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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF RIVERSIDE**
13 **RIVERSIDE HISTORIC COURTHOUSE**

14 INLAND EMPIRE UNITED, EVELYN ARANA,)
ELIZABETH AYALA, ARACELI CALDERA,)
15 EDGAR CASTELAN, ROBERT GARCIA, and)
DAISY LOPEZ,)

16 Petitioners/Plaintiffs,)

17 v.)

18 RIVERSIDE COUNTY, RIVERSIDE COUNTY)
BOARD OF SUPERVISORS, and KEVIN)
19 JEFFRIES, KAREN SPIEGEL, CHUCK)
WASHINGTON, V. MANUEL PEREZ, and)
20 YXSTIAN GUTIERREZ, in their official capacities)
as members of the Riverside County Board of)
21 Supervisors, and REBECCA SPENCER, in her)
official capacity as the Riverside County Registrar of)
22 Voters,)

23 Respondents/Defendants.)
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Case No. **CVRI2202423**

**NOTICE OF MOTION AND MOTION
FOR ISSUANCE OF A PEREMPTORY
WRIT OF MANDATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: Not yet set
Time: Not yet set
Dept.: 10
Judge: Hon. Harold W. Hopp

Action Filed: June 14, 2022
Unlimited Civil Case

- Attachments:
- Compendium of Declarations
- Request for Judicial Notice
- [Proposed] Order

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1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that at a time and date to be determined by the Court at Riverside
3 Historic Courthouse, Department 10, 4050 Main St., Riverside, CA 92501, Petitioners Inland Empire
4 United, Evelyn Arana, Elizabeth Ayala, Araceli Caldera, Edgar Castelan, Robert Garcia, and Daisy
5 Lopez (“Petitioners”) will, and hereby do, move the Court, pursuant to Code of Civil Procedure §1085,
6 for issuance of a peremptory writ of mandate prohibiting Respondents Riverside County, Riverside
7 Board of Supervisors, and Kevin Jeffries, Karen Spiegel, Chuck Washington, V. Manuel Perez, and
8 Yxstian Gutierrez, in their official capacities as members of the Riverside County Board of
9 Supervisors, and Rebecca Spencer, in her official capacity as the Riverside County Register of Voters
10 (“Respondents”) from using the 2021 Redistricting Plan for Board of Supervisor districts in the County
11 of Riverside in any future election and compelling them to comply with their mandatory duties under
12 the Fair And Inclusive Redistricting for Municipalities And Political Subdivisions Act (“FAIR MAPS
13 Act” or “Act”), Elec. Code §§21500-21509, by adopting a new redistricting plan before the March
14 2024 election that complies with the requirements of the FAIR MAPS Act, including the requirements
15 that the plan comply with the California Constitution and the federal Voting Rights Act by not
16 unlawfully diluting the voting power of Latinos in Riverside County, and the requirements that in
17 adopting the plan, Respondents follow the mandatory, ranked criteria established by the FAIR MAPS
18 Act, including by prioritizing maintaining communities of interest whole over maintaining cities and
19 census designated places whole and by not considering or prioritizing incumbency.

20 This Motion is based on the attached Memorandum of Points and Authorities in Support;
21 Request for Judicial Notice; Declarations of Julia A. Gomez, Sky Allen, Evelyn Arana, Elizabeth
22 Ayala, Edgar Castelan, Robert Garcia, Araceli Caldera, Daisy Lopez, Andrea Vidaurre, Sheheryar
23 Kaoosji, and Corey Jackson; Declarations and Expert Reports of Anthony Fairfax, Dr. Loren
24 Collingwood, and Dr. Albert Camarillo; all pleadings, files, and records in this action; and such other
25 argument as may be received by this Court at the hearing on this Motion.

26 DATED: May 19, 2023


Respectfully submitted,

27 By: /s/ Matthew J. Murray
28 Matthew J. Murray

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1 **INTRODUCTION**

2 Petitioners seek a straightforward order from this Court compelling Riverside County to fulfill
3 its legal duties and adopt a supervisorial district map that complies with California’s landmark local
4 redistricting law. In 2019, the California Legislature adopted the Fair And Inclusive Redistricting for
5 Municipalities And Political Subdivisions Act (“FAIR MAPS Act” or “Act”), Elec. Code §§21500-
6 21509, to ensure that redistricting prioritizes communities, not politicians. To achieve this goal, the Act
7 protects the fundamental right to vote for members of suspect classes by: 1) prohibiting redistricting
8 plans that cause vote dilution; 2) requiring that districts be drawn using a set of express, mandatory,
9 ranked criteria; and 3) excluding incumbency protection from those criteria. Elec. Code §§21500(b)-
10 (c). These requirements are critical in jurisdictions like Riverside County where the well-documented
11 presence of racially polarized voting and other historical and socioeconomic factors have diminished
12 Latino voters’ ability to participate fully and equally in the political process.

13 Here, to avoid vote dilution and maintain communities of interest following the 2020 Census,
14 the Act required the County Board of Supervisors (“Board”) to adopt a map that included two districts
15 in which geographically compact Latino communities form the majority of the citizen voting age
16 population (“CVAP”). The Board did not. Instead, it adopted a supervisorial district map—the 2021
17 Plan—that violates the Act in multiple independent ways. First, the 2021 Plan violates the Act’s core
18 prohibition on vote dilution in contravention of both the California Constitution and Section 2 of the
19 federal Voting Rights Act (“VRA”), both of which are expressly incorporated in the Act. Second, in
20 adopting the 2021 Plan, the Board relied upon and prioritized a non-statutory criterion—incumbency
21 protection—prohibited by the Act. Third, the Board misapplied the Act’s mandatory, ranked criteria by
22 prioritizing a lower ranked criterion (municipal boundaries) over keeping communities of interest
23 whole. The Board’s clear violations of the Act resulted in an unrepresentative and discriminatory map
24 that splits up two well-established Latino communities across three districts. Without the court’s
25 intervention prior to the 2024 election season, the 2021 Plan will remain in effect until 2031, depriving
26 Latino voters of the opportunity to participate fully and equally in County politics and governance.¹

27
28 ¹ The signature in lieu period for the March 2024 elections opens on September 14, 2023. *See* Gomez Decl. Ex. 1. For that reason, the requested writ should issue as soon as possible.

1 **FACTUAL BACKGROUND**

2 **I. The FAIR MAPS Act**

3 The FAIR MAPS Act was California’s most significant redistricting reform in more than half a
4 century. It established new mandatory criteria and procedures by which counties and cities must adopt
5 district boundaries after each federal decennial census. *See* Asm. B. 849 (2019-2020 Reg. Sess.) (Oct.
6 8, 2019). Procedurally, the Act encourages fair and transparent redistricting processes by requiring
7 counties to, among other things, attach CVAP data to draft maps and take steps to encourage
8 underrepresented and non-English speaking communities to participate in the redistricting process.
9 Elec. Code §§21508(a), (d), (g); 21507.1(a). Substantively, the Act prohibits vote dilution by requiring
10 covered jurisdictions to comply with the California Constitution and Section 2 of the VRA. *Id.*
11 §21500(b). The Act also imposes a set of specific criteria that jurisdictions must apply, ranked in
12 descending order of priority: 1) contiguity; 2) maintaining communities of interest (“COIs”) and
13 neighborhoods; 3) keeping cities and census-designated places (“CDPs”) whole; 4) providing easily
14 identifiable boundaries; and 5) compactness. *Id.* §21500(c). Not only is incumbency *not* a ranked
15 criterion, but its consideration is also prohibited by the Act: The Act specifies that communities of
16 interest do *not* include relationships with incumbents. *Id.* §21500(c)(2).

17 The Act defines a “community of interest”—which counties must prioritize keeping whole
18 above lower-ranking criteria like keeping cities and CDPs whole—as “a population that shares
19 common social or economic interests that should be included within a single supervisorial district for
20 purposes of its effective and fair representation.” *Id.* The California Constitution, from which the Act’s
21 definition was modeled, Gomez Decl. Ex. 2 (Asm. Comm. on Local Gov’t, A.B. 849 Analysis at 7
22 (Apr. 24, 2019)) (“Asm. Analysis”), provides examples of shared interests for use in statewide
23 redistricting, including those interests common to urban, rural, industrial, or agricultural areas, and
24 “those common to areas in which the people share similar living standards, use the same transportation
25 facilities,” and “have similar work opportunities,” Cal. Const. art. XXI, §2(d)(4).

26 To achieve fairer and more equal representation, the California Legislature made the Act’s
27 ranked criteria *mandatory*. Under the former version of state law, “local governments ‘may’—but
28 [were] not required to—consider communities of interest in redistricting,” and “even basic redistricting

1 criteria, like contiguity, [we]re listed as discretionary considerations, and as a consequence [we]re
2 sometimes ignored.” Asm. Analysis at 7, 11. As a result of this discretion, “some local governments
3 continue[d] to draw districts that [did] not meet these criteria and ha[d] deleterious effects on
4 representation of political or racial minorities.” Gomez Decl. Ex. 3 (S. Approps. Comm., A.B. 849
5 Fiscal Summ. at 2 (Aug. 12, 2019)). The Legislature therefore adopted the Act to curb partisan and
6 pro-incumbent gerrymandering, “establish[ing] mandatory, ranked redistricting criteria . . . so that
7 keeping communities intact is actually prioritized.” Asm. Analysis at 7, 11.

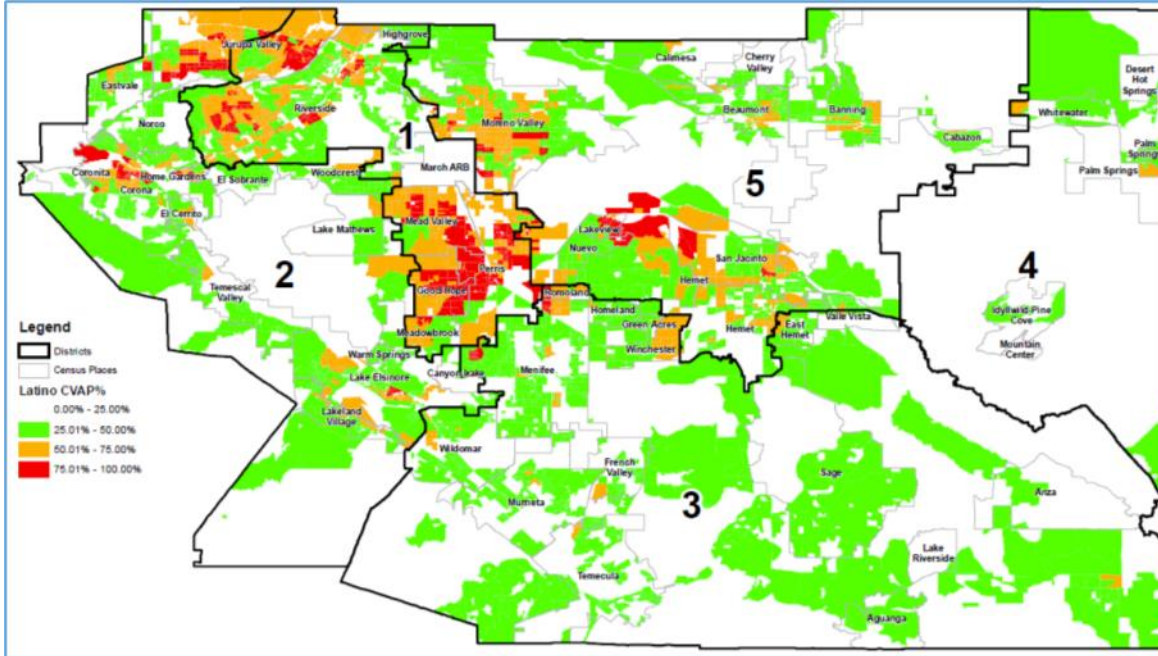
8 **II. Riverside County’s COIs with Substantial Latino Populations**

9 Understanding Riverside County’s COIs with substantial Latino populations is critical to
10 understanding the County’s obligations under the Act. According to the last two decennial censuses,
11 Riverside grew more in total population than any other county in California, and that growth was
12 driven entirely by Latino and other residents of color. *See* Fairfax Decl. Ex. 1 (“Fairfax Rep.”) ¶¶28-29
13 & Tb. 1. The County’s total population increased from 2,189,641 in 2010 to 2,418,185 in 2020. *Id.* Tb.
14 1. During the same period, the County’s Latino share of the population grew from 45.5% to 49.7%,
15 while its non-Latino white (“white”) population share decreased from 39.7% to 32.6%. *Id.* Latino
16 residents’ share of the eligible voting population has also grown: Latino CVAP grew from 28.9% in
17 2009 to 39.3% in 2019. Verified Petition (“Pet.”) ¶8; Answer ¶26.² Despite the County’s substantial
18 Latino population, no Latino candidate had ever been elected to the Board before 2018. Camarillo
19 Decl. Ex. 1 (“Camarillo Rep.”) ¶51; Pet. ¶67.

20 There are two COIs in the northwestern part of the County with substantial Latino populations.
21 The first COI resides in Jurupa Valley, northwest Riverside, north Corona, Eastvale, and surrounding
22 areas (“Jurupa Valley-Riverside COI”). Allen Decl. ¶15; Fairfax Rep. ¶¶83-87 & App’xs F & G. The
23 second COI resides in Moreno Valley, Perris, Mead Valley, and surrounding areas (“Moreno Valley-
24 Perris COI”). Allen Decl. ¶16; Fairfax Rep. ¶¶85, 88, 112-113 & Appx’s G. The Latino populations
25 that make up these COIs are sufficiently large and geographically compact to constitute a majority of
26 the eligible voters in two districts. Fairfax Rep. ¶39. The concentration of these populations, and their
27 division among three districts in the 2021 Plan, is shown in Figure 1 below.

28 _____
² 2019 data was the most recently available CVAP data during the 2021 process. Pet. ¶8; Answer ¶26.

1 **Figure 1.** Latino CVAP Heat Map Overlaid with 2021 Plan. Fairfax Rep., App’x G (at 171).



13 The **Jurupa Valley-Riverside COI** includes Spanish-speaking immigrant households with
14 similar levels of educational attainment, household income, and health care coverage. Fairfax Rep.
15 ¶¶83-87 & App’xs F & G; Allen Decl. ¶15; Lopez Decl. ¶7; Ayala Decl. ¶¶11-12; Castelan Decl. ¶¶8-
16 10; Garcia Decl. ¶¶8-9; Arana Decl. ¶10. Members in this community share language access and
17 education needs. Ayala Decl. ¶20; Garcia Decl. ¶¶9, 12; Arana Decl. ¶18. This COI includes cities like
18 Jurupa Valley and Eastvale that were only incorporated in 2010 and 2011, respectively, and historical
19 Latino neighborhoods like north Corona, Casa Blanca, and Eastside. Ayala Decl. ¶¶11, 14-15, 18-19;
20 Castelan Decl. ¶¶10, 12; Kaosji Decl. ¶6; Garcia Decl. ¶10; Arana Decl. ¶11; Camarillo Rep. ¶¶24,
21 30-32, 35. The Santa Ana River runs through part of the core of the Jurupa Valley-Riverside COI. *See*
22 Castelan Decl. ¶11. Community members have family and friends who live throughout this region, and
23 they attend the same religious institutions, shop at the same Mexican grocery stores, and support local
24 street vendors. Allen Dec. ¶15 & Ex. 4 at 3-4 (at 2-3 of narrative); Lopez Decl. ¶8; Castelan Decl. ¶¶9-
25 11; Ayala Decl. ¶¶15, 17; Arana Decl. ¶¶11, 15. The location of the COI also serves as a major
26 logistics hub, and many members of this community work in warehouses. Lopez Decl. ¶¶11- 13;
27 Kaosji Decl. ¶¶5-6, 8; Castelan Decl. ¶¶7, 9, 13; Arana Decl. ¶¶10, 13; Fairfax Rep. ¶88 & App’x F
28 (at 150) & G (at 169). The I-15, SR-91, and SR-60 freeways are heavily used by the logistics industry

1 and form a triangle that loosely relates to the geography of the Jurupa Valley-Riverside COI. *See* Fig.
2 1; Fairfax Rep. App'x G (at 169-70). 8; Lopez Decl. ¶13; Ayala Decl. ¶13; Vidaurre Decl. ¶7. Big-rig
3 traffic is common along these freeways and along city streets, resulting in traffic hazards, air pollution,
4 and serious health impacts for the community. Lopez Decl. ¶¶10-12; Vidaurre Decl. ¶¶11-14 & Ex. 1;
5 Fairfax Rep ¶86 & App'xs F & G. In recent years, residents have organized in response to the health,
6 labor, and environmental impacts of warehousing. Lopez Decl. ¶12; Allen Decl. ¶15. In 2013, for
7 example, the County and Jurupa Valley settled a lawsuit that sought to stop the construction of a 65-
8 acre industrial complex next to a residential tract in Mira Loma, a community within Jurupa Valley.
9 Pet. ¶72; Answer ¶72; Gomez Decl. Ex. 4. More recently, residents resisted the construction of a 1.3
10 million square foot warehouse next to a residential neighborhood in Jurupa Valley. Allen Decl. ¶15;
11 Lopez Decl. ¶12; Gomez Decl. Ex. 5 at 1-2.

12 Some members of the Jurupa Valley-Riverside COI reside in areas with infrastructure issues
13 that developers have targeted for warehouse expansion. Lopez Decl. ¶¶10-12; Vidaurre Decl. ¶¶17-19;
14 Garcia Decl. ¶¶10, 14; Castelan Decl. ¶¶10, 15. These areas were formerly farmland and are now semi-
15 rural and industrial, with many warehouses and trucking roads located next to homes and schools.
16 Lopez Decl. ¶10; Kaoosji Decl. ¶6; Vidaurre Decl. ¶¶8, 15-21; Castelan Decl. ¶¶10-13; Garcia Decl.
17 ¶10. More urban areas in the region have denser and older housing stock compared to nearby
18 neighborhoods outside of this COI. Ayala Decl. ¶¶12, 18; Arana Decl. ¶11. Neighborhoods outside the
19 COI include south Corona, the southeastern part of the city of Riverside, and Lake Matthews, which
20 are more affluent and suburban, with tract homes on large plots. Ayala Decl. ¶¶6, 15, 17-18, 21; Lopez
21 Decl. ¶9; Garcia Decl. ¶12, 15; Arana Decl. ¶¶14-15; Fairfax Rep. ¶¶75, 79-80 & App'x F.

22 The large Spanish-speaking immigrant population that makes up the **Moreno Valley-Perris**
23 **COI** is likewise united by shared socioeconomic characteristics, including similar levels of educational
24 attainment, household income, and health care coverage. Fairfax Rep. App'x G; Allen Decl. ¶16. This
25 community also includes a growing Black population in Perris and Moreno Valley characterized by
26 similar socioeconomic levels and shared interests. Allen Decl. ¶16; Jackson Decl. ¶¶2, 4, 6. The I-215
27 freeway connects Mead Valley, Perris, and Moreno Valley, while Perris Boulevard runs through the
28 core of Perris and Moreno Valley. Jackson Decl. ¶5; Caldera Decl. ¶¶10, 13. The Moreno Valley-

1 Perris COI includes urban and semi-rural areas, like Mead Valley and San Jacinto. Jackson Decl. ¶5. In
2 recent years, residents and developers from the city of Riverside have moved east into Moreno Valley,
3 Allen Decl. ¶16, creating a growing logistics hub and industrial corridor that runs along the I-215,
4 Vidaurre Decl. ¶9; Caldera Decl. ¶10; Kaoosji Decl. ¶7; Fairfax Rep. App’x F (at 169). The growth of
5 the logistics industry, including the increase in Amazon flights landing in nearby March Airforce Base
6 and the SR-60’s recent expansion to accommodate logistics traffic and warehouse development, has
7 generated more diesel pollution and negative health impacts, like elevated asthma and cancer rates, on
8 the surrounding community. Vidaurre Decl. ¶¶9-10; Caldera Decl. ¶10; Fairfax Rep. App’x G.

9 Residents in the Moreno Valley-Perris COI share a desire for investment in the residential
10 infrastructure of their rural-turned-suburban region. Allen Decl. ¶16 & Ex. 4 at 4 (at 3 of narrative).
11 They also share concerns around the negative health, labor, and environmental impacts of the logistics
12 industry. Vidaurre Decl. ¶¶23-24; Kaoosji Decl. ¶¶9-15; Caldera Decl. ¶¶10-11, 13. There is tension
13 between residents and developers about how to use large lots of undeveloped lands in Moreno Valley
14 and Perris. Allen Decl. at ¶16; Vidaurre Decl. ¶¶21, 23-24. Community members want investment in
15 housing, schools, and social services, while developers seek to expand the logistics industry. *Id.*

16 **III. The County’s 2021 Faulty Supervisorial Redistricting Process**

17 Riverside County is divided into five single-member districts, each electing one supervisor. Pet.
18 ¶31; Answer ¶31. Following each decennial census, the Board must adopt a new district map. Elec.
19 Code §21500. To do so, the Riverside County Planning Commission and the Board held a series of
20 public hearings in the summer and fall of 2021. Pet. ¶36; Answer ¶36.

21 From the start, the County’s draft maps reflected a desire to keep incumbents in power and
22 basic misunderstandings of the legal requirements governing redistricting. For instance, the County’s
23 Executive Office Technical Committee (“EOTC”) published four draft maps, EOTC A through D,
24 before the October 6 hearing, none of which came close to complying with the Act. These maps split
25 the Jurupa Valley-Riverside and Moreno Valley-Perris COIs to keep the city of Riverside whole.
26 Gomez Decl. Exs. 6-9. The Act prioritizes COIs over cities and CDPs, *see* Elec. Code §21500(c), but
27 EOTC staff represented that they had drawn these initial maps with the (incorrect) understanding that
28 cities and CDPs were, by definition, communities of interest, Gomez Decl. Ex. 10 at 45:18-46:3 (video

1 mins. 2:44:30-45:01). The maps also: 1) did not attach the CVAP data necessary to assess compliance
2 with the state Constitution and VRA, Gomez Decl. Exs. 6-9, Answer ¶40; and 2) kept every incumbent
3 other than Supervisor Kevin Jeffries, who was set to retire in 2024, in their existing district.³

4 Most troubling is that the four initial draft maps did not include a single Latino-majority CVAP
5 district, Gomez Decl. Exs. 15-18—perhaps because EOTC staff erroneously believed that the law
6 simply required the County to keep track of whether a particular group was “predominant” within a
7 district, *see, e.g.*, Gomez Decl. Ex. 10 at 34:5-36:5 (video mins. 2:29:49-32:15). In response,
8 community-based and civil rights organizations urged the Board to closely study whether the Act and
9 VRA required the County to create Latino-majority districts, including by assessing whether there was
10 racially polarized voting (“RPV”) in the County—that is, whether Latinos preferred different
11 candidates from the rest of the electorate. Allen Decl. ¶20 & Exs. 2, 3.

12 On October 14, 2021, the Inland Empire Redistricting Hub (the “Hub”), a coalition of nearly
13 two dozen community-based organizations brought together by Petitioner Inland Empire United,
14 submitted a draft map that was subsequently revised and labeled Community Map 1.4. Allen Decl.
15 ¶¶21-24 & Ex. 4. Following state law, the Hub’s redistricting plan prioritized preserving communities
16 of interest, including the Jurupa Valley-Riverside and Moreno Valley-Perris COIs. Allen Decl. ¶¶14-
17 16, 21 & Ex. 4 at 3 (at 2 of narrative); Gomez Decl. Ex. 19 at 1. Community Map 1.4 also avoided vote
18 dilution by including two geographically compact districts where Latino residents constituted the
19 majority of the CVAP. Gomez Decl. Ex. 19 at 1-2. In other words, Community Map 1.4 demonstrated
20 that it was possible to create a map with two Latino-majority CVAP districts that maintained well-
21 established communities of interest. But despite this example, the County’s next draft maps, EOTC E
22 through J, fell short. Among other infirmities, the maps split the Jurupa Valley-Riverside and Moreno
23

24 ³ During the redistricting process, District 1 Supervisor Jeffries announced his planned retirement from
25 the Board. *See, e.g.*, Gomez Decl. Ex. 11 at 59:15-20 (video mins. 4:34:20-34:41). In 2021, District 2
26 Supervisor Spiegel lived in Corona, District 3 Supervisor Washington lived in Temecula, District 4
27 Supervisor Perez lived in Coachella, and then-District 5 Supervisor Hewitt lived in Calimesa. Gomez
28 Decl. Ex 12 (Spiegel’s webpage: she has lived in Corona since 1985); Ex. 11 at 61:10-62:4, 63:17-21
(video mins. 4:36:50-38:05, 4:40:10-40) (Washington stating he has lived in southwest part of County
for 32 years and his home is in Temecula); Ex. 13 (Perez’s webpage: he resides in Coachella); Ex. 11
at 57:23-58:6 (video mins. 4:32:20-32:40) (Hewitt stating he has lived in same place for over 30
years); Ex. 14 (showing Hewitt was elected to Calimesa City Council in 2010).

1 Valley-Perris COIs, included at most one Latino-majority CVAP district, and again protected all
2 incumbents but Supervisor Jeffries by placing them in their existing districts. Gomez Decl. Exs. 20-25.

3 The County released a summary of its analysis of RPV in Riverside County on November 4,
4 2021. *See id.* Ex. 26. The County’s consultants found RPV countywide and in each district based on a
5 review of all contested primary and general supervisorial elections from 2014 to 2020 and eight
6 statewide races involving a Latino candidate. *Id.* at 1. The County’s RPV analysis further found that
7 white bloc voting repeatedly defeated Latino candidates of choice in Riverside County. *Id.* Thus, by
8 this point in the redistricting process, the County knew from Community Map 1.4 that it was possible
9 to adopt a map that included two Latino-majority CVAP districts and otherwise complied with the
10 Act’s redistricting criteria in their ranked order, and knew from its own RPV analysis that its failure to
11 adopt such a map would unlawfully dilute the vote of Latino communities in the County.

12 The Board advanced three maps for final consideration, including versions of EOTC F and
13 Community Map 1.4. EOTC F included only one district with more than 50% Latino CVAP, District 1,
14 centered around the intact city of Riverside. Gomez Decl. Ex. 27. EOTC F created this Latino-majority
15 CVAP district by splitting each of the two Latino COIs discussed above and sandwiching affluent non-
16 Latino-majority communities between the Latino populations concentrated in Perris on one end and
17 east Jurupa Valley and northwest Riverside on the other. *Id.* at 1; Fig. 1; Fairfax Rep. ¶¶75 & App’xs F
18 & G; Ayala Decl. ¶23 (describing affluent “greenbelt” in southeast Riverside). The County also
19 released a table with a side-by-side comparison of the final maps. Gomez Decl. Ex. 28. The table
20 identified various COIs, including the Jurupa Valley-Riverside and Moreno Valley-Perris COIs, and
21 showed that EOTC F split more COIs than Community Map 1.4. *Id.* The table also showed that
22 Community Map 1.4 was the only map under consideration that created two Latino-majority CVAP
23 districts and kept whole both the Jurupa Valley-Riverside and the Moreno Valley-Perris COIs.

24 Ahead of the final public hearing, the County received and ultimately disregarded
25 correspondence that highlighted EOTC F’s legal infirmities. *See, e.g.*, Allen Decl. ¶25 & Exs. 5-8. For
26 example, the UCLA Voting Rights Project submitted a report with a heat map reflecting concentrations
27 of different demographic groups and showing that EOTC F “clearly cracks the Latino population”
28 between “Districts 1, 2, and 5.” Gomez Decl. Ex. 29 at 9; *see also* Fig. 1. Given the existence of RPV

1 in the County, the report recommended that the Board adopt a map with two Latino-majority districts.
2 Gomez Decl. Ex. 29 at 7. Supervisor Spiegel’s chief of staff found the “heat map section”
3 “interesting,” *id.* Ex. 30, and Supervisor Jeffries’ chief of staff was surprised by the effect of EOTC F
4 on the Latino population, *see id.* Ex. 31. Even so, the County did not reverse course and attempt to
5 draw a map that did not crack the Latino community. In an email sent to EOTC staff and bcc’ing the
6 chiefs of staff for Supervisors Washington, Hewitt, and Spiegel, Supervisor Jeffries’ chief of staff
7 noted that heat maps would have been useful when “we were initially drawing our maps, rather than
8 having to guess at where the concentrations [of the Latino population] were.” *Id.* He also admitted that
9 “trying to do what [UCLA] asked”—comply with state and federal law by keeping Latino communities
10 together in two Latino-majority CVAP districts—“ends up looking a lot like the Community Map.” *Id.*

11 At the final hearing on December 7, 2021, multiple Supervisors’ statements against Community
12 Map 1.4 confirmed their interest in improperly prioritizing cities, preserving the status quo, and getting
13 reelected rather than complying with the Act. Supervisor Hewitt, for example, complained that
14 Community Map 1.4 “divides up so many cities to try to check off one box,” referring to compliance
15 with the VRA. Gomez Decl. Ex. 11 at 59:7-12 (video mins. 4:33:50-34:16). After discussing his
16 campaigning with Latino residents in Perris and Moreno Valley, *id.* at 56:23-57:14 (video mins.
17 4:30:58-31:50), cities he would no longer represent in Map 1.4, Supervisor Hewitt stated that he would
18 “argue with anyone whether someone with a little bit darker skin can represent any group of people
19 any better than I can,” *id.* at 59:7-59:12 (video mins. 4:33:50-34:16). Supervisor Hewitt further took
20 issue with Map 1.4 moving his home city of Calimesa from District 5 to District 3, admitting that he
21 could not support Community Map 1.4 because it would purportedly make District 3 Supervisor Chuck
22 Washington his supervisor. *Id.* at 57:23-58:25 (video mins. 4:32:20-33:39). Supervisor Hewitt also
23 wondered whether Supervisor Perez would feel different about his support for Community Map 1.4 if
24 Coachella, where Supervisor Perez lived, had similarly been placed in a differently numbered district.
25 *Id.* Meanwhile, Supervisor Spiegel contended that Map 1.4 was gerrymandered because she had been
26 placed in a district with part of the Jurupa Valley-Riverside COI, *id.*, presumably instead of being
27 included with the rest of her 2011 district, which includes more affluent areas like the southern part of
28 Corona, Fairfax Rep. App’x F (at 151, 153); Gomez Decl. Ex. 32.

1 (issuing writ requiring defendant to take action “according to the statutory criteria”).

2 Third, Petitioners have a beneficial interest in compelling the County to redraw the 2021 Plan
3 because it splits their communities and dilutes their votes. *See Save the Plastic Bag Coal. v. City of*
4 *Manhattan Beach* (2011) 52 Cal.4th 155, 170 (beneficial interest includes “particular right to be
5 preserved or protected over and above the interest held in common with the public at large”). Although
6 Petitioners satisfy the beneficial interest requirement, courts have also recognized an exception to the
7 beneficial interest requirement where, as here, petitioners are acting in the public interest. *Vandermost*
8 *v. Bowen* (2012) 53 Cal.4th 421, 451 n.18.

9 **II. The County Violated the FAIR MAPS Act in Adopting the 2021 Plan.**

10 In adopting the 2021 Plan, the County failed to comply with its duties under the Act. First, the
11 County improperly considered and prioritized incumbency protection. Second, the County improperly
12 prioritized municipal boundaries over maintaining communities of interest. Third, the County violated
13 the California Constitution and the VRA by failing to adopt a map with two Latino-majority CVAP
14 districts, improperly splitting two COIs with substantial Latino populations among three districts and
15 unlawfully diluting these communities’ voting power. Any one of these violations is sufficient to
16 require a writ ordering Respondents to adopt a new lawful map.

17 **A. Respondents Improperly Considered Incumbency.**

18 The Board violated the Act by considering incumbency in adopting the 2021 Plan. The Act
19 expressly lists the mandatory criteria counties “shall ... us[e],” in a particular ranked order, when
20 adopting district boundaries, and consideration of incumbency is *not* one of those criteria. Elec. Code
21 §21500(c). Instead, the Act specifies that COIs—which are expressly included in the ranked criteria—
22 *do not* include relationships with incumbents. *Id.* §21500(c)(2). By listing the specific criteria counties
23 must use, the plain language of the Act prohibits considering other criteria, including incumbency. *See*
24 *Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 (“*Expressio unius est exclusio alterius*. The expression of
25 some things in a statute necessarily means the exclusion of other things not expressed.”). At the very
26 least, by its plain language, the Act prohibits prioritizing incumbency over the enumerated criteria.

27 In violation of this clear mandatory duty, the Board explicitly incorporated and prioritized
28 incumbency considerations in the 2021 redistricting process. During the process, the County only

1 released draft maps that kept every incumbent other than Supervisor Jeffries in their home district. *See*
2 Gomez Decl. Exs.6-9, 15-18, 20-25, 27, 33-37; *supra*, n.4. What’s more, at the final redistricting
3 hearing, both Supervisor Hewitt and Supervisor Spiegel explained that they would not support
4 Community Map 1.4 because it would draw them out of their districts—making clear that pro-
5 incumbent concerns drove their support of the 2021 Plan. Gomez Decl. Ex. 11 at 56:23-59:12 (video
6 mins. 4:31:00-34:16). Reliance on a prohibited criterion to select a redistricting plan is enough to
7 require that the 2021 Plan be redrawn consistent with the Act. *See Miller v. Bd. of Supervisors of Santa*
8 *Clara Cnty.* (1965) 63 Cal.2d 343, 349 (issuing writ of mandate under pre-FAIR MAPS Act law
9 directing board to redraw supervisorial lines when board improperly prioritized non-statutory criteria).

10 **B. Respondents Improperly Prioritized Keeping Cities Whole Over Keeping COIs Whole.**

11 Respondents also violated the Act by incorrectly prioritizing the preservation of cities and
12 CDPs within a single district over keeping COIs whole. *See Elec. Code §21500(c)*. The Act’s text and
13 legislative purpose make clear that Respondents had a ministerial, mandatory duty to adopt
14 supervisorial district boundaries using the Act’s mandatory ranked redistricting criteria *in their*
15 *enumerated order*. *See supra*, 12-13. The Act’s mandatory ranked criteria require prioritizing keeping
16 COIs and neighborhoods whole above keeping cities and CDPs intact, to promote the fair and effective
17 representation of historically underrepresented and minority groups. Elec. Code §§21500(c)(2), (3).

18 Rather than comply, the Board adopted a map that, by the Board’s own tally, split *more* COIs
19 than either of the other two maps under final consideration. Gomez Decl. Ex. 28. The Board contended
20 that EOTC F *and* the two other finalist maps all complied with constitutional requirements, the federal
21 VRA, and the Act’s contiguity requirement, and that EOTC F was better because it divided fewer
22 cities. *See id*; Gomez Decl. Ex. 11 at 59:7-12 (video mins. 4:33:50-34:16).⁵ Respondents thus
23 unlawfully prioritized keeping cities whole over maintaining the geographic integrity of COIs.

24 The Board’s mis-prioritization of cities over COIs at the final redistricting hearing was
25 consistent with the County’s confusion throughout the redistricting process about these criteria. *See*
26 Pet. ¶¶39, 42, 48. Most of the County’s draft maps, for example, united the city of Riverside while
27 splitting surrounding COIs. Gomez Decl. Exs.6-9, 15-18, 20-25, 27, 33-37. EOTC staff represented

28 _____
⁵ EOTC F divided one city and one CDP while EOTC H divided two cities and zero CDPs. *Id.*

1 that the initial draft maps had been drawn with the understanding that cities were, by definition, COIs.
2 Pet. ¶42; Gomez Decl. Ex. 10 at 2:44:30-45:01. That understanding was erroneous: The Act’s text
3 distinguishes between cities and COIs—and prioritizes the latter. And its legislative history accords
4 COIs special concern not afforded to cities and other CDPs. *See* Asm. Analysis at 7 (stating that the
5 Act “reforms the criteria for local redistricting . . . to ensure that communities and neighborhoods are
6 kept whole as much as possible” without mentioning cities or CDPs).

7 Supervisors’ public comments confirmed their shared misunderstanding of the Act’s
8 requirements. Throughout the redistricting process Supervisor Jeffries was overly concerned with
9 keeping the city of Riverside whole. Ayala Decl. ¶23. Supervisor Hewitt’s explanation at the final
10 redistricting hearing that he could not support Community Map 1.4 because it split up more cities than
11 EOTC F entirely failed to acknowledge that EOTC F split more COIs, which the Act required to be a
12 higher priority. His comment illustrates the Board’s failure to comply with the ministerial duties
13 imposed by the Act’s mandatory, ranked criteria.

14 The County did not and cannot point to any superseding requirement in the Act that could
15 justify its decision to adopt a plan that, by its own evaluation, performed less well in terms of
16 preserving COIs than either of the two other finalist maps it considered. *See* Elec. Code §21500 (only
17 compliance with U.S. and California Constitutions and VRA and the contiguity requirement may
18 supersede the preservation of COIs). As such, the Board’s adoption of the 2021 Plan violated the Act.

19 **C. The 2021 Plan Violates the California Constitution and §2 of the VRA by Diluting the**
20 **Voting Power of Riverside County’s Latino Residents.**

21 The Act requires counties to “adopt supervisorial district boundaries that comply with . . . the
22 California Constitution, and the [VRA].” Elec. Code §21500(b). Respondents violated both mandatory
23 duties by adopting a redistricting plan that impermissibly dilutes the voting power of Latinos in the
24 Jurupa Valley-Riverside and Moreno Valley-Perris COIs.

25 **1. District Maps that Dilute the Vote of Cohesive Minority Voters Are Subject to Strict**
26 **Scrutiny Under the California Constitution and Nearly Always Violate §2 of the VRA.**

27 The California Constitution’s equal protection guarantees prohibit government policies that
28 infringe upon the ability of a protected class to enjoy any fundamental right, including the fundamental
right to vote. *Vergara v. State* (2016) 246 Cal.App.4th 619, 645, 648 n.13; *Bd. of Supervisors v. LAFC*

1 (1992) 3 Cal.4th 903, 913 (voting is a fundamental right under California Constitution). If a facially
2 neutral statute or other government policy or practice has a disparate effect on a protected class’s
3 exercise of a fundamental right, “strict scrutiny will apply, irrespective of motive or intent.” *Vergara*,
4 246 Cal.App.4th at 648 & n.13; *Inland Empire United v. Riverside Cnty.* (C.D. Cal. Jan. 23, 2023)
5 2023 WL 397035, *4; see *Butt v. State* (1992) 4 Cal.4th 668, 684-86; *Crawford v. Bd. of Educ.* (1976)
6 17 Cal.3d 280, 297. Under strict scrutiny, “*the state* bears the burden of establishing not only that it has
7 a *compelling* interest which justifies the law but [also] that the distinctions drawn by the law are
8 *necessary* to further its purpose.” *Vergara*, 246 Cal.App.4th at 645, 648 & n.13 (emphasis in original)
9 (citing *In re Marriage Cases* (2008) 43 Cal.4th 757, 832, and *Serrano v. Priest* (1971) 5 Cal.3d 584,
10 597); *Calderon v. City of Los Angeles* (1971) 4 Cal.3d 251, 260-61 & n.11.

11 As the courts have long recognized, electoral schemes that dilute—i.e., artificially diminish—
12 minority electoral strength have a disparate effect on the voting rights of that protected class because
13 they impair its members’ ability to participate equally in the political process. In jurisdictions with
14 RPV where a white majority and a racial minority each vote as a bloc for opposing candidates, at-large
15 and multimember district schemes tend to cancel out the voting power of politically cohesive minority
16 groups, often “permitting the political majority to elect *all* representatives of the district.” *Rogers v.*
17 *Lodge* (1982) 458 U.S. 613, 616.⁶ Single-member district schemes can similarly dilute minority voting
18 power if, as a result of the way districts are drawn, the minority group’s preferences are canceled out
19 by majority bloc voting more often than they would be under an alternative reasonably drawn plan.
20 *Thornburg v. Gingles* (1986) 478 U.S. 30, 46 n.11 (noting the dilutive effects that occur when
21 members of a politically cohesive minority are dispersed “into districts in which they constitute an
22 ineffective minority of voters” or concentrated “into districts where they constitute an excessive
23 majority”); *Grove v. Emison* (1993) 507 U.S. 25, 40-41 (recognizing single-member districts can be
24 dilutive). Such dilutive voting schemes reduce minority electoral power and thereby impair the
25 minority group’s ability to elect its preferred candidates and otherwise participate equally in the
26 political process. *Calderon*, 4 Cal.3d at 260-61 & n.11 (recognizing disparate impact on minority
27

28 ⁶ The California Voting Rights Act prohibits at-large electoral schemes in jurisdictions with RPV because of the dilutive effects of these systems. See Elec. Code §§14025-14032.

1 voting rights of a dilutive non-population based apportionment scheme); *see also Gingles*, 478 U.S. at
2 48 n.14 (observing that, in diminishing minority voting strength, dilutive voting schemes enable
3 elected representatives to “ignore [minority] interests without fear of political consequences”).

4 Courts use a three-part test known as the “*Gingles* preconditions” to evaluate whether a
5 particular voting system dilutes the minority vote. A plaintiff challenging an apportionment scheme as
6 dilutive must show: (1) that a minority group “is sufficiently large and geographically compact to
7 constitute a majority” in an additional district; (2) that the minority group “is politically cohesive;” and
8 (3) “that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s
9 preferred candidate.” *Gingles*, 478 U.S. at 48-51. The first element establishes that the minority voters
10 in question “possess the *potential* to elect representatives in the absence of the challenged” voting
11 scheme and therefore that the scheme may *deprive* them of that potential. *Id.* at 50 & n.17 (emphasis in
12 original). The second and third elements establish that the challenged voting scheme *in fact* “impedes
13 [the minority group’s] ability to elect its chosen representative” due to structural features of the voting
14 system that dilute minority electoral strength. *Id.* at 51; *Grove*, 507 U.S. at 40. Satisfaction of the
15 *Gingles* preconditions demonstrates that the challenged voting scheme disparately impacts the minority
16 group’s rights by diluting their voting power—a showing that triggers strict scrutiny under the
17 California Constitution. *See Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789
18 (recognizing that vote dilution is established by proving the three *Gingles* preconditions); *Vergara*, 246
19 Cal.App.4th at 645 (strict scrutiny triggered when facially neutral statute creates a disproportionate
20 impact on the fundamental rights of a suspect class).

21 Congress has also declared that dilutive voting schemes violate Section 2 of the VRA. *See* 52
22 U.S.C.A. §10301.⁷ To prove a Section 2 vote dilution claim, plaintiffs must show disparate impact

23 ⁷ In the 1960s, the U.S. Supreme Court held that apportionment schemes which “designedly or
24 otherwise” operate “to minimize or cancel out the voting strength of racial . . . elements of the voting
25 population” constitute “invidious discrimination” triggering constitutional scrutiny. *Burns v.*
26 *Richardson* (1966) 384 U.S. 73, 88 (quoting *Fortson v. Dorsey* (1965) 379 U.S. 433, 439); *Calderon*, 4
27 Cal.3d at 260-61 (citing *Fortson* and *Burns*). In *City of Mobile v. Bolden* (1980) 446 U.S. 55, however,
28 the U.S. Supreme Court held that discriminatory intent, not just discriminatory effect, was required to
establish a violation of the VRA. Congress promptly adopted the 1982 amendments to the VRA, which
reinstated the discriminatory “effects test” that had been laid out in earlier cases such as *Fortson*,
Burns, and *White v. Regester* (1973) 412 U.S. 755. *See* S. REP. NO. 97-417, at 28 (1982); *Gingles*, 478

1 through establishing the three *Gingles* preconditions, and also must make a final showing that, based
2 on the totality of the circumstances, the challenged dilutive voting scheme deprives a minority group of
3 an equal opportunity within the political process “on account of” race, as opposed to other factors. *See*
4 *Bartlett v. Strickland* (2009) 556 U.S. 1, 12; *Smith v. Salt River Project Agr. Imp. & Power Dist.* (9th
5 Cir. 1997) 109 F.3d 586, 595 & n.7. This requires a searching, practical inquiry of the “Senate factors”
6 identified in *Gingles*, which derive from the VRA’s legislative history. 478 U.S. at 44-45.

7 The County’s 2021 Plan violates both the California Constitution and the VRA, either one of
8 which is independently sufficient to require a writ ordering the County to adopt a new map.

9 **2. The 2021 Plan Dilutes the Voting Power of Latino Voters in Riverside County.**

10 **a. An additional, reasonable district with a Latino voting majority can be drawn.**

11 To evaluate if a district map causes vote dilution, courts first ask whether the allegedly
12 impacted minority group is sufficiently large and geographically compact to constitute a majority in an
13 additional district (*Gingles* precondition 1). Petitioners can make this showing by demonstrating that it
14 is possible to draw a “reasonably configured” illustrative alternative redistricting plan that includes a
15 greater number of majority-minority districts than are included in the challenged plan. *Wisconsin Leg.*
16 *v. Wis. Elecs. Comm.* (2022) 142 S. Ct. 1245, 1248. Anything more than 50% of the CVAP in the
17 district constitutes a “sufficiently large minority population.” *Bartlett*, 556 U.S. at 15; *Romero v. City*
18 *of Pomona* (9th Cir. 1989) 883 F.2d 1418, 1425-26, *abrogated on other grounds by Townsend v.*
19 *Holman Consulting Corp.* (9th Cir. 1990) 914 F.2d 1136. Here, the two Illustrative Plans presented by
20 Petitioners’ expert, Anthony Fairfax, demonstrate that the Latino population on the County’s westside
21 is sufficiently large and geographically compact to comprise more than 50% of the CVAP in two
22 single-member districts of a reasonably configured plan. *See Fairfax Rep. & App’x B & H.*⁸

23 Districts 1 and 5 in Illustrative Plan 1 are both majority Latino, as measured by both voting age
24 population and CVAP. *Id.* ¶120 & Tb. 14. Illustrative Plan 2 likewise contains two majority Latino
25 CVAP districts. *See id.* App’x H. By contrast, the County’s 2021 Plan contains only one district

26 _____
27 U.S. at 43-44 (discussing the Senate Report).

28 ⁸ Mr. Fairfax discusses one of these, Illustrative Plan 1, in detail. *See id.* ¶¶38-102; *id.* at ¶¶106-19
(describing why Illustrative Plan 1 satisfies the first *Gingles* precondition).

1 (District 1) with a bare majority of Latino voters. *See id.* ¶117.

2 Mr. Fairfax’s Illustrative Plans are also “reasonably configured” and otherwise comport with
3 all other federal and state map-drawing criteria. In fact, Mr. Fairfax’s Illustrative Plan 1 performs as
4 well or better than the 2021 Plan with respect to each of the FAIR MAPS Act’s other requirements.
5 *See* Fairfax Rep. ¶¶17, 115-17 & Tb. 13. The districts are “substantially equal in population as required
6 by the United States Constitution.” Elec. Code §21500(a); *see Voinovich v. Quilter* (1993) 507 U.S.
7 146, 161 (population deviations under 10% do not trigger constitutional scrutiny); Fairfax Rep. ¶¶43 &
8 App’x C. They are also geographically contiguous. *See* Fairfax Rep. ¶47 & App’x C. Significantly,
9 Illustrative Plan 1 also splits fewer COIs than the 2021 Plan, and it properly prioritizes this mandatory
10 criterion above lower-ranked ones, such as municipal boundaries. *See, e.g., id.* at ¶55 & Tb. 7. While
11 the 2021 Plan packs portions of the Jurupa Valley-Riverside and Moreno-Valley Perris COIs into one
12 district and then splits the remaining portions of these largely Latino COIs across Districts 2 and 5,
13 *supra*, Fig. 1, Mr. Fairfax’s Illustrative Plan 1 keeps them whole, Fairfax Rep. App’xs G & F.
14 Although doing so requires splitting the city of Riverside, Illustrative Plan 1 ultimately splits *fewer*
15 cities and CDPs than the 2021 Plan. Fairfax Rep. ¶89. And, as Mr. Fairfax concludes, “by splitting the
16 city of Riverside, the Illustrative Plan prioritizes COIs over keeping the city whole.” *Id.* ¶83. Finally,
17 Illustrative Plan 1 performs better than the 2021 Plan overall when considering three different
18 compactness measures, even though its greater adherence to criteria such as the preservation of COIs
19 would typically lead to *less* compactness. *Id.* ¶¶125-31. Illustrative Plan 1 amply demonstrates that a
20 reasonably configured alternative plan with two majority Latino CVAP districts can be drawn. *See*
21 *LULAC v. Perry* (2006) 548 U.S. 399, 433 (an illustrative alternative plan is reasonably configured
22 where it “take[s] into account traditional districting principles” (internal quotation omitted)).

23 **b. Latinos in Riverside County, including those in Districts 1, 2, and 5, are politically**
24 **cohesive, and white bloc voting usually defeats Latinos’ candidates of choice.**

25 The second element of a vote dilution claim (*Gingles* precondition 2) evaluates whether
26 minority voters in the political subdivision at issue are politically cohesive, and the third element
27 (*Gingles* precondition 3) asks whether, in the absence of special circumstances, the white electoral
28 majority regularly votes sufficiently as a bloc to defeat those minority voters’ preferred candidates. *See*
Gingles, 478 U.S. at 50-51 & n.16. Because evidence of “bloc voting” or RPV generally demonstrates

1 political cohesion, a showing that voting in Riverside is polarized along racial lines would satisfy the
2 second element. *Id.* at 62, 69. Petitioners can satisfy the third element by showing that RPV regularly
3 results in the preferences of a white voting bloc cancelling out those of the Latino voting bloc. *Id.*

4 Both elements are present here. The County’s own analysis shows that voting in Riverside
5 County is racially polarized and a white majority frequently votes as a bloc to defeat Latino candidates
6 of choice. Gomez Decl. Ex. 26. Dr. Loren Collingwood, an expert in RPV and political demographic
7 and statistical analysis, reached the same conclusion after analyzing County election data from 2014 to
8 2022. *See generally* Collingwood Decl, Ex. 1 (“Collingwood Rep.”). Dr. Collingwood focused on
9 elections in which a Latino candidate ran, *id.* at 1, because racially contested elections are considered
10 most probative of RPV. *See United States v. Blaine Cnty.* (9th Cir. 2004) 363 F.3d 897, 911-12. Dr.
11 Collingwood found that voting was racially polarized both countywide and at the supervisorial district
12 level in 89% of the racially contested statewide primary and general elections he analyzed, and in 76%
13 of these contests, white voters blocked the Latino-preferred candidate. Collingwood Rep. at 6, Tb. 1, 7-
14 24. Racially contested supervisorial elections demonstrated a similar pattern of RPV in six of eight
15 contests. *Id.* at 25, Tb. 2. In the three of these RPV-infected races not characterized by unusual
16 circumstances, white bloc voting blocked the Latino candidate of choice every time. *Id.*

17 In the three remaining racially polarized supervisorial elections—the District 4 2018 primary
18 and the District 5 2022 primary and general—“special circumstances” enabled isolated Latino success
19 despite widespread racially polarized voting within the County. Consequently, the results in these
20 elections are not probative. *See Gingles*, 478 U.S. at 51; *see also Ruiz v. City of Santa Maria* (9th Cir.
21 1998) 160 F.3d 543, 558 (“Only minority electoral success in *typical* elections is relevant to whether a
22 Section 2 majority voting bloc usually defeats the minority’s preferred candidate.”) (emphasis added).
23 While Supervisor Perez, a Latino, was elected in the District 4 2018 primary, he only won after being
24 appointed to that position by the governor in 2017 to fill a mid-term vacancy. Answer ¶68. Courts have
25 discounted minority electoral success when, as with Supervisor Perez, the minority candidate won as
26 an incumbent only after first being appointed to the seat. *See, e.g., Pope v. Cnty. of Albany* (N.D.N.Y.
27 2015) 94 F. Supp. 3d 302, 340; *Ala. State Conf. of the NAACP v. Alabama* (M.D. Ala. Feb. 5, 2020)
28 2020 WL 583803, at *4. The contrast between Supervisor Perez’s victory in 2018 and loss in 2014

1 underscores the special circumstances of 2018.

2 Yxstian Gutierrez’s victories in the 2022 District 5 primary and general elections occurred after
3 the 2021 Plan was adopted and the County had already failed to comply with its mandatory duties
4 under the Act. In any event, those elections too involved special circumstances. Specifically,
5 Gutierrez’s white rival in both elections, the incumbent Jeff Hewitt, was the subject of scandal in the
6 months leading up to these elections, having been accused of sexual harassment by multiple claimants,
7 one of whom received \$50,000 from the County to settle. Gomez Decl. Ex. 38. Both contests, as well
8 as all but one of the other racially contested 2022 elections analyzed by Dr. Collingwood, exhibited
9 RPV both countywide and in District 5, and in the majority of these contests, the Latino preferred
10 candidate was blocked. Collingwood Rep. at 6, Tb. 1; 7-24; 25, Tb. 2.⁹ Supervisor Gutierrez’s recent
11 success thus is not probative of any broader trend of Latino electoral success within the County.

12 When racially contested elections characterized by special circumstances are discounted, as
13 they must be, *see Ruiz*, 160 F.3d at 556, Riverside County voting data demonstrates an overwhelming
14 pattern of white bloc voting that prevents Latinos’ candidates of choice from being elected. The 2021
15 Plan’s fragmentation of the politically cohesive Jurupa Valley-Riverside and Moreno Valley-Perris
16 Latino COIs thus impedes those communities’ ability to give their distinct political interests voice and
17 diminishes their electoral strength. In short, it disparately impacts their fundamental voting rights.

18 **3. The 2021 Plan Violates the California Constitution Because It Does Not Satisfy Strict**
19 **Scrutiny.**

20 Because the 2021 Plan disparately impacts the fundamental voting rights of a protected class
21 (Latinos in Riverside County), it is subject to strict scrutiny. *Vergara*, 246 Cal.App.4th at 645, 648 &
22 n.13. Respondents cannot meet their heavy burden under this standard. They lack any compelling
23 interest that could possibly necessitate adoption of the discriminatory 2021 Plan. *See id.* at 645.
24 Respondents claimed to adopt the 2021 Plan rather than a plan without dilutive effect like Community
25 Map 1.4 because Community Map 1.4 split too many cities and would disrupt the status quo by
26 drawing incumbents out of their districts. *See Gomez Decl. Ex. 11 at 57:23- 59:7-12 (video mins.*
27 *4:32:20-34:16).* But those rationales are anything but compelling. To the contrary, the County’s

28 _____
⁹ These included County level Sheriff and Auditor-Controller contests. *See id.* at 6, Tb. 1; 7-24, 28.

1 rationales themselves *separately and independently* contravene the Act, *supra*, 21-23, and thus cannot
2 be deemed compelling. *See, e.g., Smock v. Carlson* (1975) 47 Cal.App.3d 960, 962-64 (holding that the
3 “favored family concept” was not a compelling interest justifying discriminatory regulations, when
4 that concept was inconsistent with the text of the regulations’ enabling statute).

5 Moreover, Petitioners have provided *two* alternative illustrative plans, in addition to
6 Community Map 1.4, that (1) include two reasonably configured majority-Latino CVAP districts and
7 (2) *comport with all other redistricting requirements*, including the Act’s mandatory ranked criteria.
8 *See generally* Fairfax Rep. & App’xs B & C. These illustrative plans demonstrate that even if the
9 interests the government asserts to justify the 2021 Plan were compelling—and they are not—the Plan
10 is in no way narrowly tailored to the interests it purports to serve. Petitioners have accounted for all
11 possible legal requirements that might possibly qualify as a compelling interest and shown that none
12 necessitates vote dilution. *See, e.g., In re Marriage Cases*, 43 Cal.4th at 854-55 (limitation of marriage
13 was unconstitutional because it was unnecessary to further any legitimate purpose).

14 **4. Respondents’ 2021 Plan Deprives Latino Voters of an Equal Opportunity to Participate**
15 **in Riverside County’s Political Processes and Thereby Violates §2 of the VRA.**

16 The County’s violation of the California Constitution is sufficient to require issuance of a writ.
17 But the 2021 Plan also violates the Act’s requirement that the plan comply with the VRA. Prevailing
18 on a vote dilution claim under Section 2 of the VRA requires a fourth and final showing beyond that
19 necessary to establish disparate impact for purposes of the California Constitution: namely, that under
20 the totality of the circumstances Latino voters are deprived of an equal opportunity to participate in
21 Riverside’s political processes and elect candidates of their choice. *See* 52 U.S.C.A. §10301(b);
22 *Gingles*, 478 U.S. at 45. “[W]hether the political processes are equally open[,] depends upon a
23 searching practical evaluation of the past and present reality, and on a functional view of the political
24 process.” *Gingles*, 478 U.S. at 45 (internal citation and quotation marks omitted). The Senate Report
25 on the 1982 amendments to the VRA set forth a non-exhaustive list of factors, now referred to as the
26 so-called “Senate factors,” for courts to consider when undertaking this practical evaluation: (1) the
27 history of official discrimination; (2) the degree of racially polarized voting; (3) the presence of voting
28 practices or procedures that tend to subjugate the minority group’s voting preferences; (4) the

1 exclusion of minority group members from the candidate slating process; (5) the extent to which the
2 minority group bears the effects of past discrimination that tend to hinder its members' ability to
3 participate effectively in the political process; (6) the use of subtle or overt racial campaign appeals;
4 and (7) the extent to which members of the minority group have succeeded in being elected to public
5 office. *Id.* at 44-5 (citing S. REP. NO. 97-417, 28-29). Courts may also consider the extent to which
6 elected officials have been responsive to the particularized needs of the minority group ("senate factor
7 8"). *Id.* at 45. Finally, the Ninth Circuit has added that "proportionality"—i.e., whether the share of
8 effective majority-minority districts is roughly comparable to the minority's share of the relevant
9 population—is an "important factor." *Old Person v. Cooney* (9th Cir. 2000) 230 F.3d 1113, 1129; *see*
10 *also Johnson v. De Grandy* (1994) 512 U.S. 997, 1000 (observing that proportionality is an important
11 factor under a Section 2 analysis). No number of factors must be proven, nor must a majority point in a
12 given direction to establish a Section 2 violation. *Gingles*, 478 U.S. at 45.

13 "It will only be . . . 'the very unusual case in which the plaintiffs can establish the . . . three
14 *Gingles* [preconditions] but still have failed to establish a violation of §2 under the totality of the
15 circumstances.'" *Luna v. Cnty. of Kern* (2018) 291 F.Supp.3d 1088, 1131 (quoting *Jenkins v. Red Clay*
16 *Consol. Sch. Dist. Bd. of Educ.* (3d Cir. 1993) 4 F.3d 1103, 1135). This is no such case. A practical
17 evaluation of the totality of circumstances and the Senate factors confirms Section 2 liability.

18 **a. The most important factors (2, 7, and proportionality) favor Petitioners.**

19 *Gingles* recognized that Senate factors 2 and 7 are the most important factors, 478 U.S. at 48
20 n.15, and the Ninth Circuit has emphasized the importance of the additional "proportionality" factor,
21 *Old Person*, 230 F.3d at 1129. Here, these factors favor a finding of Section 2 liability.

22 Starting with senate factor 2, Dr. Collingwood's analysis confirms that voting in Riverside
23 County is consistently racially polarized. As explained *supra*, particularly in probative racially
24 contested elections, Latino voters generally prefer a different candidate from that preferred by a white
25 majority voting as a bloc. And in electoral contests not characterized by special circumstances, Latino
26 candidates consistently lose elections. *Supra*, 27-29. Indeed, and relevant to senate factor 7, despite the
27 consistent growth of the County's Latino population, Fairfax Rep. Tb. 1, and the efforts of several
28 previous Latino candidates, *see* Collingwood Rep. at 25-27, a Latino supervisor has only been elected

1 twice in the County’s 130-year history. Camarillo Rep. ¶51; Collingwood Rep. at 25. Significantly,
2 both Latino representatives won in elections when special circumstances prompted atypical crossover
3 voting that enabled the Latino candidate’s victory. *See supra*, 28-29. These anomalous results are out
4 of keeping with the County’s long history of Latino underrepresentation. The 2021 Plan does not
5 address this history. Particularly relevant to the proportionality factor, although Latinos comprise
6 nearly 42% of the County’s CVAP, Fairfax Rep. Tb. 3, they form an effective voting majority in only
7 one (20%) of the County’s five districts. These three “important” factors underline that the 2021 Plan
8 fails to address structural issues that block equal Latino political opportunity in the County and will
9 improperly perpetuate their discriminatory effects.

10 **b. Riverside County has a long history of Latino discrimination and political**
11 **exclusion, including through official, voting-related mechanisms (factor 1).**

12 Senate factor 1, which considers the extent of any history of official discrimination that
13 “touched” the right of minority group members to register, vote, or otherwise participate in the
14 political process, also favors Petitioners. *Gingles*, 478 U.S. at 36-37. This inquiry is concerned “not
15 only with present discrimination, but with the vestiges of discrimination which may interact with
16 present political structures to perpetuate a historical lack of access to the political system.” *Rodriguez*
17 *v. Harris Cnty.* (S.D. Tex. 2013) 964 F. Supp. 2d 686, 778-79. Evidence that relates to this factor
18 includes the existence of racially segregated schools and public facilities. *LULAC v. Clements* (5th Cir.
19 1993) 986 F.2d 728, 747.

20 Here, the expert report of Dr. Albert Camarillo details more than a century of disgraceful racial
21 discrimination against Latino and other minority voters in Riverside County. *See generally* Camarillo
22 Rep. Dr. Camarillo describes widespread official discrimination against Latinos in California generally
23 and Riverside County in particular, including through English-language literacy voting restrictions in
24 the latter part of the 19th Century. *Id.* ¶10. During the first half of the 20th Century, de facto and de
25 jure discrimination and segregation that Dr. Camarillo refers to as “Jaime Crow” “came to define the
26 lives of most Latinos” in Riverside County and the Southwest more broadly. *Id.* ¶28. Residential
27 communities in Riverside County, including in the city of Riverside and nearby Corona, were racially
28 segregated. ¶32-35. Restrictive covenants, redlining, and economic forces confined Latino residents,

1 then the prime source of labor for the region’s burgeoning citrus industry, into “barrios” near orange
2 groves, packinghouses, and railroad hubs. *Id.* ¶¶30-32. Public facilities, schools, and businesses were
3 also racially segregated. *Id.* ¶¶31-35. These historic patterns of residential segregation persist in
4 Riverside County today. *See* Ayala Decl. ¶21; Lopez Decl. ¶9.

5 More recent history confirms that Latino discrimination and officially sanctioned political
6 exclusion is an ongoing problem in the County. During the last half century, gerrymandering and at-
7 large voting have kept Latinos from holding office. Camarillo Decl. ¶48-50. In 2010, the U.S.
8 Department of Justice sued the County for failing to provide services to Spanish-speaking voters as
9 required under Section 203 of the VRA. As a result of the lawsuit, the federal government monitored
10 the County’s 2010 primary and general elections for VRA compliance. Pet. ¶63; Gomez Decl. Exs. 40-
11 41. And, as recently as 2018, the County operated a program that disproportionately referred students
12 of color into punitive probationary supervision. Jackson Decl. ¶6.

13 **c. Discrimination has produced severe socioeconomic disparities that hinder Latino**
14 **voters’ ability to participate effectively in the political process (factor 5).**

15 Petitioners satisfy Senate factor 5 because Latinos in Riverside County “bear the effects of
16 discrimination in such areas as education, employment and health, which hinder their ability to
17 participate effectively in the political process.” *Gingles*, 478 U.S. at 37. Census Bureau data
18 demonstrates “significant disparities across a variety of socioeconomic indices between” Riverside
19 County’s white and Latino populations. Fairfax Rep. ¶30. For example, while nearly 77% of white
20 residents in Riverside County are homeowners, only about 60% of Latino residents are. *Id.* Tb. 4.
21 Relatedly, 13.2% of the County’s Latino population are below the poverty level, in contrast to the
22 8.9% of the County’s white population. *Id.* About 30% of Latinos lack a high school degree while only
23 5.6% of white residents do. *Id.* Health-related data show similar disparities: 15.23% of the County’s
24 Latino population receive food assistance and 11.6% are without health insurance; but 7.72% of the
25 County’s white population receive food assistance and 4.1% lack health insurance. *Id.* Finally, the built
26 environment that the County’s Latino residents call home also bears the effects of discrimination.
27 Historically and to this day, warehouses and hazardous sites have been disproportionately sited in
28 Latino communities. Vidaurre Decl. ¶¶15-22; *see also* Fairfax Rep. App’x G (at 169).

1 The political, social, and economic legacy of past discrimination evident in these present-day
2 socioeconomic realities has hindered the ability of the County’s Latino residents to participate
3 effectively in its political processes. Latinos now represent nearly half of the County’s total population
4 and 41.75% of its CVAP, slightly less than the County’s white CVAP. Fairfax Rep. ¶34, Tb.3. But
5 white voters in Riverside County turn out at rates far greater than Latino voters; in 2020, for example,
6 82% of white voters cast a ballot while only 40% of Latino voters did. Collingwood Rep. at 34-35. The
7 comparatively depressed socioeconomic status of Riverside County’s Latino residents that has resulted
8 from more than a century of discrimination prevents this growing population from translating its
9 growth into equal political opportunity.¹⁰ Rather than bringing Latinos into the full stream of political
10 life, the 2021 Plan shuts out Latinos in Jurupa Valley, Eastvale, North Corona, and Home Gardens and
11 prevents Latinos in Moreno Valley, Perris, and Mead Valley from mobilizing with one unified voice
12 around the issues most impacting their lives. This factor thus also favors Petitioners.

13 **d. Voting mechanisms in Riverside County exacerbate vote dilution (factor 3), and**
14 **supervisory elections have featured subtle racial appeals (factor 6).**

15 Election procedures and atmospherics additionally work to diminish Latino political
16 opportunity. Riverside County Board of Supervisors elections are subject to majority vote and runoff
17 requirements, *see* Elec. Code §§1300, 8140-41, which the Ninth Circuit has acknowledged “increase[]
18 the expense and other burdens of minority candidates by requiring them to run a second time” if no
19 candidate wins a majority in the primary. *Badillo v. City of Stockton* (9th Cir. 1992) 956 F.2d 884, 890;
20 *see also Luna*, 291 F.Supp.3d at 1136. Runoff requirements are also one of the mechanisms Congress
21 has recognized may enhance vote dilution. S. REP. NO. 97-417, at 28-29; *Gingles*, 478 U.S. at 37. This
22 procedure thus supports a finding of Section 2 liability.

23 Recent political campaigns for Board positions have also featured subtle racial appeals. *See*
24 *Gingles*, 478 U.S. at 37 (citing S. REP. NO. 97-417, at 28-29). In the 2018 District 4 supervisory race,
25 for example, Jan Harnik’s campaign released a television commercial depicting Supervisor Perez in
26 front of a bloodied wall and stating, “Manuel Perez’s policies let murderers, rapists, and child
27 molesters go free.” Pet. ¶66; Gomez Decl. Ex. 43. The commercial also included pictures of a Latino

28 ¹⁰ It is well recognized that political participation and influence are correlated with education and
wealth. Collingwood Rep. at 35-36.

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