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October 28, 2020

VIA CERTIFIED MAIL 7018068000147053646

Ms. Christa Freemantle
Folsom City Clerk
50 Natoma Street
Folsom CA 95630
cfreemantle@folsom.ca.us

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

Dear Ms. Freemantle:

Neighborhood Elections Now, representing Asian and Latino voters in Folsom, has asked the Bay Area Voting Rights Initiative to send this notice that the city of Folsom may be in violation of the California Voting Rights Act (CVRA). The at-large method of electing the city council has impaired the ability of Folsom's Latino and Asian minorities, who often vote as a coalition, to influence the outcome of city council elections. My clients do not intend to challenge the outcome of the November 2020 election, but ask the city to begin the process to create single-member districts for the next general election and for any election resulting from a vacancy.

The prospective plaintiffs can show racially polarized voting, which is the predicate for demonstrating that at-large elections are illegal, but race and ethnicity should not be the predominant factor in designing districts. The council should also ensure that every community of interest within the city has a dedicated voice in the choices made by the council.

Creating districts will guarantee that the neediest areas always have a dedicated voice in city governance. Perhaps most critically, district elections will ensure that whenever a difficult choice must be made, the council has a representative who is committed and accountable to each affected neighborhood. Even when there is contention over limited resources, each district will entrust their member to negotiate on behalf of their particular needs and values. District elections impose some increased electoral risks on incumbents accustomed to the at-large system, but they benefit voters of all races. Elections will be more competitive and engage more voters in every part of the city.

I. TIMING AND PROPOSED RESOLUTION OF THIS PETITION

Several individual electors contacted me after the Folsom Area Democratic Club received a response from the city manager to their formal petition to transition to district elections. On March 2, 2020. Ms. Andersen indicated that the petition was

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“shared with the council members,” but her response does not purport to reflect their direction, nor does she indicate when any action would ever be taken on the petition. Instead, she offers to meet with the Club to answer “any questions you may have with respect to our city government.” The Democratic Club did not receive any response from the city council.

In early March, I declined to send this notice because the statute allows up to 135 days to complete the hearing process to develop maps. As such, the City could not be compelled to submit a map of districts to the registrar before July 1, 2020, which is normally the last day for implementation of boundary changes in this year’s general election. San Juan USD, which was timely notified, used COVID as a pretext to suspend compliance indefinitely. It now faces state and federal civil rights claims in Sacramento Superior Court.¹ By contrast, Folsom-Cordova USD held its first hearing on March 26, 2020 and completed the process on June 9, 2020. The process for cities is significantly simpler since they do not have to seek approval from the county and state boards of education.

Other voting rights attorneys have continued to send letters and insisted that jurisdictions draw maps using 2010 data without any extension of the statutory deadlines. These maps can be used for vacancy elections, but maps for the next general election must use 2020 census data. Therefore, these maps will have to be revised. California is one of four states that normally receive the relevant data in February.² The Census Bureau has asked Congress to delay the deadline until July 31, 2021.³ Elections Code, Section 10010 precludes any extension of the safe harbor beyond 90 days, which would start the 90 day hearing period in mid-March 2021. If the 2020 data are significantly delayed, it might be difficult to complete the required five meetings by mid-June 2021. In this event, I would be willing to work with the city attorney to defer completion of the map.

A.B. 849 (2019) creates the following priorities when charter cities create councilmanic districts: (1) contiguity, (2) minimizing the division of communities of interest, (3) use of understandable natural or artificial barriers as boundaries, (4) compactness. Elections Code, Section 21621(c). Boundaries may not favor or disfavor any political party, and cannot be gerrymandered because relationships with political parties, incumbents, and candidates do not constitute a “community of interest.”

¹ [Kincaid et al. v. SJUSD](#), 34-2020-00286475 (Sacto. Cty. Sup. Ct., filed Oct. 5, 2020).

² 13 U.S.C. 141(c) requires the Census to provide a tabulation for redistricting to all states by March 31, 2021. New Jersey and Virginia have legislative elections in November 2021, and Maine has a June 2021 deadline. Article XXI, Section 2 of our state constitution requires that legislative redistricting be complete by August 1, 2021.

³ <https://www.ncsl.org/research/redistricting/2020-census-delays-and-the-impact-on-redistricting-637261879.aspx>

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Section 21261(d) & (c)(2).

Race and ethnicity are important communities of interest, because ethnic groups have shared experiences, values, needs, and electoral preferences. Until the nativist movement of the 1910s, America integrated immigrants by giving them opportunities to elect representatives from their neighborhoods to local elected positions (from which some progressed to state and national office). Since 1965, most cities and states have recognized that single-member constituencies are necessary to give Black neighborhoods equal opportunities. Neither federal law nor the CVRA assume that any racial group is entitled to proportional representation. Rather, their purpose is to give these citizens an opportunity to aggregate their votes as effectively as the rest of the electorate. Given the dynamic, mobile and pluralistic nature of politics in California, this means forming coalitions among ethnic groups and appealing to like-minded crossover voters.

Folsom will face some unusual factors as it implements district elections. According to the 2010 census, 9.3% of the population of Folsom lives in block 1000 of tract 988300, which is the state prison. Prior to AB 849, this complicated any attempt to elect by district, because any district in which the prison was located had only half as many non-incarcerated constituents as the other districts. The new law excludes the prison population, so the ideal population (using 2010 census) of each district is 14,400. It is generally accepted that the 14th amendment requires local jurisdictions to keep the population of the largest and smallest district within 10 percent, so no district can be smaller than 13,248.

Except to the extent that residents moved in before April 1, 2020, the 2020 census will not report population in most of Folsom Ranch. All growth after that date will overpopulate the district to which Folsom Ranch is attached. AB 849 generally prohibits mid-decade redistricting, but Elections Code, Section 21625(c) permits Folsom to do so if it amends its charter. The 2019 Budget Act allows cities to conduct their own census, provided it is validated by the Department of Finance. Government Code, Section 40200. Therefore, Folsom can and should adjust the boundaries if Folsom Ranch development causes the districts to have significant differences in population.

Finally, a clear residency ordinance is an important part of guaranteeing the integrity of electoral districts. Under the general law, a council member must reside and be a registered voter in the city (and any district). Government Code, Section 34882. He must continue to be an "inhabitant" during his term. Government Code, Section 1770(d). Since Section 349(c) of the Elections Code allows persons to have multiple residences, and Sections 2020, et seq., provide multiple tests that govern the establishment of a new domicile, the ordinance should establish clear procedures to determine residency on a uniform and predictable basis.

II. A BRIEF HISTORY OF DISTRICT ELECTIONS

If there is one matter for which democracy requires a city manager to be impartial and to defer to the council and its constituents, it is the method by which the city's legislative body is elected. It is a matter of concern that Ms. Andersen dismissed the February 2020 petition declaring that the at-large method of election "prevents factions and frictions between different neighborhoods or 'districts.'" If the council, not just the city manager, has arrived at this peculiar perspective, it should take responsibility for doing so. To assert that at-large election equips each of five members to discern the right answer for every community on every question before the council is in logical conflict with the city manager's contention that "the city values ... the diversity of our communities." While Ms. Andersen describes the council as "inclusive," in reality, each incumbent is a white Anglo who lives on the same side of town, as does every former incumbent who still resides in Folsom.

Ms. Andersen's notion that single-member districts lead to factionalism is belied by 350 years of American history. Ensuring that ethnic neighborhoods are represented in local government has been an important way in which we have integrated generations of immigrants. For that reason, multi-member constituencies have been an anomaly in American democracy. When Madison and Hamilton proposed that the House of Representatives should include delegates elected individually from districts, their arguments relied on almost a century of experience in local government.⁴ Hamilton attributed New York's success in integrating Irish and German immigrants during the 1600s to the fact that each ethnic neighborhood had democratic representation on the city council. New York not only provided the model for Congress, but by the time of the Revolution, most colonial legislatures, as well as the legislative bodies for cities and counties, adopted single member constituencies. As local executive positions, such as mayor, surveyor, assessor, auditor, and tax collector, emerged, they were elected at large.

A century ago, California's Republican Governor Hiram Johnson, began promoting at-large election for cities and even counties.⁵ During the first decade of the

⁴ In The Federalist Papers, both Madison and Hamilton advocate for single-member constituencies based on the system of city and county government prevalent in New York other mid-Atlantic states. In their view, representative democracy required as diverse group of delegates as possible to represent "so many parts, interests, and classes" of citizens. *e.g.*, [Federalist No. 51](#) (diversity of interests); Federalist No. 10 (each representative chosen by constituents); Federalist No. 6. New York City's charter of 1683 established a council of six aldermen, one per ward. New York's counties adopted supervisorial districts in 1691, a practice that other mid-Atlantic states followed decades before the revolution. City government itself had been an American innovation. Until the Great Reform Act of 1832, unelected county officials provided most local government in Britain.

⁵ Most states require counties to have districted supervisors, but Johnson's 1914 inaugural address committed to leave this to each county to decide. Until the CVRA, counties as large as San Mateo elected

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20th Century, California's population grew by 60%, fueled largely by European immigration into the state's cities. The Republican Party dominated the state, holding all congressional seats until 1910. In contrast to the colonial New York, at-large elections sought to limit the influence of the newcomers by eliminating single-member constituencies. Their motives were profoundly nativist; the 1914 Progressive platform decried the "delinquency and criminality of the second-generation aliens," *i.e.*, those American citizens one of whose parents was born in Europe.⁶ After he was elected to the Senate in 1916, one of Johnson's first acts was to sponsor legislation banning immigration from India.

The elimination of single-member districts became the centerpiece of his nationwide program to "reform" municipal government. Johnson's "Progressive" movement attempted to make local elections nonpartisan, limiting the ability of political parties to vet the qualifications of executive city officers. They implemented what they called the "short ballot," in which at-large councilmembers appointed professionals to positions that elected officials had previously performed. Finally, the Progressives encouraged a practice they called "electoral preemption." When a councilmember decided not to seek reelection, he was expected to resign in time for his colleagues to appoint a member of the local establishment, who usually succeeded in defending the seat.⁷

In California, the combined effect of these practices was to allow Republican majorities installed early in the 20th century to survive decades of demographic change and political realignment. When the state began recording party registration in 1922, Republicans outnumbered Democrats three-to-one. By 1954, 60% of registered voters were Democrats. Yet, at the time of the 1955 municipal elections, 68 percent of councilmembers in California's 28 largest cities were still registered Republicans, as were 80 percent of large city mayors.⁸

While some of Governor Johnson's reforms have shown enduring merit, his objective was to perpetuate a power structure that was almost exclusively native white men. (Women were not yet entitled to vote.) His movement never intended to empower immigrants or minorities. He successfully campaigned to eliminate voting by noncitizens in the eight states that still permitted it.⁹ (California never permitted non-citizens to vote.) Japanese comprised 15% of the population in 1890, but Johnson ran for Senate on a platform that supported Japanese exclusion. As Senator, he was the leading

supervisors at-large.

⁶ CALIFORNIA PROGRESSIVE CAMPAIGN BOOK FOR 1914, at 25.

⁷ Blair and Flournoy, Legislative Bodies in California at 74 (1967).

⁸ Lee, Politics of Nonpartisanship at 56-57 (1960).

⁹ Walton, et al. The African-American Electorate: A Statistical History (2012), Table 2-18, Statistical Review of the Black Electorate. Eleven additional states had allowed non-citizens to vote, but abolished it between 1895 and the Progressive initiative of 1910.

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advocate for the Immigration Acts of 1917, which barred immigration from India, and of 1922, which placed strict quotas on immigration from all countries outside Western Europe.

The 1965 Voting Rights Act recognized how these Progressive-era reforms entrenched incumbents and marginalized minority influence. Bay Area congressman Don Edwards was one of the Act's leading advocates. In 1975, he convinced Congress to expand its protection to language minorities, including Asians and Latinos in California, New York, Massachusetts, and other states outside the South. Congressman Edwards also complained that southern jurisdictions were using at-large voting to dilute the influence of newly enfranchised African-Americans.¹⁰ Congress responded in 1982 by amending Section 2 to require federal and state courts to strike down any device, including at-large elections, that was discriminatory in its effects on voters belonged to "protected groups," *i.e.*, racial or language minorities.

After the Voting Rights Act, most major American cities restored district elections without litigation. Of the 100 cities with populations over 250,000, only Cincinnati and Columbus still elect at-large. Sixty-three of these cities were at-large in 1965. In California, however, at-large city councils continued to be the rule, rather than the exception.

Federal courts often require plaintiffs to show that a single minority has a majority of eligible voters within a potential district before prohibiting at-large elections. This can make the federal Voting Rights Act difficult to apply in California. Because Asians, Latinos, and African-Americans often live in the same areas, it is common that none of these protected groups can demonstrate a majority district, even though the ability of any of these groups to elect candidates of its choice was still diluted by the at-large system. In 2002, the Legislature responded by enacting the California Voting Rights Act (CVRA), which dispensed with any requirement of a majority-minority district. The dilution of minority influence, as demonstrated by "racially polarized voting," is sufficient under state law to require a jurisdiction to create districts.

Last week, the California Supreme Court depublished the decision of an appeals court that, for the first time ever, reversed a trial court order requiring district elections. The city, Santa Monica, could not be more different than Folsom. Since 1990, Santa Monica's population has grown only 8%, compared to 50% for Folsom. Santa Monica's minority population was also stable; the Latino share increased from 14% to 15% over 30 years. By contrast, Folsom's Asian population alone increased from 3.5% to 20%.

¹⁰ The Shameful Blight: The Survival of Racial Discrimination in Voting, (1975) After the 1965 Act enabled African-Americans to register and gain majority control in a legislative district, the district would be consolidated into a larger area controlled by whites, which would elect multiple legislators on a winner-take-all basis.

Thirty percent of voters in Santa Monica's minority district were Latino. While it is premature to propose a district map, we believe that minority voter share in a neighborhood-based district including parts of Empire Ranch could substantially exceed 40 percent. While the plaintiffs in Santa Monica proved racially polarized voting over decades, the justification for compliance with the reform in Folsom is even more compelling.

III. THE 2018 ELECTION DEMONSTRATED RACIALLY POLARIZED VOTING.

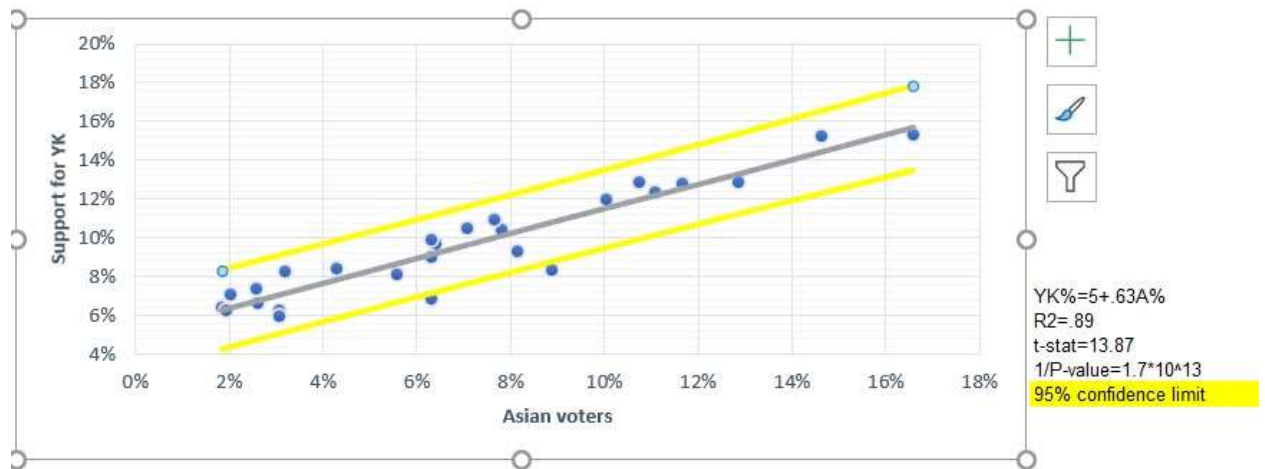
For purposes of the CVRA, racially polarized voting means that members of a protected group (such as Asians, Latinos, Black, or Native Americans) choose different candidates or vote differently on ballot questions that affect their rights and privileges. Elections Code, Section 14028(b). Since these groups have different histories, traditions, life experiences, and (in some cases) different languages, racially polarized voting is almost universal. It is also an essential element of our democracy. Without racially polarized voting, a white Anglo majority could determine every candidate elected to office and the outcome of every ballot initiative. The CVRA prohibits at-large systems wherever there is racially polarized voting precisely to ensure that the voters from minority communities have an equal opportunity to influence elections.

The CVRA reflects a fundamental insight from the current dean of the Yale Law School, Heather Gerkin, who wrote "Understanding the Right to an Undiluted Vote," 114 HARV. L. REV. 1663 (2001). She explained that, whenever a racial group is polarized (which is almost always the case), concentrating some of the voters from that group into a single district, improves the representation of the group's members throughout the larger jurisdiction. It was not necessary to engineer a district with the goal of ensuring that every member was in the district, nor was it necessary to create a majority district in which the group could unilaterally elect "one of its own" to the legislative body. The goal was to equalize the ability of these voters to influence elections by forming coalitions and appealing to crossover voters to favor candidates that they preferred. These are not always candidates that share their ethnicity; Maxine Waters is very clearly the candidate of choice of the Latino community, who constitute the majority of voters in her district. Influence in the election provides a degree of influence over the officials after they are elected.

Giving racial and language minorities an equal opportunity to aggregate their vote with like-minded electors helps integrate them into the political life of our state. Twenty years ago, when the CVRA first became law, less than ½ of one percent of school trustees were Latino; now 6 percent are. (Latinos are the majority of the students that these trustees serve.) But all communities of interests are entitled to some consideration when districts are drawn. Environmentalists, renters, poor communities or religious minorities may properly seek to be placed in a district that brings like-

minded voters together. The new “Fair MAPS” Act requires the council to consider every such community of interest and to avoid dividing them arbitrarily, so that they may also aggregate their votes effectively. A goal of the CVRA is to promote legislative bodies that are more representative of all electors.

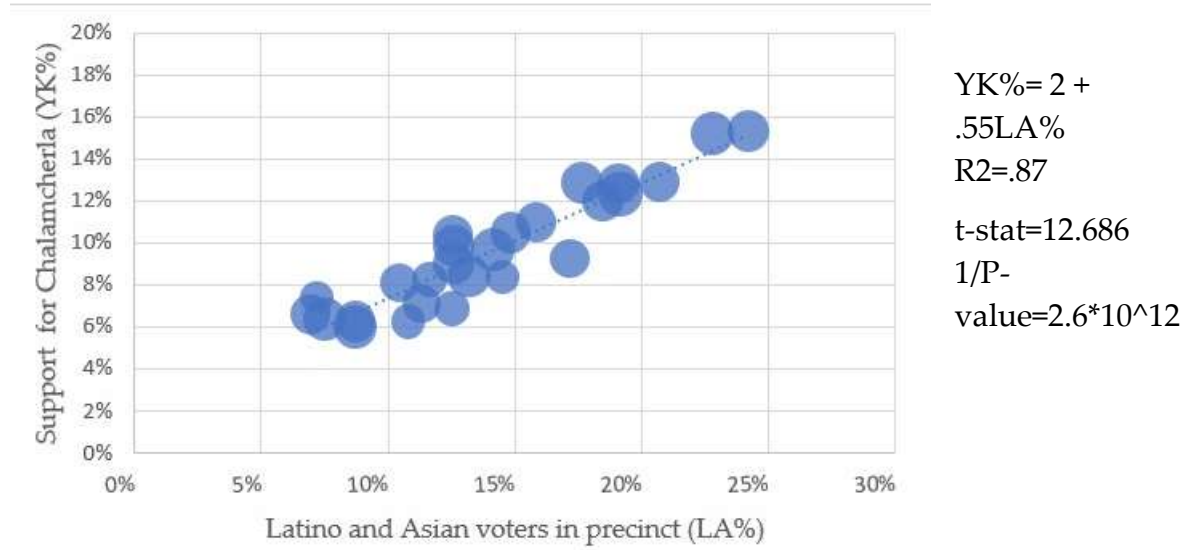
The Supreme Court has explained that evidence can rely on a single election “where a minority group has begun to sponsor candidates just recently.” Thornburg v. Gingles (1989) 470 U.S. 30, 58 & fn.25. 2018 featured the first minority candidate since 2010, Y.K. Chalmachura. Mr. Chalmachura declines to state any party affiliation, and statistical examination does not show that he performed better in Democratic or Republican precincts.¹¹ However, Mr. Chalmachura performed very well in Asian and Latino areas. This ecological regression infers an estimate that he received approximately 5% of the non-Asian vote and 68% of the Asian vote. The Supreme Court has held that it is not necessary to explain why a difference exists or to exclude the relationship of other factors; it is sufficient to demonstrate “a correlation that did not happen by chance.” Thornburg, 470 U.S. at 53 & fn.22. One test calculates the probability that this regression coefficient happened by chance as one in 1,703,638,756,676.¹²



A similarly striking result occurs by assuming that Latinos vote in coalition with Asian voters. In this case, the model is refined to weight observations based on slight deviations in the number of votes cast in each precinct. Collectively, 55 percent of Latino and Asian voters supported Mr. Chalamcherla.

¹¹ To implement the Voters Choice Act, the registrar divided Folsom into 26 precincts for reporting purposes, even though these areas are no longer associated with individual polling places.

¹² This is the reciprocal of the P-value for the slope coefficient.



Whether or not Mr. Chalamcherla or other minority candidates eventually prevail in a future election has limited probative value. Elections Code, Section 14028(a). Since the issue of racially polarized voting was raised last February, non-minority voters may be more inclined to support minority candidates. The legislature was concerned that some Latino candidates had argued that white should vote for them in order to refute evidence of racially polarized voting.¹³ In more recent years, white voters have cited less strategic reasons for supporting minority candidates after a CVRA petition has been filed. They agree with district elections in principle and hope that the cadre of elected officials becomes more diverse.

Although I have not spoken to Mr. Chalamcherla, I understand that he has not publicly embraced district elections. Distancing himself from this issue may (or may not) be a political calculation designed to increase his appeal among white voters. His position is also irrelevant. District elections are not about minority candidates; they are about minority voters who want to influence elections by effectively voting for the candidates of their choice.

In performing these analyses, I have relied on the official tabulation of actual voters in the 2018 election by race that has been prepared for the California Legislature by the University of California at Berkeley. There is no similar data for Black and

¹³ Abel Maldonado successfully ran for Santa Maria city council after the city was sued under Section 2, arguing that voters could demonstrate that they were “not racist” by supporting him.

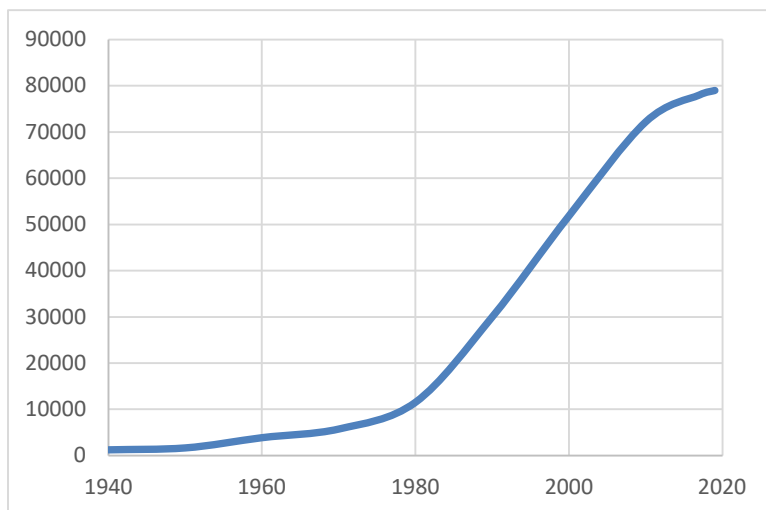
Native American voters, so an analysis can only be based on the number of such voters who were eligible to vote at the time of the election. Petitioners believe that these minorities also act in coalition with the Latino and Asian communities and will conduct this analysis if the council disagrees.

IV. FOLSOM'S COUNCIL NEEDS TO REPRESENT A CHANGED COMMUNITY.

At-large elections are undemocratic because they do not represent the entire city and are exceptionally susceptible to capture by special interests. Folsom incorporated three decades after the nativist movement that promoted the shift away from single-member districts. It is unnecessary to consider whether the city founders had any exclusionary motives; the evils of the at-large system are structural. Homogenized at-large boards resist demographic change and entrench incumbents who self-perpetuate by promoting successors with similar philosophies and social characteristics.

As recent events have demonstrated, the council has become less representative than it was 60 years ago. The average age of the inaugural city council was 31. Today, the average council member is 61 years old. In the 20th century, 16 of 38 council members served only one term. In the 21st century, only one incumbent has been defeated – and only after being arrested for impersonating a policeman. Of the four longest serving members, two are still on the council.

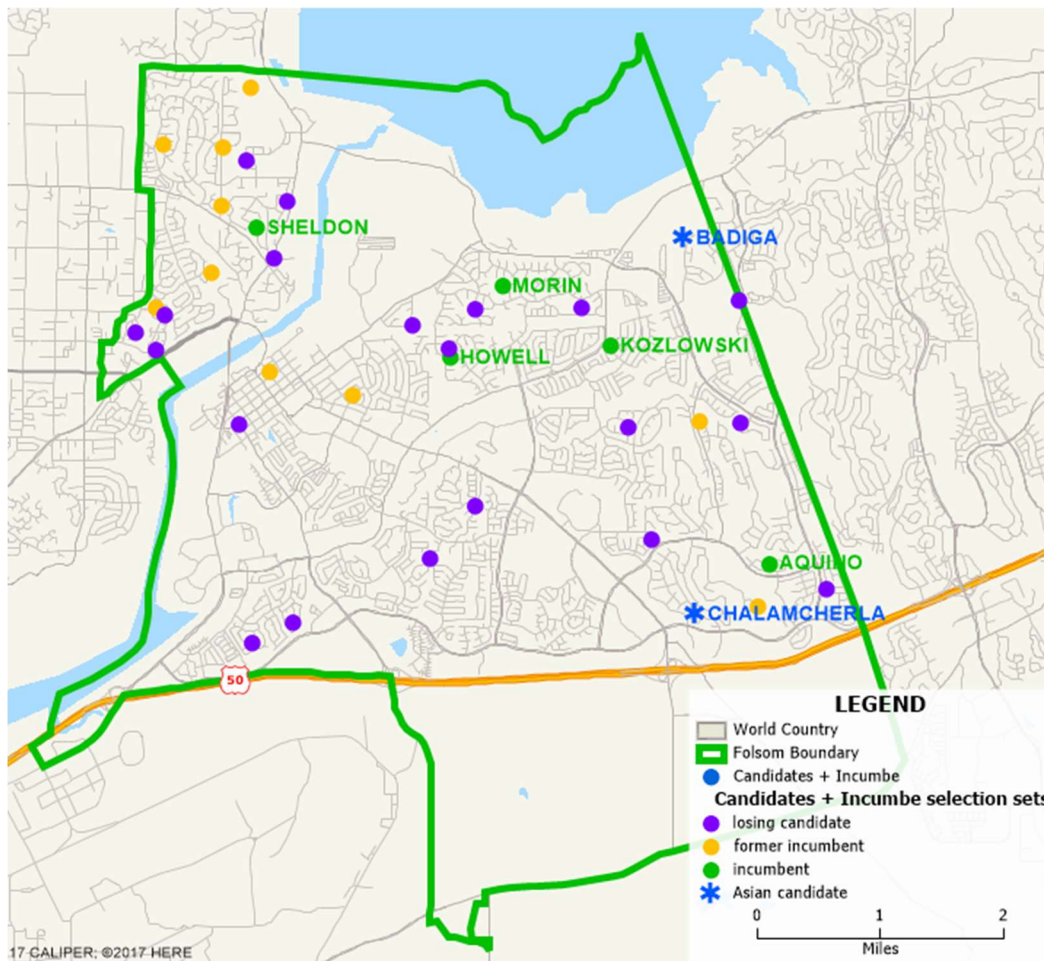
Folsom is no longer a small or homogeneous town. Its population has grown eight-fold since 1980.



Folsom has become more diverse. As late as 1980, only 62 Asian Indians (about ½%) and 628 Latinos lived in the city. By 1990, the Asian population had increased to 3-

½ percent in 1990 and is 20 percent today. The Latino population has grown from 6 percent to 13 percent. Today, 13 percent of Folsom’s eligible voters are Asian; 11 percent are Latino; Black and Native American voters total seven percent of the electorate. If all the Latino voters were located in one district, and all the Asian voters in another, each group would be capable of forming a majority district. Section 2 of the Federal Voting Rights Act would require a majority districts on the basis that this would enable group to elect its own candidate of choice. Of course, Folsom is not so segregated and California politics is not defined by race to the same degree that characterized the Deep South.

Winner-take-all has resulted in the chronic underrepresentation of many neighborhoods, some of which suffer from unemployment or are distinguished by large numbers of children and foreign-born residents. Some have rates of indicators of social need (such as housing vacancy, non-family households and lack of broadband) that are higher than Folsom’s most well-to-do areas.¹⁴

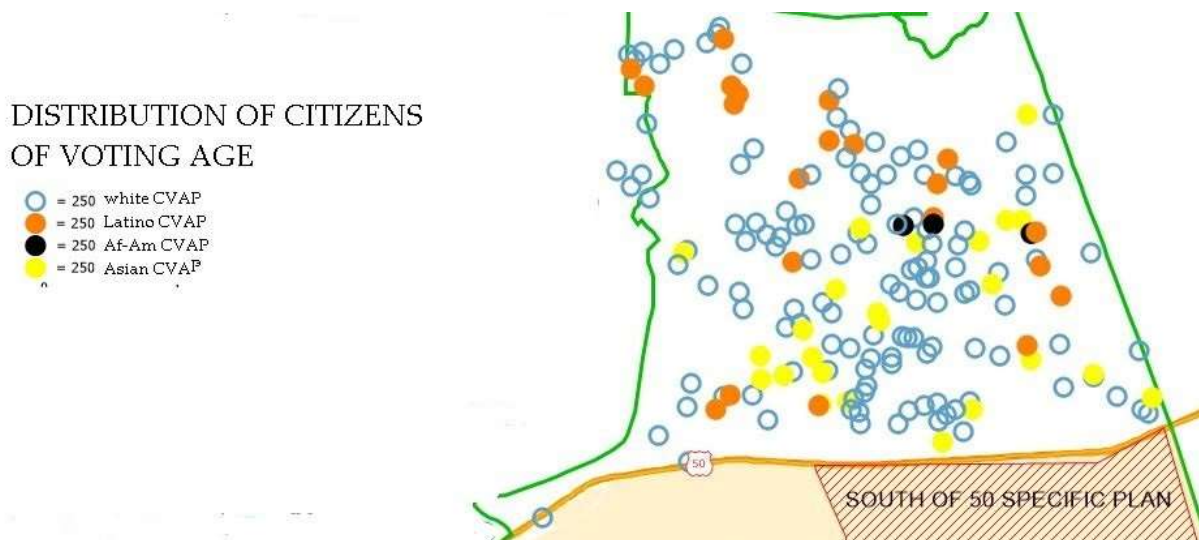


¹⁴ Folsom is one of the most prosperous areas in Sacramento County, does not have considerable segregation, and has few residents on public assistance.

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Folsom's minority community is a source of great strength for the city. Empire Ranch has many affluent, well-educated residents in expensive homes, but this community also has distinctive needs, as suggested by the higher-than-average number of school age children. Mayor Aquino lives near this area, but not in a high-Asian block group.

Most renters and much of Folsom's Latino and foreign born populations live in the central city, Parkway, or other areas south or east of Bidwell Street. Additional demographic measures (vacancy rates, unemployment, and lack of high school education) suggest that parts of these neighborhoods also have particular needs. No incumbent or former incumbent lives near these block groups.



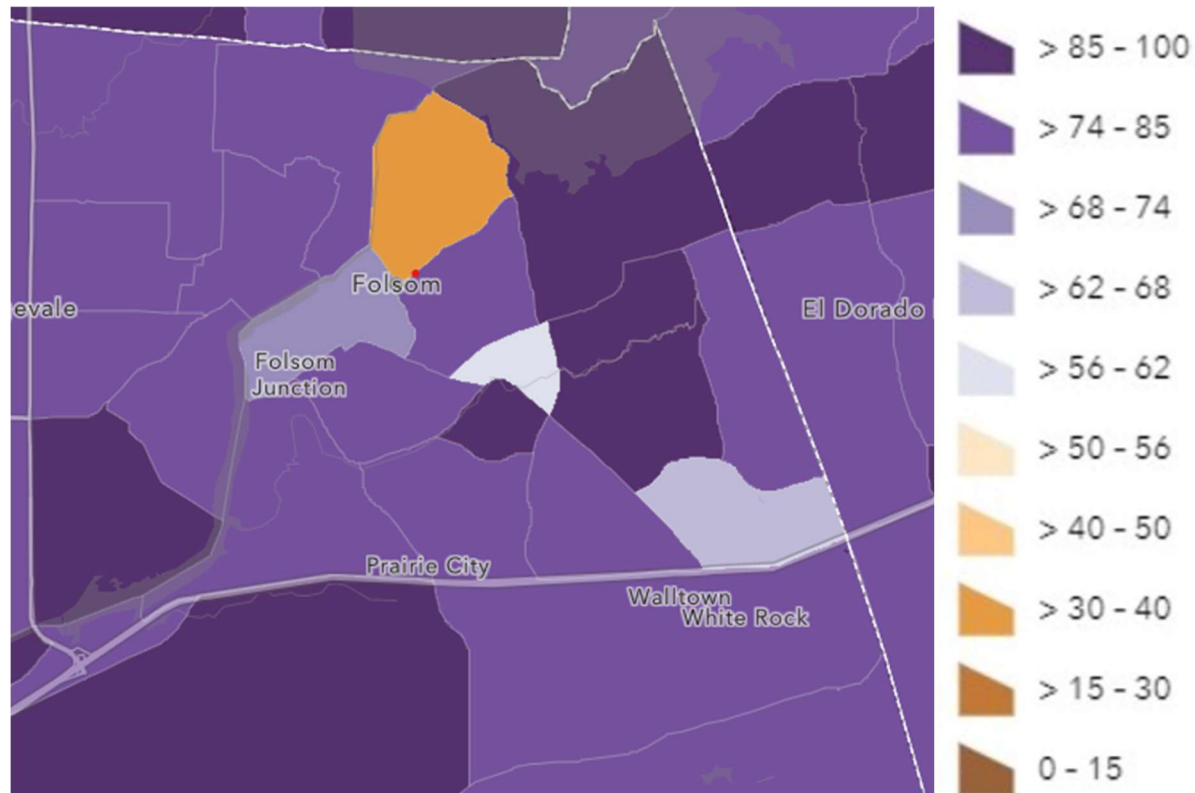
Empirical studies suggest that at-large city councils focus on infrastructure development and annexation, but neglect social services.¹⁵ I have also attached a demographic analysis recently performed by the state to identify census tracts that it expected to be "hard-to-count" in the census. The same factors that make these tracts hard-to-count make them less engaged in at-large city government. Candidates do not campaign in their neighborhoods, and incumbents may neglect them due to the resulting low turnout. Despite the warning that the city reach out to the Parkway because of its high foreign-born population, more than 40 percent of its 2000 households did not return census forms.

The state's "hard-to-count" analysis avoided suggesting that cities were not

¹⁵ Langbein, et al. "Rethinking Ward and At-Large Elections in Cities: Total Spending, the number of locations of Selected City Services, and Policy Types," 88 PUBLIC CHOICE 276 (1996); Mehay & Gonzalez, "District Elections and the Power of Municipal Employee Unions," 15 J. LABOR RES. 376 (1994).

engaged with neighborhoods that have racial minorities. The state did not identify prosperous Tract 85.13 in southwest Folsom as hard-to-count, but more than a third of the estimated 3600 residents in this Asian neighborhood failed to respond to the census. To the extent that these areas were not fully counted during the very limited follow-up operations, Folsom and Sacramento County will pay a price in every population-based revenue allocation until 2032.

CENSUS SELF-RESPONSE RATES

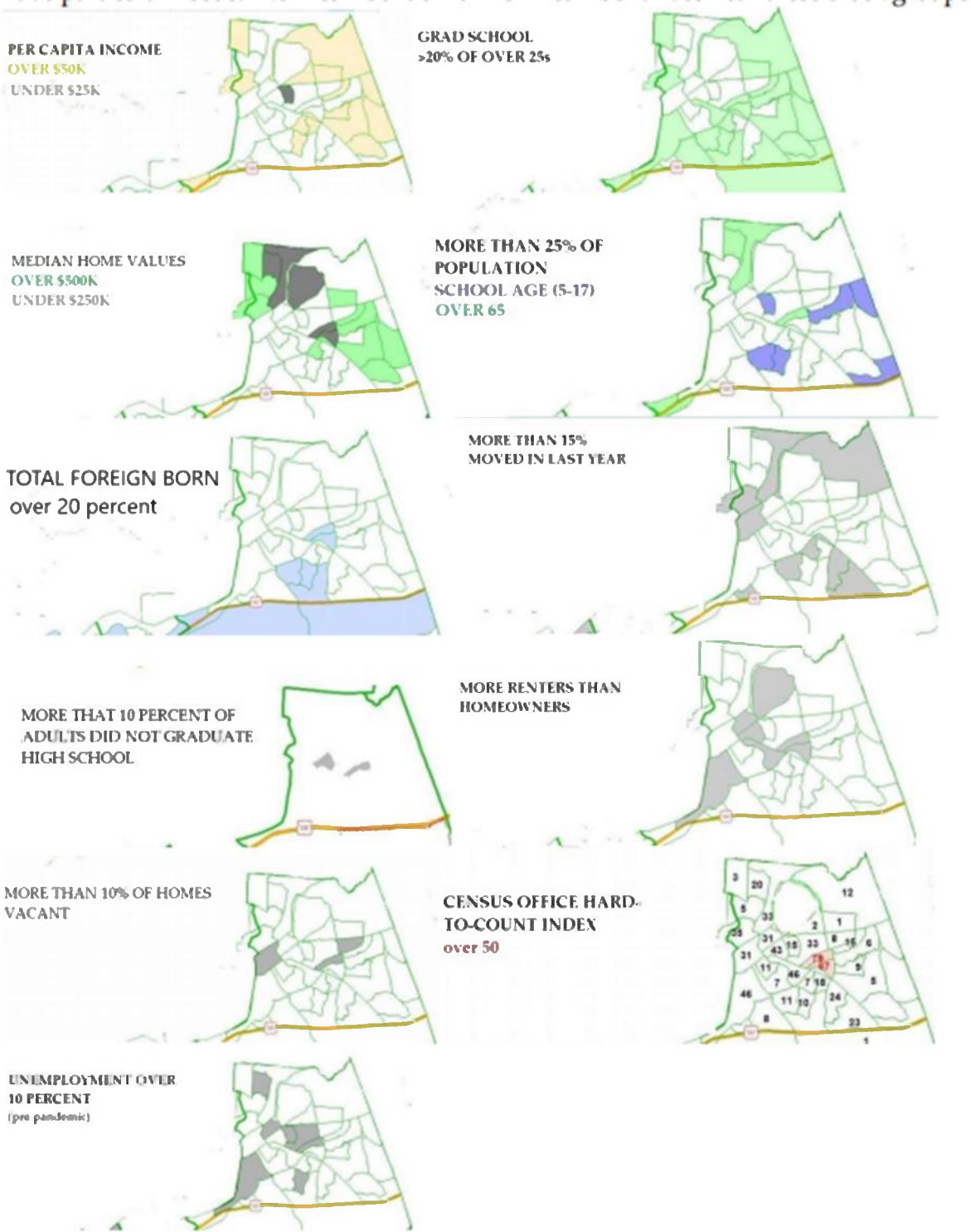


The maps on the next page provide demographic information about each block group in Folsom. While Folsom is prosperous as a whole, there are areas that have distinctive needs and require representation by council members who are accessible to these constituents and understand their values and political objectives because they live in or near those neighborhoods.

I attach a letter than Dolores Heurta recently sent to the Justices of the California Supreme Court. As she explains, the disincorporation of minorities from local political life has statewide effects. One of these is depressing minority turnout in statewide elections.

FOLSOM – TURNOUT IN RECENT GENERAL ELECTIONS

	White/Black	Latino	Asian
2018	64%	38%	38%
2016	70%	42%	39%



CONCLUSION

District elections will give Folsom an opportunity to make its council more representative, more effective and more accountable to the voters. It will incorporate minority communities into the political life of the city and provide an equal opportunity for them to identify and support candidates of their choice for elective office. My clients look forward to working with the council and city attorney to implement district elections and to comply with the California Voting Rights Act.

Sincerely,

A handwritten signature in black ink that reads "Scott J. Rafferty". The signature is written in a cursive style with a blue ink smudge or shadow effect behind it.

Scott J. Rafferty

¹⁶ This document reflects corrections and additional demographic charts provided on October 29, 2020.

DOLORES HUERTA FOUNDATION

August 31, 2020

The Hon. Chief Justice Tani Cantil-Sakauye
and Hon. Associate Justices
In Care of Honorable Jorge E. Navarrete
Clerk, Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: ***Amicus Curiae Letter in Support of Petition for Review***
Pico Neighborhood Association, et al. v. City of Santa Monica, No. S263972
Court of Appeal, Second Appellate District, Division Eight,
Case Number B295935

Dear Chief Justice and Associate Justices of the California Supreme Court:

The Dolores Huerta Foundation, a California 501(c)(3) non-profit community based grass roots organization founded by California civil rights and labor leader Dolores Huerta, respectfully submits this *amicus curiae* letter, pursuant to Rule 8.500(g) of the Rules of Court, in support of plaintiffs-respondents' Petition for Review in this matter.

INTEREST OF DOLORES HUERTA FOUNDATION

The Dolores Huerta Foundation recruits, trains, organizes, and empowers local residents in low-income communities to attain social justice through systemic and structural transformation. Throughout California, at-large election methods have historically denied equality of influence to Latino, Asian, black, and Native American communities. Because these structural barriers persist, even in large cities and school districts with substantial minority populations, these communities do not have an equal opportunity to choose their leaders and to elect them to local office.

P.O. Box 2087 ♦ Bakersfield, CA 93303 ♦ P: (661) 322-3033 ♦ F: (661) 322-3171
www.doloreshuerta.org

The Hon. Chief Justice Tani Cantil-Sakauye
and Hon. Associate Justices
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Since the Legislature enacted A.B. 350 in 2016, the Dolores Huerta Foundation has supported petitions that have led school boards and city councils to implement district elections on a no-fault basis. These petitions detail how Latinos vote differently than non-Latinos, often citing ballot questions. Most elected officials (and their constituents) understand and accept that Latino electoral choices reflect different values and needs. The success of this process, which achieves compliance while avoiding litigation cost, is unlikely to continue if petitions must also prove that the very incumbents voting to comply have been elected only because their non-Latino constituents successfully blocked a Latino-preferred candidate.

The Dolores Huerta Foundation is committed to civic engagement. It conducts voter registration drives that seek to close the shocking gap in participation that separates Latinos and Asians from the rest of the electorate. As Congressional Representatives Barbara Jordan and Edward Roybal testified 45 years ago, at-large elections in Texas and California suppress Latino turnout because the chronic inability to elect candidates of choice has discouraged these communities. Even today, when Latinos are the majority of school-age children, only six percent of school board trustees are Latino. Such a dramatic absence of elected officials signals that Latinos have not yet been incorporated into the political life of our state.

Finally, the Dolores Huerta Foundation supports Latino (and Asian) parents in one of their most distinctive characteristics – the passion to ensure that their children receive the best possible education. Four years ago, most non-Latino voters opposed Proposition 51, which authorized \$9 billion in bonds to improve K-12 schools and community colleges statewide. Proposition 51 became law solely because of Latino votes. Few jurisdictions can deny racially polarized voting on this measure, using the test for statistical significance established in *Kaku v. City of Santa Clara*.¹ In Santa Monica, Latinos voted for Prop 51 at almost

¹ The trial court applied a 95% confidence interval to midpoint estimates for minority and non-minority preferences and found racially polarized voting if there was no overlap. The city disputes the use of a 95% confidence interval in the appeal (H046105), pending in the Sixth Appellate District.

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twice the rate of non-Latino voters.

WHY REVIEW SHOULD BE GRANTED

For over a century, at-large elections have impaired the ability of Latino communities to form coalitions with other minorities and to aggregate their votes with like-minded citizens of all races. As a result, many of our neighborhoods across the state are unrepresented on school boards and city councils. For this reason, the California Voting Rights Act prohibited at-large elections wherever Latinos (or another protected group) vote differently from the rest of the electorate. Prior to the reversal of the trial court judgment in Pico Neighborhood Ass'n v. City of Santa Monica, it was clear that this standard did not allow most jurisdictions to defend the use of at-large elections.

A century ago, California Progressives led a nationwide movement to elect city councils and school boards at-large. State legislatures in the South also adopted at-large voting in the 1960s in order to dilute the votes of newly enfranchised blacks. In recent decades, all but three of the nation's largest cities have recognized the anti-democratic effects of winner-take-all elections and restored district elections.² But until the CVRA, change in California was slow. Unless reviewed, the Court of Appeal's opinion in this case could stop voluntary compliance or even reverse the progress that has been made.

This Court should grant review to permit a more thorough briefing of two erroneous conclusions that were critical to the appellate opinion. First, the panel denied that racially polarized voting is sufficient to condemn at-large voting as a dilution of minority influence, criticizing the plaintiffs for devoting only one sentence to this argument. But The CVRA is not limited to promoting equal opportunity to elect candidates of choice; it also guarantees equality of influence, particularly the ability of voters to aggregate their votes with like-minded

² Columbus, Cincinnati, and Portland are still at-large. Significantly, NAACP LDF has threatened to force Columbus's majority-black city council to abandon at-large, because several black members were elected only after being appointed and are not the black community's authentic candidates of choice.

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voters.³ Therefore, at-large systems dilute Latino influence whenever Latinos vote differently than the rest of the electorate. This explains the Legislature’s creation of the no-fault liability standard in Section 14028(a), and why no state or federal court has ever read it to permit any additional elements. Second, without reference to the record or any other source, the opinion stated that district elections were “swept away” as a response to “widespread graft and corruption.” This contradicts most historic interpretations of the context and consequences of Progressive era election reforms, which excluded immigrants and entrenched incumbents, allowing the political composition of many local governments to resist demographic change for decades. The combined effect of these two erroneous assertions is to validate unfounded objections to district elections and to place at risk the progress made to date in eliminating an electoral system that is undemocratic. The remainder of this letter summarizes our argument on these two issues, which amicus expects to brief if this Court grants review.

- (1) Racially polarized voting is sufficient to establish that an at-large system dilutes minority voters.

The CVRA focuses on using districts to increase minority influence. In contrast to the federal Voting Rights Act, it does not require that changing from the at-large system will immediately allow a single minority group to elect its candidate of choice. Therefore, it eliminated a critical restriction in the federal Voting Rights Act: “the need to prove a geographically compact majority-minority district.” Sanchez v. City of Modesto (2006) 145 Cal. App. 4th 660, 669, citing Section 14028(c); Jauregui v. City of Palmdale (2014) 226 Cal. App. 4th 781, 789. Based on these unambiguous terms, even the plaintiff in Higginson v. Beccera (2019) 363 F. Supp. 3d 1118, 1122, agreed that CVRA liability “turned solely on racially polarized voting.” Neither the district court nor any party

³ Dean Heather Gerken’s article, “Understanding the Right to an Undiluted Vote,” 114 HARV. L. REV. 1663, 1680 (2001), explains dilution as impairing the right of minorities “to aggregate their votes effectively.” “Single-member districts were historically chosen over at-large precisely to afford electoral minorities a chance to affect the political process.” *id.*

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disputed this assertion. The U.S. Supreme Court declined to review the district court's ruling that establishing liability based on racially polarized voting alone satisfies all constitutional requirements. No 19-1199 (May 20, 2020).

Without distinguishing these cases, the appellate panel claims that the plain meaning of the word "dilution" restores the very requirement of a majority-minority district that the Legislature so clearly eliminated. The opinion finds it insufficient that Santa Monica's at-large system deconcentrates Latinos voters in the Pico neighborhood from a 30% Latino district into an area seven times as large in which only 14% of voters are Latino.⁴ The panel eviscerates the CVRA by denying liability unless plaintiffs show a majority Latino district, which they assume to be essential to electing a Latino official.

In California, Latinos can seldom be elected without support from other minorities and crossover voters. A Latino majority is not necessary for districting to increase Latino influence, nor is it sufficient (given the registration gap) to guarantee election of the Latino candidate of choice. In most California jurisdictions, Latino voting is cohesive and racially polarized, but it is not the case that Latinos vote only for Latinos, as the panel assumes.⁵ Districting allows minorities to build the coalitions that give them procedural equality in the electoral process.

The Legislature created a strong presumption in favor of districting not only to improve minority influence during the campaign, but also to increase the quality and responsiveness of cities and school districts. The at-large system continues to entrench homogenous incumbents in local government, as it was designed to do more than a century ago. In many cases, all members live in the

⁴ One court suggested that "Standard rules enhance consistency, manageability, predictability, and uniformity," and that 25% of voting age population (including non-citizens) is sufficient to qualify an influence district. Rural W. Tenn. African-American Affairs Council v. McWherter (1995) 877 F. Supp. 1096, 1104 (W.D. Tenn.), *aff'd* 516 U.S. 801.

⁵ Congressman Maxine Waters enjoys overwhelming support from Latinos, who constitute the majority of eligible voters in her district.

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“better parts of town,” often remote from Latino constituents. Ontario and Santa Clarita elected white incumbents in the 20th century, when they were smaller and less diverse, but they are still there. Districting enables Latino neighborhoods to identify natural leaders who can attract funding sufficient to engage voters in much smaller constituents. More competitive elections benefit all neighborhoods and voters of all races.

If this Court grants review, briefing will demonstrate that districting increases the influence of Latinos and other minorities, even in cases where no single minority has a share of eligible voters as high as the 30% in the Santa Monica remedy. In almost every case, districting empowers a new class of neighborhood-based candidates, who can attract funding and endorsements. This allows Latinos to cast a meaningful and effective vote for the very first time.

(2) The Progressive Era elimination of district elections perpetuated corruption and entrenched a white, nativist elite. The at-large method of election continues to exclude racial and ethnic minorities.

The Court of Appeal's opinion turns California history on its head when it argues that the Progressive Era “swept away” district elections due to “widespread graft and corruption.” By granting review, this Court can objectively examine the extensive evidence that winner-take-all elections marginalize minorities in Santa Monica and in many city councils and school districts across the state.

For more than two centuries, our nation used district elections to incorporate immigrant communities into local political life. New York City provided for single member constituencies in 1683. Two decades later, 3000 Germans settled Governors Island and could elect their own council member. In recent decades, blacks, Latinos and Asians who began political life as local elected officials have advanced to state and federal offices.

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Large-scale corporate corruption has been endemic to local governments elected at-large, primarily because campaigning across a large city or school district requires substantial funding. This explains why the Southern Pacific could corrupt San Francisco's at-large board of supervisors in 1905 but was less successful among Los Angeles districted members. Oakland restored district elections after district attorney Earl Warren successfully prosecuted at-large Oakland city commissioners for graft in 1930.⁶ More recently, a large school district abandoned at-large elections after decades of construction waste led to an SEC bond investigation that forced the retirement of a long-time trustee.⁷

Governor Hiram Johnson was a visionary political strategist who restructured local elections to entrench the results of his party's 1911 landslide.⁸ Across the state, most victors were white, male Protestants from the cities' most established neighborhoods. The change to at-large would prevent leaders from emerging in ethnic neighborhoods and also increase the cost of challenging the new incumbents. Other reforms, some of which had independent merit, made it even more difficult to displace incumbents (and still do).⁹ Two tactics were particularly effective. Instead of creating an open seat, retiring members resigned in advance of the election, so their colleagues could fill the vacancy. Completing the slate often deterred anyone from contesting the election.¹⁰ Incumbents also used selective annexation to choose their voters, stranding minority neighborhoods in "unincorporated islands." The California Legislature outlawed this device in 1951, but Tuskegee, Alabama emulated it shortly

⁶ The corrupt council members belonged to the Ku Klux Klan. Rhomberg, "The 1920s Ku Klux Klan in Oakland, California," 17 *Journal of American Ethnic History* 39, 49 (1988).

⁷ [East Bay Times, July 31, 2017.](#)

⁸ In 1911, the Progressive Party came to power after two Irish anarchists confessed to bombing the Los Angeles Times. This was particularly remarkable in Los Angeles, where European immigration had tripled the population in the prior decade.

⁹ The "short ballot" reduced the number of elected positions (generally to five). Terms were lengthened and staggered. Non-partisanship reduced information about potential challengers.

¹⁰ Blair and Flournoy, *LEGISLATIVE BODIES IN CALIFORNIA* at 7-4 (1967).

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thereafter.¹¹

The racial exclusivity of these reforms is undeniable.¹² Outside of Los Angeles, which restored competitive district elections in 1925, the dominance of the Progressive/ Republican victors of 1911 and their handpicked successors survived decades of demographic and political change. A 1955 study showed that 60% of mayor and council members were Republican, which was by then the reverse of the state's voter registration. The partisan bias was even more extreme in large cities, where 83% of officials were Republican. The study showed that council members were homogenous in other ways; a "substantial majority" were still white, male, Protestant Masons who had lived in "a better part of town" for ten years or more.¹³ Even today, the legacy of at-large elections deprives California of the natural diversity of leadership that our democracy requires.

CONCLUSION

This Court should review the appellate opinion because it fails to explain its conflict with state and federal precedents (Sanchez, Jauregui, Higginson, *supra*) that have found racially polarized voting to be the statutory predicate to require district elections. In California, minorities succeed only by building coalitions. Voting may be polarized by race, but minorities do not vote automatically or exclusively for candidates of their own ethnicity. Therefore, the panel errs in assuming that a majority Latino district is necessary to demonstrate

¹¹ Rafferty v. City of Covina (1955) 133 Cal. App. 2d 747, 753; Cal. Stat. 1951, Ch. 1702, p.3915; Gomillion v. Lightfoot (1960) 364 U.S. 339. West Pueblo inside the City of Napa is a surviving example of a Latino island who cannot vote in city elections and are forced to pay more for services.

¹² Latinos had served on Los Angeles city council for 60 years, but during the Progressives' at-large period (1909-1925), the council was 100% Anglo. Most Asians could not vote because Chinese and Japanese had been excluded from citizenship. The CALIFORNIA PROGRESSIVE CAMPAIGN BOOK FOR 1914 (at 24) called New York's assimilation of immigrants "a fearful social blunder California is determined to avoid." It denounced the "delinquency and criminality of the second-generation alien," even though census data showed these birthright citizens to be as literate as "native stock." It warned that the Panama Canal, which opened in August 1914, would begin an "alien flood."

¹³ Lee, POLITICS OF NONPARTISANSHIP at 56-57 (1960).

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that districting will increase Latino influence. It is enough to show that Latino precincts vote differently than the rest of the city when we have an electoral choice “that affects [our] rights and privileges.” Section 14027(b).

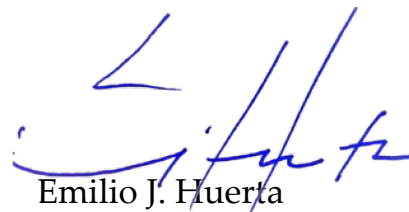
The CVRA does not attempt to engineer electoral outcomes; it simply enhances equality of opportunity in the electoral process. In most at-large systems, the citywide majority, almost always white and non-Latino, chooses every elected official, so large parts of many cities are totally unrepresented. Many of the young people in Latino communities have never met an elected official who lives in their neighborhood. The cost and futility of challenging longtime Anglo incumbents in citywide elections often frustrates attempts by the Latino community to find and support candidates who are natural leaders. District elections often create opportunities for candidates from minority neighborhoods. However, whether or not there is a Latino candidate, districting increases the political influence of our neighborhoods during the campaign and after the election. The Legislature’s desire to improve governance statewide explains its decision to enact the CVRA with such a strong presumption in favor of district elections. The panel erred in ignoring that legislative judgment.

This Court should grant review, reverse the appellate opinion, and restore the remedy directed by the superior court.

Sincerely,



Dolores C. Huerta
Founder & President



Emilio J. Huerta
General Counsel

cc: Scott J. Rafferty, Esq., Counsel
rafferty@gmail.com

Census 2020 California Hard-to-Count Fact Sheet

Folsom City in Sacramento County

(CA Census 2020 Region 1)

Race and Hispanic Origin	
Total population	75,897
Hispanic or Latino of any race	11.2%
Hispanic Exclusive Race:	
White alone	62.7%
Black or African-American alone	4.1%
American Indian and Alaska Native alone	0.3%
Asian alone	16.2%
Native Hawaiian and Other Pacific Islander alone	0.4%
Some other race alone	0.1%

Top 3 Languages Spoken at Home	
Total Limited-English Population (Persons 5 years and older who do not speak English "very well")	3,836
Spanish	24.0%
Other Indo-European languages	22.7%
Chinese (incl. Mandarin, Cantonese)	20.3%

Hard-to-Count Characteristics	
The California Hard-to-Count (CA-HTC) Index is based on multiple demographic, housing and socioeconomic variables correlated with an area being difficult to enumerate. Census tracts with higher indexes are likely to be places that will pose significant challenges to enumerate in 2020.	
Percent of Total Housing Units:	
That are vacant (includes seasonal)	2.8%
With 3 or more units in a multi-unit structure	20.0%
Percent of Occupied Housing Units (or Households):	
That are renter-occupied	30.2%
That are overcrowded	0.2%
Without broadband Internet	7.5%
With limited-English speaking ability	3.0%
That are non-family	28.0%
Receiving public assistance income	1.2%
Percent of population:	
Under 5 years old	6.0%
That is foreign-born	16.2%
Who moved from outside county in past year	8.2%
With income below 150 percent of poverty level	7.9%
Age 16 or older that are unemployed	4.6%
Age 25 or older who are not high school graduates	7.6%

California Hard-to-Count Characteristics	
Median CA-HTC index all census tracts	16.5
Estimated Total Population in Census Tracts with above median CA-HTC	35,879
Leading HTC characteristics in those areas: Non-family households; Moved recently; Children under 5	

Top 5 CA-HTC Census Tracts in Place	
Census Tract 85.06:	
Total Population	2,664
CA-HTC Index	63.0
Leading Hard-to-Count Reasons: Multi-unit structures Renter-occupied units Moved recently	
Census Tract 9883:	
Total Population	5,551
CA-HTC Index	53.0
Leading Hard-to-Count Reasons: Vacant housing units Renter-occupied units Non-family households	
Census Tract 85.07:	
Total Population	4,104
CA-HTC Index	30.0
Leading Hard-to-Count Reasons: Moved recently Children under 5 Multi-unit structures	
Census Tract 84.04:	
Total Population	3,387
CA-HTC Index	29.0
Leading Hard-to-Count Reasons: Moved recently Non-family households Households without broadband subscription	
Census Tract 84.03:	
Total Population	6,340
CA-HTC Index	22.0
Leading Hard-to-Count Reasons: Moved recently Non-family households Children under 5	



For a detailed map of all census tracts, go to census.ca.gov/HTC-map

Data Source: U.S. Census Bureau, American Community Survey, 2013-2017 (5-year).

Geography Note: Census tracts do not cross county boundaries but a tract may be divided by city, district, and other boundaries. Also, the same tract number may be used in more than one county. "CDP" – A Census Designated Place is a unincorporated community.

To learn more about California's Census 2020 efforts, please visit census.ca.gov

Folsom City

California Hard-to-Count Index by Census Tract

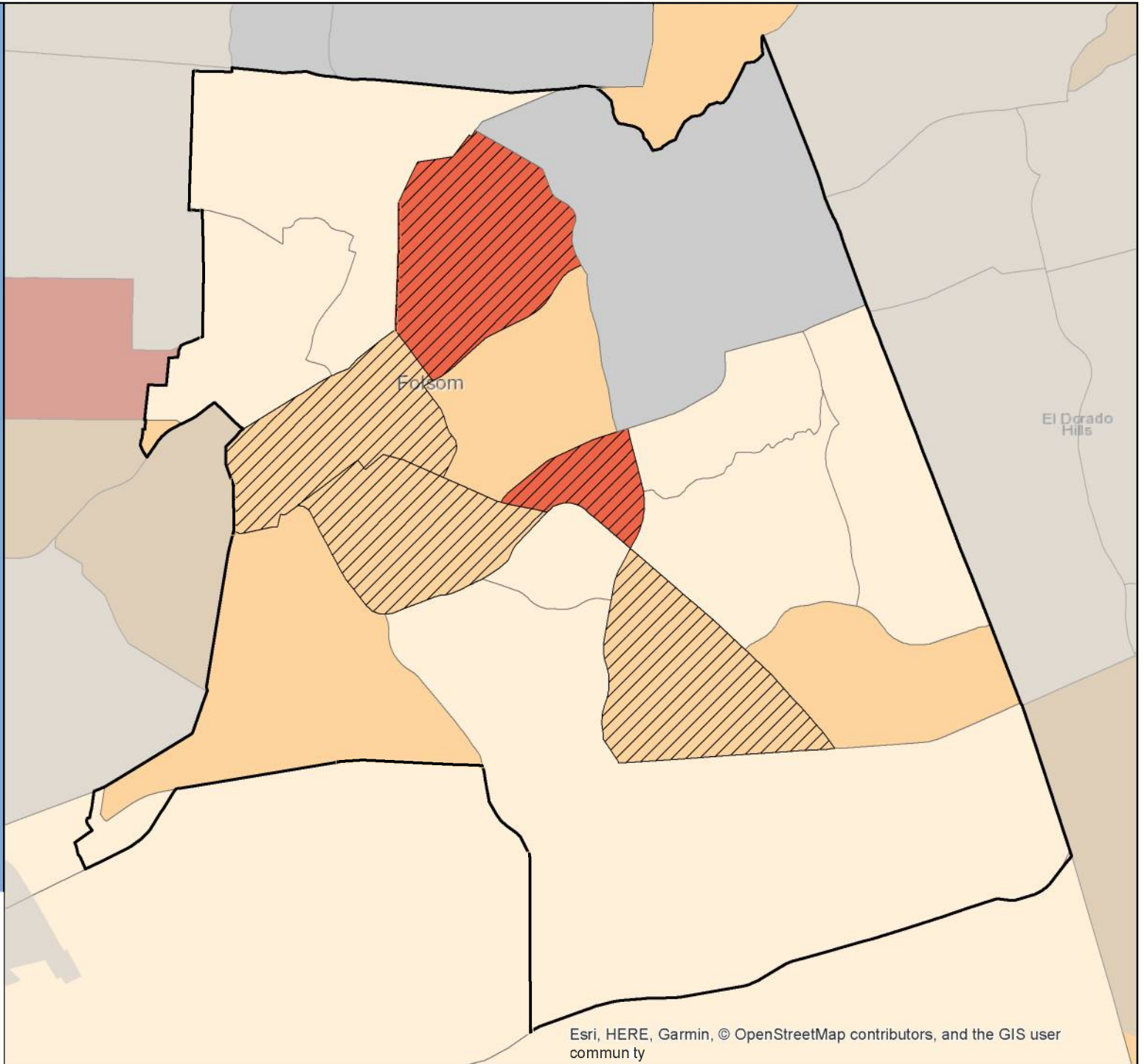
- 1 - 16
- 16 - 30
- 30 - 47
- 47 - 70
- 70 - 136

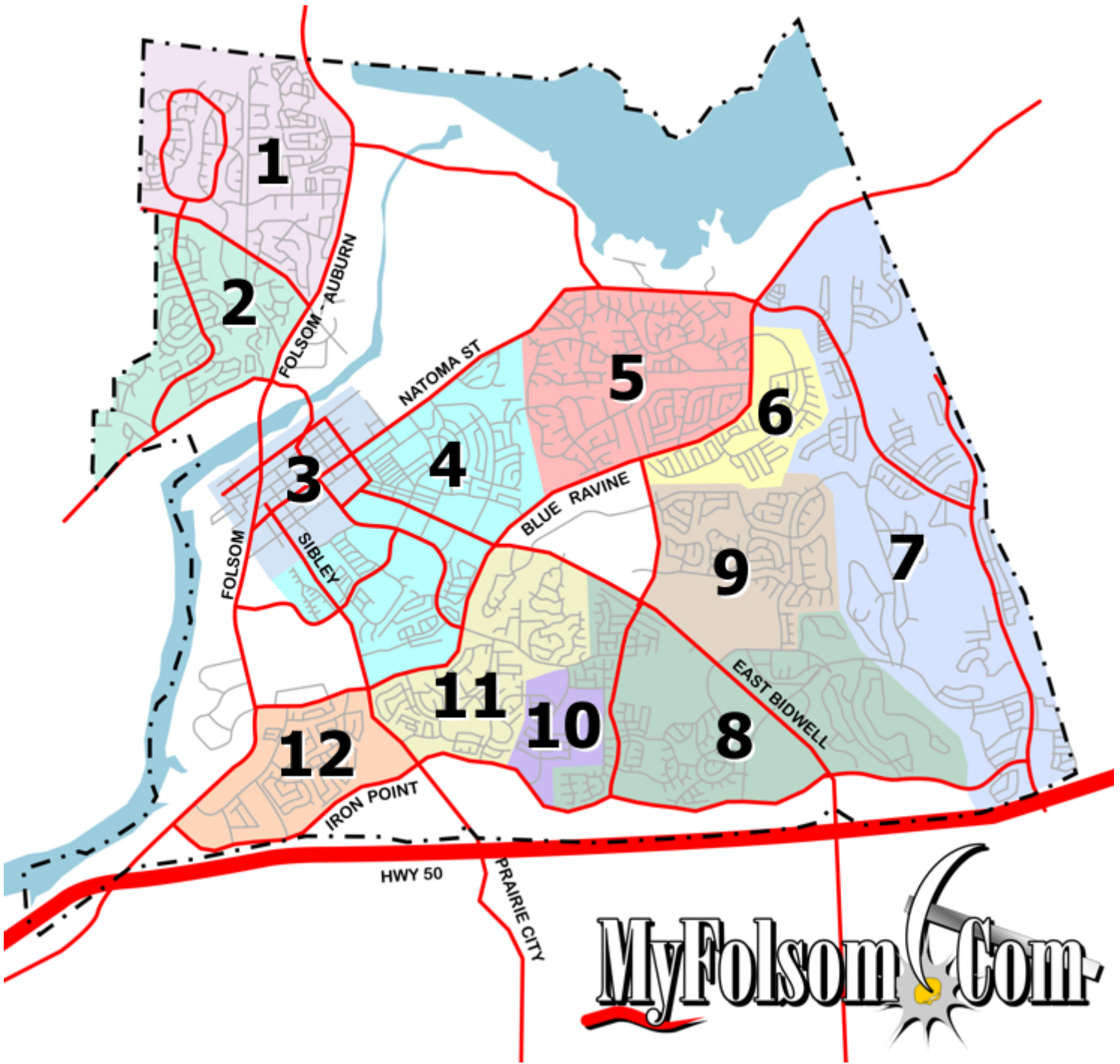
Tracts with highest indexes

CA-HTC Index is 0



0 0.325 0.65 1.3 Miles





- 1. American River Canyon North ([real estate](#), [message board](#))
- 2. American River Canyon ([real estate](#), [message board](#))
- 3. Historic Folsom ([real estate](#), [message board](#))
- 4. Central District ([real estate](#), [message board](#))
- 5. Briggs Ranch ([message board](#))
- 6. The Parkway ([message board](#))

- 7. Empire Ranch ([real estate](#), [message board](#))
- 8. Broadstone ([real estate](#), [message board](#))
- 9. Lexington Hills ([real estate](#), [message board](#))
- 10. Willow Springs ([real estate](#), [message board](#))
- 11. Prairie Oaks ([real estate](#), [message board](#))
- 12. Natoma Station ([real estate](#), [message board](#))