully defending the Commission's adopted redistricting plan. Notably, Mr. Adelson provided counsel to the Arizona commission in the 2011 round of redistricting.
- **Yes on Proposition 11:** The firm represented the campaign and its major funder to pass Proposition 11, the 2008 ballot measure sponsored by Common Cause, that established an independent commission for redistricting of state legislative offices in California.
- **Yes on Proposition 20:** Again, the firm participated in the drafting of the proposition and represented the proponent of, and campaign for passage of, Proposition 20, the 2010 ballot measure that expanded the duties of Proposition 11's independent commission to redistricting congressional offices in California.
- ***Vandermost v. Bowen*, 53 Cal. 4th 421 (2012):** In this litigation, Ms. Leoni represented the leading proponent of Propositions 11 and 20 as

Anne Rierson, Deputy County Counsel  
County of Santa Barbara  
January 15, 2021  
Page 3

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- ***Vandermost v. Bowen*, 53 Cal. 4th 421 (2012):** In this litigation, Ms. Leoni represented the leading proponent of Propositions 11 and 20 as



November 9, 2020

To: Santa Barbara CIRC Members  
Fr: Douglas Johnson, National Demographics Corporation  
Re: Commissions Question Regarding Adjusting Official Census Population Counts

### **The Question**

Commissioner Bradley posed the following question regarding whether the Census population data can be adjusted to account for any COVID-driven temporary reduction in university students in the County's 2020 Census counts:

I have a related question . . . about how reduced numbers of UCSB and CC students, who normally reside in and around Isla Vista and are registered to vote there, may have been overlooked by the 2020 US Census count during the pandemic lock-down. Specifically, whether these temporarily reduced numbers can impact Santa Barbara County's Third District, especially for future years to come when the population there returns to higher, more-typical population levels. Obviously, this presents an anomaly to college towns and districts throughout the USA during the current COVID-19 crisis.

The US Census Bureau had already identified areas in and around Isla Vista as a Hard to Count (HTC) zone, and this has been compounded by the additional absence of students who stayed home during the pandemic while classes were taught online; it also coincides with the summertime lease/rent cycles for housing there. How might this affect the redistricting process, at least for the upcoming 10-year, redistricting cycle?

### **Analysis**

For charter counties such as Santa Barbara, a complicated set of County Charter and state Statute provisions determines the population numbers the Commission must use in redistricting.

Santa Barbara County Charter Sec. 2-10.9A. (6)(A)(1)

Districts shall comply with the United States Constitution and each district shall have a reasonably equal population with other districts for the board, except where deviation is required to comply with the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10101 et seq.) or allowable by law.

The Charter language does not specify a source for those population numbers. NDC's understanding (legal counsel may disagree once they are on board) is that when the charter is silent the County must follow state statutes. There are a series of three inter-related statutes that designate the population data to be used in county redistricting:

California Election Code Section 21500:

(a) Following each federal decennial census, and using that census as a basis, the board shall adjust the boundaries of any or all of the supervisorial districts of the county so



that the supervisorial districts shall be substantially equal in population as required by the United States Constitution.

(1) Population equality shall be based on the total population of residents of the county as determined by that census.

(2) Notwithstanding paragraph (1), an incarcerated person, as that term is used in Section 21003, shall not be counted as part of a county's population, except for an incarcerated person whose last known place of residence may be assigned to a census block in the county, if information about the last known place of residence for incarcerated persons is included in the computerized database for redistricting that is developed in accordance with subdivision (b) of Section 8253 of the Government Code, and that database is made publicly available.

#### Government Code Section 8253(b)

The Legislature shall take all steps necessary to ensure that a complete and accurate computerized database is available for redistricting, and that procedures are in place to provide the public ready access to redistricting data and computer software for drawing maps. Upon the commission's formation and until its dissolution, the Legislature shall coordinate these efforts with the commission.

#### California Elections Code Section 21003

(b) In order to comply with its obligation to ensure that a complete and accurate computerized database is available for redistricting in accordance with subdivision (b) of Section 8253 of the Government Code, the Legislature, in coordination with the Citizens Redistricting Commission, shall ensure that the information provided by the Department of Corrections and Rehabilitation pursuant to subdivision (a) is included in that computerized database.

(d) Consistent with Section 2025, the Legislature hereby requests the Citizens Redistricting Commission to deem each incarcerated person as residing at that person's last known place of residence, rather than at the institution of that person's incarceration, and to use the information furnished to it pursuant to subdivision (a) in carrying out its redistricting responsibilities under Article XXI of the California Constitution.

#### **NDC's Conclusion:**

NDC's understanding (again, subject to legal counsel review once they are on board) is state law requires the CIRC to measure total population balance using the prisoner-adjusted 2020 Census population counts that will be provided by the California Statewide Database.

The 'equal population' rule does allow some flexibility: a plan is "presumptively constitutional" if the populations deviations of the smallest and largest districts are within 10% of each other. Thus, if the Census data do confirm a shortage of university students has a particular impact on a specific district, the CIRC can under-populate that district within that 10% range to offset the anticipated quick increase in population once the students return to campus.



**From:** Christopher Skinnell  
**To:** CEO Redistricting RES  
**Subject:** Preliminary response to letter from Philip A. Seymour  
**Date:** Monday, February 1, 2021 3:59:37 PM

---

**Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.**

Dear Commissioners:

We have just become aware of the letter to you from Philip A. Seymour, Attorney-at-Law, dated yesterday, January 31, 2021. Given the lateness of the comment, we believe it appropriate to provide a very brief response so that the Commission is aware of our position before this evening's interview.

First of all, we think it appropriate to note that Mr. Seymour was co-counsel with Mr. Woocher, of Strumwasser & Woocher, in litigation between 2008-2013 representing former Santa Barbara County Supervisor Doreen Farr. <https://ballot-access.org/2013/woocher-brief.pdf>. While we can understand his loyalty to a colleague, we ask the Commission to take that into consideration in evaluating his comment.

Beyond that we are prepared to address the issues that Mr. Seymour erroneously believes disqualify this firm from representing you in the 2021 redistricting process:

1. Our representation of a major client that made two political contributions to Santa Barbara County Supervisors is not a disqualification within the terms of the County's own ordinance, because unlike a PAC, a major donor is not "a political committee required to register with the California Secretary of State." See *Smutny-Jones Advice Letter*, No. A-16-081, 2016 Cal. Fair-Pract. LEXIS 89, \*7 (FPPC June 21, 2016) ("In contrast to other committees, *major donor committees are not required to register with the Secretary of State.*") (emphasis added).

Our firm should not be disqualified for activities that are outside the terms of the ordinance any more than Mr. Woocher's firm should be disqualified for serving as the attorney for the Democratic National Committee (<https://www.strumwooch.com/About-the-Firm.aspx>), or Mr. Rafferty for serving as a member of the California Democratic Party's Organizing Committee (<https://www.cadem.org/our-party/standing-committees/organizational-development-committee/>). (Our firm, by contrast, does not represent any national, state, or local political party or organization, nor do we generally represent candidates.)

2. As mentioned in our prior public comment, the firm will comply fully with the Commission's new conflict of interest code. The Commission should know this, and Mr. Seymour acknowledges that this is only a problem if we are asking for an exemption, which we are not.
3. Mr. Seymour misunderstands our additional disclosures to the Commission of the firm's representation of clients across a broad range of governmental and political interests (from the humane society to the horse racing industry). These do not qualify as, and we are not asking for waivers of, ethical conflicts of interest under the statutes and regulations governing the practice of law. These disclosures are simply language from our standard engagement contract that we provide to all clients, consistent with our philosophy of "no surprises" in our client representations.

We look forward to meeting you this evening, and we look forward to your questions.

**Chris Skinnell, Partner**

**NIELSEN MERKSAMER  
PARRINELLO GROSS & LEONI LLP**

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**NIELSEN MERKSAMER**

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From: Lollie Katz  
Date: Tue, Feb 2, 2021 at 7:35 PM  
Subject: Resignation

Dear Chairman Morris, Commissioners, Mr. Churchwell, Dr. Johnson and Shalice,

After considerable worry and angst about my role as a commissioner I've come to the realization that I don't have the endurance or strength of belief to continue.

The random drawing that placed me as one of the first of 5 was a double-edged sword for me in that I was an interviewer but not interviewed and will never know if I would have made the cut!

I have decided to resign my position effective now and hope this will result in finding a replacement who will meet the requirements of measure G.

It really was an honor to work with each and every one of you. Thank you all very much. I will miss the camaraderie and amazing, incisive thinking you each brought to the commission...actually I am blown away by how smart you are.

Finally, Glenn, thank you for managing the chair role with wisdom, humor and ease. You are a role model.

All the best,

Laura (Lollie) Katz

## EXHIBIT

<http://pulse.ncpolicywatch.org/2019/07/25/did-hofeller-draw-nc-maps-before-redistricting-process-judges-throw-out-expert-testimony-claiming-he-didnt/#sthash.Mc7pIV2G.dpbs>

### **Did Hofeller draw NC maps before redistricting process? Judges throw out expert testimony showing he didn't**



By [Melissa Boughton](#)

July 25, 2019

In Courts & the Law, News



*A three-judge panel threw out expert testimony Thursday from Douglas Johnson, a witness for the legislative defendants in North Carolina's partisan gerrymandering trial. (Photo by Melissa Boughton)*

In a bombshell decision, a three-judge panel threw out testimony Thursday from an expert witness for GOP lawmakers in North Carolina's partisan gerrymandering case, and it could have federal implications.

Douglas Johnson, a research fellow at the Rose Institute of State and Local Government in Claremont, Calif., testified that deceased GOP mapmaker Thomas Hofeller's draft 2017 legislative maps were dramatically different than the maps that lawmakers ultimately enacted.

He was trying to prove that Hofeller hadn't drawn the majority of the state's 2017 legislative maps before the public redistricting process took place, a conclusion one of the plaintiffs' experts presented to the court in the *Common Cause v. Lewis* trial.

Johnson admitted though, during cross examination, that his research was inaccurate. In the data he used to show big changes to the enacted House map from the draft

Hofeller map, he omitted 11 districts in his report that showed almost 100 percent overlap between the two maps. In some instances, he would include districts with low overlap percentages in one county grouping, but not the districts in that same grouping that had a high overlap percentage.

In a similar analysis to maps produced by Common Cause North Carolina, though, Johnson included some of those high overlap districts.

When confronted with the inaccuracies during his cross examination, Johnson could not say what happened. He said he had been working late and had possibly made some coding errors.

"Sitting here today, you cannot tell the court your numbers are correct?" asked Daniel Jacobson, an attorney for the plaintiffs who cross examined Johnson.

Johnson responded, "I can tell you the idea is true."

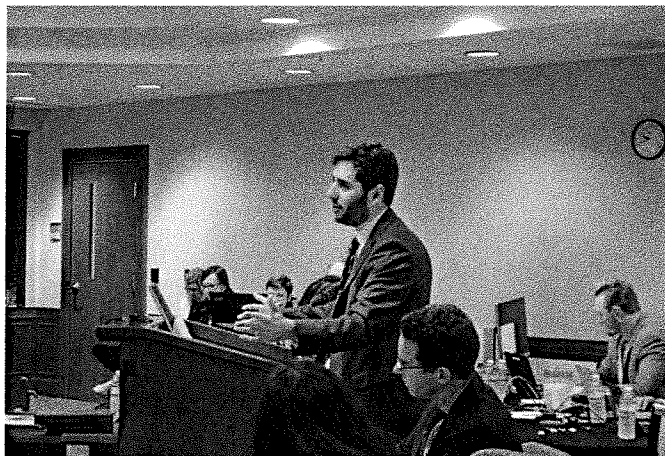
His inaccuracies produced overall percentages that showed Hofeller's draft maps were more similar to the Common Cause maps than they were to the enacted maps.

That finding has been key to many of the legislative defendants' court filings and has served as a line Republican lawmakers use when talking about the Hofeller files to the press.

Jacobson displayed during cross examination a News & Observer newspaper article quoting Pat Ryan, a spokesman for Senate President *Pro Tem* Phil Berger making the same claim. Johnson confirmed that he provided the information to Berger's office and that it was based on his flawed analysis.

"I probably owe Ryan an apology," he said on the stand.

Johnson also admitted during the cross examination that his findings that Hofeller moved a large percentage of people around in the enacted 2017 legislative map compared to his draft map was based on unweighted population calculations that should have been weighted. That error ultimately produced another unreliable statistic.



*Daniel Jacobson, an attorney for the plaintiffs in Common Cause v. Lewis, cross examined an expert witness Thursday for the legislative defendants. (Photo by Melissa Boughton)*

Jacobson asked the court to strike all of Johnson's testimony from his direct examination because of his inaccurate calculations.

"Incorrect numbers can't possibly go to weight [of this case]," he argued.

"They're just wrong."

Patrick Lewis, an attorney for the legislative defendants, told the court that if there were some calculation errors, they don't require a full-scale striking of Johnson's testimony. He tried to argue for the experts' findings regarding the Senate to stay in.

The three-judge panel returned to their chambers to consider the arguments and ultimately decided to strike all of Johnson's testimony comparing Hofeller's draft 2017 legislative maps to the enacted maps. They also struck testimony comparing Hofeller's maps to the Common Cause maps.

Johnson has been the only expert the legislative defendants' have presented thus far in the *Common Cause* trial who has rebutted the findings that Hofeller drew most of the 2017 enacted maps before the redistricting process.

If that finding remains at the conclusion of the trial, it could open a pathway back to the federal court. The legislative defendants convinced the federal district court in *North Carolina v. Covington*, a racial gerrymandering case, not to order special elections under new remedial maps in 2017.

They made repeated statements that they had not yet started drawing new districts and needed sufficient time to develop criteria, draft the plans and receive public input.

Legislative leaders didn't approve a contract with Hofeller until the very end of June 2017, and the joint redistricting committee tasked with remedially drawing new maps didn't even meet publicly for the first time until July 26 the same year. Hofeller's digital files — which were turned over by his daughter after his death to the *Common Cause* plaintiffs — show that he had substantially completed drawing the 2017 legislative plans in June 2017, according to expert testimony.

The redistricting committee met Aug. 4 to discuss potential criteria to be used in drawing the new districts and held public comment during that meeting. Criteria for the mapmaking process was not adopted until August 10 and Hofeller wasn't notified of it until the next day, according to a court filing from 2017 from the legislative defendants in *Covington*.

The *Common Cause* plaintiffs have already accused the legislative defendants of lying to the federal court. If proven, the federal court could sanction the legislative defendants in *Covington*.

The federal court in *Covington* ultimately obliged the legislature by not ordering a special election — despite noting in their ruling that they were prepared to. That meant the North Carolina Republican supermajority stayed in place for an extra year.

If the legislature is found to have lied to that court, it could also be important to a separate case in the state Court of Appeals, where the NAACP is challenging the Republican supermajority's power to two constitutional amendments, one implementing a voter ID law and another implementing a tax cap.



*Senate Majority Leader Harry Brown (R-Jones, Onslow) was called to testify in a state partisan gerrymandering trial Thursday. He walked back his prior support for redistricting reform. (Photo by Melissa Boughton)*

The legislative defendants in Common Cause put on two other witnesses Thursday. Senate majority leader Harry Brown (R-Jones, Onslow) testified that he represents his Democratic and Republican constituents and tries his hardest to work

across party lines within the legislature.

He was questioned during cross examination about his support for redistricting reform when he was in the minority, but said he was just making a statement.

"We all knew at this point that this bill had no chance, that it would go nowhere," he said of a 2007 redistricting reform measure.

The other witness, Trey Hood, is a professor of political science at the University of Georgia. He continues to offer expert testimony rebutting plaintiff expert findings that the 2017 legislative plans were partisan outliers. It's not clear if he will testify about the difference between Hofeller's draft maps and the enacted ones.

The trial is expected to conclude tomorrow. For live updates, follow [reporter Melissa Boughton on Twitter](#).

No related posts.

## False testimony in NC gerrymandering trial? Judges exclude GOP expert witness claims

BY WILL DORAN

JULY 25, 2019 01:01 PM, UPDATED JULY 25, 2019 06:07 PM



Political scientist Douglas Johnson and expert witness for Republicans admits that some of his testimony was incorrect. Portions were excluded from the record of the NC gerrymandering trial. BY POOL VIDEO

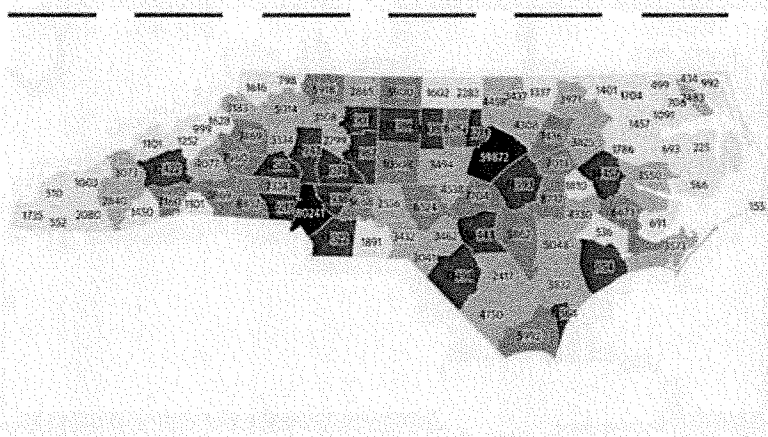
**RALEIGH**

The trial challenging North Carolina's legislative lines as unconstitutional partisan gerrymanders took a dramatic turn Thursday when an expert witness for Republican lawmakers admitted some of his testimony on their behalf was incorrect.

The challengers used that admission to ask that testimony by Claremont McKenna College political scientist Douglas Johnson be struck from the record.

"His testimony in his direct (examination) is just incorrect," said Daniel Jacobson, a lawyer who represents the redistricting reform group Common Cause NC. "The numbers are wrong."





The three-judge panel overseeing the case agreed to strike parts of Johnson's testimony.

Wake County Superior Court Judge Paul Ridgeway, who is leading the panel, said North Carolina's rules for expert witnesses say that "his opinions must be the product of reliable methods and principles ... and the principles used by Dr. Johnson were not reliable."



Judges Alma Hinton, left, Paul Ridgeway and Joseph Crosswhite confer during the first day of the gerrymandering trial challenging the North Carolina legislature district lines Monday, July 15, 2019. The trial is being held at Campbell University's Law School in Raleigh, N.C. Ethan Hyman [EHYMAN@NEWSOBSERVER.COM](mailto:EHYMAN@NEWSOBSERVER.COM) A three judge panel listens during the first day of the gerrymandering trial challenging the North Carolina legislature district lines Monday, July 15, 2019. The trial is being held at Campbell University's Law School in Raleigh, N.C. [ETHANHYMAN@NEWSOBSERVER.COM](mailto:ETHANHYMAN@NEWSOBSERVER.COM)

It's not clear yet how the decision will affect the outcome of trial, which is still ongoing. But expert witness testimony is important in cases like gerrymandering challenges, which rely on highly technical arguments and data.

A main issue has been the personal files of the late Tom Hofeller, a well-known mapmaker responsible for redistricting in North Carolina and other Republican- controlled states. Hofeller drew the maps being challenged in this case in 2017, to replace North Carolina's maps from 2011 — which Hofeller also drew — that had been overturned as unconstitutional racial gerrymanders.

This case is challenging the maps used to elect North Carolina's state legislature. It's different from the case that ended last month, which had challenged North Carolina's maps for the U.S. House of Representatives. In that case, the U.S. Supreme Court ruled in favor of Republicans and did not overturn the congressional maps. This current case over the General Assembly maps is in state court, not federal court.

The plaintiffs in this case, who include the North Carolina Democratic Party as well as Common Cause, say Hofeller's files show he didn't follow the rules when drawing North Carolina's maps. He used racial data and completed much of his work before the legislature ever approved the rules he was supposedly bound by, they say.

But Republican lawmakers have defended the maps they approved, saying anything on Hofeller's personal computer was merely a hobby, and not official work for the legislature. And Johnson had testified for them that Hofeller's personal maps were not actually all that similar to the maps the legislature ultimately approved.

But on Thursday, Johnson admitted to several errors under cross-examination.

Those included, in one example, an admission that his analysis left out 11 districts that had the exact same shape in both Hofeller's personal files and in the maps that were ultimately adopted by the legislature.

Jacobson, the Common Cause attorney, asked Johnson, "You don't think that including those would have significantly changed your calculations?"

Johnson responded he still stands by his findings, saying, "It would have been a change in degrees, but not a change in conclusion."

Jacobson continued to press Johnson on how he could stand by his findings "when you don't know what the correct numbers are."

The judges agreed, ruling to strike all of Johnson's testimony in which he compared Hofeller's maps to the maps enacted by the General Assembly, as well as comparing Hofeller's maps to maps that Common Cause had submitted in a different court case.

That related in part to a statement that N.C. Senate leader Phil Berger's spokesman, Pat Ryan, made to The News & Observer earlier this month about the case. Ryan had said "the Hofeller play maps are more similar to what Common Cause submitted to the federal court in 2017 than the maps enacted by the legislature." Jacobson asked Johnson on Thursday if Berger's office got that information from him, and if it was based on the analysis he now admits was flawed. "Correct," Johnson said. "I probably owe Pat Ryan an apology."



Rep. David Lewis, a Harnett County Republican, says Republicans will use the same consultant, Thomas Hofeller, to help with the redistricting process to correct illegal racial gerrymanders. Hofeller, a former GOP mapmaker, was the architect of the

BY ANNE BLYTHE

## TRIAL NEARING THE END

This trial is expected to wrap up Friday.

Earlier this week, Johnson was one of several witnesses that Republican lawmakers called on.

On Wednesday, Republicans called on Bill Gilkeson, a Raleigh attorney and former General Assembly staffer. After North Carolina's 2011 maps were ruled unconstitutional, Gilkeson helped Democrats draw up proposed replacements.

Gilkeson testified that he discussed both racial and partisan data of the districts with some Democratic lawmakers. Many of those discussions happened at the Raleigh offices of Nexus Strategies, the political consulting firm that ran Democratic Gov. Roy Cooper's 2016 campaign.

Gilkeson's maps were not approved by the Republican-led legislature, which went with Hofeller's maps instead. But since a large part of this trial focuses on Hofeller's use of racial and partisan data, and the Democratic Party is one of the plaintiffs, Republicans highlighted Gilkeson's testimony with strong criticism.

"While Governor Cooper was calling Republicans 'technologically diabolical,' his own campaign manager was helping Democrats draft maps to maximize their advantage using racial and political data," said Republican Sen. Ralph Hise of Mitchell County in a press release Thursday morning. "The hypocrisy is astounding."

Hise is the NC Senate's lead lawmaker for redistricting. His counterpart in the House, Republican Rep. David Lewis of Harnett County, also [tweeted](#): "After having gone through years of personal attacks from the Dems, I find this hypocrisy repellent."

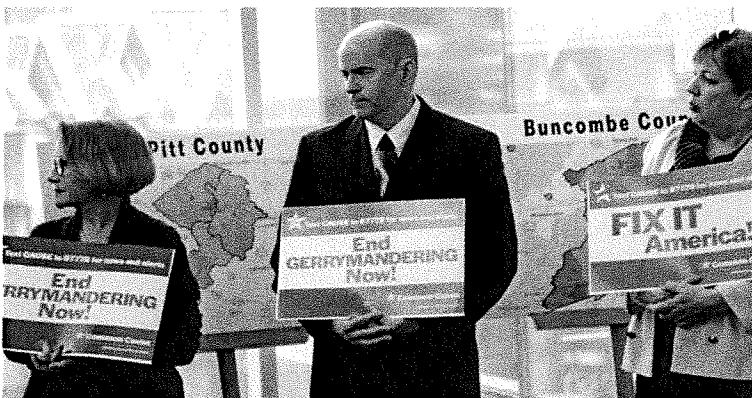
The Republican lawmakers defending the maps have also called on the party's two majority leaders in the House and Senate, Republican Sen. Harry Brown of Onslow County and Republican Rep. John Bell of Wayne County.

The challengers in the case have claimed that since Democratic candidates statewide received a majority of the votes in 2018, but did not win a majority in either the House or the Senate, the maps unfairly deprive Democratic voters of their right to voice their opinions in state politics.

But Bell shot back against those claims, saying that North Carolina is mostly a rural state, and rural areas tend to be more conservative. And he said that just because he's a Republican doesn't mean his Democratic constituents get ignored. He covers parts of Johnston, Wayne and Greene counties. "We work together to better our district."

Bell also pointed out that while he represents this heavily agricultural area in the N.C. House, a Democrat represents much of the same area in the N.C. Senate. Bell said he and that Democrat, Sen. Don Davis, frequently work together on issues like hurricane relief for their constituents.

"I represent a lot of Democrats," Bell said. "Personally, I'm a Republican. ... I'm well aware that without Democratic support and unaffiliated support, I would not get elected."



Common Cause says gerrymandered legislative districts violate the North Carolina constitution. The group filed a lawsuit in state court seeking redistricting for 2020 elections. BY [TRAVIS LONG](#) S