

# SCOTT J. RAFFERTY

## ATTORNEY AT LAW

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January 15, 2021

Citizens' Independent Redistricting Commission

Santa Barbara County

[redistricting@countyofsb.org](mailto:redistricting@countyofsb.org)

c/o [arierson@co.santa-barbara.ca.us](mailto:arierson@co.santa-barbara.ca.us)

Dear Commissioners:

It would be an honor to serve as the Commission's legal counsel. I see the role of the Commission's attorney as focused on maintaining not only compliance with state and federal voting rights law, but also having primary responsibility to uphold the high level of transparency and integrity that is essential to fulfill the Commission's mandate. In addition to the responses set forth in the request for proposal, this proposal details my lifetime commitment to voting rights, my academic qualifications, my bipartisanship, and my recent support for the creation of single-member districts. These proceedings are essential to incorporate minority neighborhood into local political life, but they are the first encounter that a jurisdiction and its public have with drawing district boundaries. My experience and knowledge of administrative law is also important because a central challenge that the Commission faces is to achieve truly full and bipartisan representation of Santa Barbara County, while maintaining strict compliance with conflict-of-interest restrictions.

In recent years, I have worked with five of the state's leading demographers in helping jurisdictions comply with the California Voting Right Act (CVRA). In this capacity, I have learned that engaging and achieving the acceptance of the entire community is as important as the integrity of the map that ultimately results. (I have never represented, nor ever been approached to represent, voters contesting at-large election systems in any Santa Barbara County jurisdiction.)

I propose to take personal responsibility for this engagement. I will not delegate.

### Lifelong Commitment to Voting Rights

In high school, I worked for Secretary of State March Fong Eu in her successful challenge to the California at-large election of delegates to the Democratic National

Convention. As a college student, I collected original government documents and interviewed senior government officials involved in civil rights policy making and litigation prior to the Voting Rights Act of 1965. My undergraduate thesis, Building the Consensus: Civil Rights and the Kennedy Administration, and these archival materials are on deposit with my papers at the John F. Kennedy Presidential Library. I performed statistical analysis regarding the first ten years of the 1965 Act for the Urban League, Joint Center, and other advocates for the 1975 extension. I lobbied with them to apply the law to language minorities and extended preclearance to parts of California. Civil rights, including prevention of police brutality, mortgage redlining, and employment discrimination were the focus of other projects archived at the Kennedy Library that continued through law school. My college and law school classmate, Justice Sonya Sotomayor, recalls my reaction to discrimination against her and assesses my subsequent career, in her memoir, My Beloved World (at 191):

I marveled at the courage that Scott Rafferty had shown in taking my side without hesitation. It meant giving up a plum job that he had been looking forward to... His disillusionment [with racially discriminatory remarks] did nothing to advance the start of his career, but it signaled a measure of integrity that would remain evident over a distinguished career in public service.

Voting rights are the foundation for all other rights in our society. My commitment to protect and expand these rights has continued on a pro bono basis. For seven years, I represented the rights of veterans in Preminger v. Principi and Preminger v. Secretary of Veterans Affairs, to register and vote in VA nursing homes. In Bridgeman v. Shelley, I advocated for the right of enlisted men and other citizens overseas to cast a secret ballot. In 2014, I advocated for the due process rights of voters who mail ballot signatures had been rejected, and managed the 2018 signature cure in Congressional District 21. Last year, I drafted the attached amicus letter that Dolores Huerta sent to the California Supreme Court in support of the CVRA.

#### Academic Qualifications and Political Bipartisanship

As noted in the attached resume, I graduated summa cum laude from the Princeton University and from Yale Law School. While I was a graduate student at the School of Public and International Affairs (formerly Woodrow Wilson School), I was awarded a Rhodes Scholarship to Balliol College, Oxford. While I prepared my doctoral dissertation, I worked with members of all three major British parties on the privatization of British Telecom (BT). The BT Unions Committee published portions of

my dissertation, comparing American congressional policy-making with the British system, which had been more partisan.

I am also proud of my ability to support members of Congress in bipartisan legislation while I was majority (Democratic) counsel to the House Telecommunications Subcommittee during and following the divestiture of AT&T. I represented two Democratic and two Republican members in a pivotal brief to the court revising the AT&T consent decree. I also drafted the Telecommunications for the Disabled Act, overcoming initial opposition by the Reagan Administration to achieve near unanimity in both Houses. This law was the first implementation of “reasonable accommodation” that became the basis for the Americans with Disabilities Act.

Upon request, I will supply references from both sides of the aisle to testify to my ability to assist legislators in bipartisan initiatives.

#### Administrative Law and Quantitative Skills

For much of my career, I have worked for state government agencies as an expert witness in utility rate cases. I designed the cost allocation system that was implemented by many state regulatory commissions to prevent utilities from cross-subsidizing competitive activities. The statistical theory and calculation in these cases is, in my view, at least as complex as the analyses that underlying redistricting. One of the skills that I developed was an ability to explain these complex calculations to the public and to commissioners, even while being accountable to very technical cross-examination. I was the lead witness for the New York Attorney General in an affiliate transactions scandal that led to what was at the time the largest disallowance and ratepayer refund in the history of telecom regulation.

During the Obama Administration, I served as deputy director of the Administrative Conference of the U.S. (ACUS), so I have an extensive knowledge of relevant principles of administrative law, particularly as regards transparency. ACUS is a collaborative including private and academic experts, as well as the general counsel of each federal department and independent agency. ACUS commissions studies in support of recommendations to make federal agency processes more fair and efficient. I managed our projects on the federal Sunshine Act, electronic records management, e-FOIA, and third-party certification. Our work on electronic rulemaking established best practices for soliciting and processing large volumes of public input.

I recently settled a Section 2 case involving West Contra Costa Unified School District, which involved creating what appears to be the first independent commission

to redistrict a school district in the U.S. This exercise confronted compliance with many of the issues that this Commission faces – effective ex parte principles, demonstration of compliance with conflict-of-interest standards, transparency and accessibility in receiving and process public input, and effective outreach.

### Lessons Learned from Working with Our State’s Leading Demographers

The role of your legal counsel should not only be to ensure technical compliance with the redistricting principles and requirements, but also to assure that the full range of considerations advocated by the public and assessed by the Commissioners is effectively presented and reflected in the map proposals that the demographer prepares and presents. It have been my honor to work with some of the state’s best demographers over the past three years. I wanted to highlight some of their special strengths.

Michael Wagaman/Wagaman Strategies

Dublin San Ramon Services District

This process created two majority-Asian divisions in a water/wastewater district whose directors were concentrated in the established part of Dublin. It also dealt with state and federal detention facilities.

Douglas Johnson/NDC

Folsom-Cordova USD

Historically, wealthier Folsom had dominated the more diverse and needy communities of Rancho Cordova, twice purging the Board of any representation. The Board both ethnic and geographic balance in 2018; Dr. Johnson skillfully preserved equity and true representation.

Paul Mitchell/Redistricting Partners

Napa

Mr. Mitchell’s hallmark is his easy manner and his ability to engage and process public input. Using low-tech placemats, his Napa workshops achieved some of the best engagement of all communities that I have seen.

Karin McDonald

Antioch

Karin insisted on a Saturday morning gathering with coffee-and-donuts that really helped bring this community together. Her staff was able to recalculate suggestions from the audience and to project maps in real time.

Larry Ferchaw/Cooperative Strategies

Mt Diablo USD

Larry’s great contribution in this school district was to recognize that maximizing Latino voting strength, as traditionally imagined, was less important that creating a

trustee area for the emerging Latino immigrant community, who had very distinct needs. Mt Diablo's board now has a representative of parents who had been disengaged and poorly understood, despite the diligence and empathy of the at-large members, two of whom sacrificed their re-election to achieve this goal.

### Conclusion

Redistricting is an opportunity for Santa Barbara County to examine changes in its people, its communities, and the interests that bind them together. The role of your legal counsel should not be to draw maps or establish priorities. It should be to facilitate the effective exchange of ideas, to maintain procedural integrity, and to ensure that the final map complies the basic standards of state and federal law. But the output is not simply a political map. There is a larger enterprise: an opportunity for the county to examine and define itself. I bring a panoply of skills and experience to facilitate this process.

Thank you for your consideration. It would be an honor to serve.

Sincerely,

A handwritten signature in dark ink that reads "Scott Rafferty". The signature is written in a cursive, flowing style.

Scott J. Rafferty

Attachments:

Responses to RFP Questions

Resume

Amicus Letter for Dolores Huerta, describing history and purpose of single-member districts

Presentation to Contra Costa County Committee on School District Organization



## RAFFERTY RESPONSES TO RFP QUESTIONS:

### 1. Firm Description.

I am a solo practitioner that has been active in election law issues for many years. My main office is in Walnut Creek, California.

### 2. Assigned personnel

I would expect to engage in this activity personally.

### 3. Experience

Most recently, I have represented groups of electors from classes that are protected in petitions to comply with the California Voting Rights Act pursuant to Section 10010 of the Elections Code, and in litigation under the CVRA and Section 2 of the Federal Voting Rights Act of 1965. These actions have sought to promote the conversation of at-large election systems to elect by single-member constituency.

### 4. Additional information

I am not disqualified under Section 23003 or the provisions of the Santa Barbara County Code.

### 5. Fees

I would propose to bill at an hourly rate of \$300 per hour, which is substantial below my normal rate. I understand that I may not bill travel time, but would incur expenses to the extent that the engagement required personal appearances in Santa Barbara County. I anticipate at least two such trips. Assuming the engagement involves not more than 450 hours, I would commit not to exceed \$100,000, exclusive of expenses. I expect to absorb normal office expenses.

### 6. Form Contract

I have read and accept the contract terms.

I will provide references upon request.

## Scott J. Rafferty

1913 Whitecliff Ct  
Walnut Creek CA 94596

Direct: (202) 380-5525  
[rafferty@gmail.com](mailto:rafferty@gmail.com)

### PROFILE:

- *Extensive experience as a management consultant, attorney and regulatory economist*
- *Pioneered use of disclosure, market-based incentives, and statistical surveillance to improve regulatory enforcement and increase government transparency*
- *Proven leader and manager of interdisciplinary teams in the public and private sectors*

### EDUCATION:

#### Oxford University (Balliol College)

**Rhodes Scholar** (1977); **D.Phil.** (1986)

“Legislative Reform of the Telecommunications Industry: United States and Great Britain”

Concentration: Regulatory economics

#### Yale Law School

**J.D.** (1979)

Concentration: Civil rights, regulation and labor law

#### Princeton University, Woodrow Wilson School

**A.B.** (1976)

*Summa cum Laude, Phi Beta Kappa, Wilson School Thesis Prize*

Thesis: “Building the Consensus: The Civil Rights Division in the Kennedy Administration”

50 trimester-hours graduate credit to M.P.A. degree in Urban Economics

### PROFESSIONAL EXPERIENCE:

**Law Offices of Scott Rafferty** Washington DC, Mountain View, Walnut Creek CA (2002 - 2010)

**Practice specializing in Voting Rights, Information Technology, Regulation, and Public Advocacy**

#### Accomplishments

- Voting Rights. Represent minority electors in actions to create single-member constituencies in jurisdictions that elect at-large.
  - Facilitated voluntary compliance in Napa, Richmond, Antioch, Brentwood, Concord, San Ramon, San Ramon Valley USD, Washington USD, Mt Diablo USD, Antioch USD, Napa Valley USD, West County Wastewater District, Dublin San Ramon Services District.
  - Settled litigation against West Contra Costa USD, creating majority Latino trustee area and first independent redistricting commission for a school district.
- As Director of Litigation for Citizens for Responsibility and Ethics in Washington, refocused litigation strategy to extend federal recordkeeping and FOIA/Privacy Act requirements to electronic documents
  - Briefed successful litigation to preserve and disclose White House visitor records;
  - Developed techniques to scan large FOIA requests for key content, facilitating web publication;
  - Achieved declassification of Kennedy-era civil rights records at the National Archives and their release for digitization.
- As Executive Director for Peninsula Ratepayers Association, represented utility consumers before the California Public Service Commission
  - Prevented Pacific Gas & Electric from using bankruptcy to preempt state regulation, avoiding substantial rate increases;
  - Built coalition with environmental groups to negotiate transfer of PG&E watershed lands from bankruptcy estate to nonprofit conservation entities;



- Persuaded regulators to allow Voice Over Internet (VOIP), advocating disclosure as the primary means to enforce service quality.
- Enforced voting rights by working with state election officials and through litigation
  - Succeeded in challenging state legislation requiring soldiers to waive ballot secrecy if they participated in electronic ballot transmission program run by DoD contractor;
  - Challenged Veterans Administration policies that interfered with voter registration at homeless shelters, nursing homes, and recreational areas where veterans live;
  - Directed voter protection in Montana 2006 election which ultimately resulted in change in control of U.S. Senate;
  - Strengthened California recall requirements through federal injunction action.

***Deputy Director for Research and Policy, Administrative Conference of the United States (federal agency), Washington DC (2010 - 2012)***

- Managed consultants and attorney-advisers who conduct work in connection with the Conference's research and policy projects.
- Supported the Conference Committee on Administration and Management, keeping its chair and members informed on current research.
- Organized project into E-FOIA and electronic publication of federal legal materials, including the use of copyrighted materials in rules and guidance
- Digitized 1200 historic ACUS studies into best practices in administrative procedure at no cost to government.
- Served as Designated Federal Officer at Conference Plenary Session and committee meetings, advising on compliance with Federal Advisory Committee Act
- Performed research into collaborative regulatory enforcement, including self-regulatory organizations and privately funded inspections
- Managed project into third-party certification
- Organized conference on e-Rulemaking with Brookings, identifying innovations at state and federal agencies
- Organized interagency workshops on online dispute resolution, case management, and immigration adjudication.
- Recovered and organized 400,000 pages of archival materials

**Senior Director, Business Development, SiRF Technology, San Jose, CA** (10/2000-2/2002)  
**Built business and regulatory alliances for SiRF, which made leading-edge GPS chipsets for mobile telephones and consumer products**

**Accomplishments**

- Successfully defended federal regulation mandating 911 location technologies in all new mobile phones;
- Created competitive advantage with proactive corporate commitment to user security and privacy by preventing abuse of location data;
- Built technology-sharing alliance with chipset customer;
- Performed economic analysis of GPS deployment, showing effect of delay in E-911 mandate;
- Developed cross-licensing framework to protect against potential patent and antitrust claims while negotiating access to critical software.

***I had no defined hours, but worked substantially in excess of 40 hours a week. My salary was \$120,000 plus extensive stock options.***

**Director, Aerie Group, Washington DC** (5/1992-11/2000)

**Accomplishments**

- Managed UN project to prepare state enterprises in Vietnam for privatization;
- As economic consultant to twelve states, designed regulations to introduce telecom competition, and promote broadband penetration, privacy, security, universal service, and service quality;
- Performed statistical analysis to show that the cable industry was not yet subject to effective competition, leading the incoming Clinton-Gore Administration to revise deregulatory rules;
- Created nationwide database (by zip code and telephone exchange) of consumer economic and demand variables and penetration of broadband and wireless services to enable members of telephone company trade association to target broadband deployment and cross-selling initiatives;
- Conducted or managed utility audits using quantitative statistical techniques to assess procurement practices and service quality;
- Implemented franchise auction for provider-of-last-resort obligation in rural Hawaii;
- Designed cost allocation accounting methodologies for utilities, which state commissions adopted and federal legislation incorporated;
- Advised national political committee on internet strategy;
- Testified before state legislatures and regulatory commissions in rulemaking and adjudicatory proceedings;
- Built internal skills of state agencies to research and testify in regulatory hearings; managed teams of economists and lawyers in complex regulatory proceedings; taught continuing professional education to regulatory CPAs

**Director of Telecommunications, Maryland Public Service Commission, Baltimore MD** (9/1990-5/1992)  
**As agency's first director, build and led staff to regulate telephone carriers**

**Accomplishments:**

- Designed Maryland broadband plan, evaluating opportunities for telemedicine, distance education, and content delivery;
- Managed statistical audit of affiliate transactions, using electronic discovery tools;
- Served as state representative to federal-state joint board on accounting separations;
- Enforced compliance with consumer safeguards, including privacy and service quality;
- Launched self-regulation of payphones that improved enforcement and saved state costs.

***Principal, Rafferty Consulting, Washington DC***

(1987-90)

***Accomplishments***

- Achieved \$965 million reduction in NY Tel rates, as well as “bubble up” compliance system and corporate restructuring to promote efficiency and ethical contracting;
- Consultant on privatization to first industry minister in post-communist Poland;
- Developed telecom job creation program for Irish Development Agency
- Performed economic evaluation of pioneering Prodigy electronic service; proposed modifications to business plan;
- Created security accounting tools to identify waste and fraud for telecommunications firms.  
*My revenues depended upon contracts.*

***NYNEX-TELCO Research, Washington DC (5/1986 -1/1987)***

***Managing Director and Senior Vice President***

***Accomplishments***

- Managing director of 120-employee software development firm; ensured employees were appropriately appraised and rewarded;
- Led team of 15 engineering and economic consultants who performed network planning and optimization and analyzed telecom markets for equipment and service suppliers;
- Restored consulting practice to profitability in less than 6 months, at which point legal restrictions forced NYNEX to leave this line of business.

***Senior Associate, McKinsey & Company, Washington DC and London, UK***

(1983-86)

***Accomplishments***

- Created plan for Dutch government to open telecom market to competition;
- Achieved \$85 million in cost reductions while maintaining technical synergies and positive management culture for telecommunications client; restructured major regional electrical utility company to enhance business accountability;
- Saved over 500 jobs and improved commercialization of research through Bell Labs re-organization;
- Specialized in organizational change to support changing business strategies;
- Led client teams to quantify post-merger staff needs;
- Created separate subsidiary structure for electric utility to enter competitive telecommunications and power management businesses, providing regulatory transparency and business synergies;
- Designed and implemented job development program for Republic of Ireland;
- Helped create exploration and development strategy for major European energy firm;
- Performed financial valuations of telecommunications companies.

***Counsel, House Subcommittee on Telecommunications, Energy and Commerce Committee  
Washington DC***

(1981-1983)

***Accomplishments***

- Represented committee members in *U.S. v. AT&T*, achieving 13 modifications to consent decree;
- Developed and prepared policy for increasing competition in U.S. telecommunications markets;
- Drafted AT&T divestiture bill and other laws relating to the telecommunications industry, including the Telecommunications for the Disabled Act;
- Co-authored detailed statistical analysis of competition and market penetration for each telecom market (“Technology in Transition”);
- Organized numerous hearings into telecom competition, privacy, and data protection.
- My salary was \$46,000. I had no defined hours, but worked substantially more than 40 hours a week.

***Associate, O'Melveny and Myers, P.C., Washington DC and Los Angeles CA*** (5/1979-81)

- Specialized in antitrust and securities litigation, including all phases of discovery and trial, including depositions and motion practice.
- Managed regulatory compliance in a major telecom merger;
- Developed regulatory strategies for Fortune 100 corporations;
- Handled all aspects of condemnation appeals before the General Accounting Office;
- Successfully defended auto manufacturer in recall proceeding;
- Represented airline industry in proceedings to reduce operations at National Airport.

***BAR ADMISSIONS***

Admitted to practice in California and District of Columbia; federal Northern District of California, and Second, Fifth, Ninth, Eleventh, D.C., and Federal Circuit Courts of Appeal.

***PROFESSIONAL ACTIVITIES***

President, Princeton Club of Northern California, 2002-2005

Co-Chair, Oxford-Cambridge Committee of Northern California, 2002-2005

Program Chair, Tshwane (South Africa)-Washington DC Sister City Committee

Parish Council President, St. George Greek Orthodox Church, Bethesda MD, 1997-1999

Board member, Meals on Wheels, 2017-2019

***PREPARED TESTIMONIES AND OTHER PUBLICATIONS***

"Legislative Reform of the Telecommunications Industry in the United States and Great Britain," Ph.D. dissertation, Oxford University 1986.

The American Experience: The Dilemma of Telecommunications in the United States," Libra Press (U.K.), 1983.

Telecommunications in Transition: The Status of Competition in the Telecommunications Industry, Report by the Majority Staff of the Subcommittee on Telecommunications and Consumer Protection and Finance, U.S. House of Representatives Energy and Commerce Committee, Committee Print 97-V (GPO 86-058) November 1981. (I am the principal author of the introduction and pp. 55-2834 and co-author of pp. 29-54).

"Realizing Congress's Promise of Effective Rate Regulation for Cable TV Consumers," September 28, 1983 (The Wall Street Journal commissioned this report, which resulted in a front page article and the substantial changes to FCC regulations)

"Southern Republicanism," Annals of the American Academy of Political and Social Sciences (1975) (citation pending) (a statistical analysis of the impact of the Voting Rights Act).

"Proceedings of the Fifth Annual Homeland Security Law Institute," 35 *Administrative & Regulatory Law News* 29 (2010).

"Proceedings of the Fourth Annual Homeland Security Law Institute," 34 *Administrative & Regulatory Law News* 28 (2009).

"Building the Consensus: Civil Rights and the Department of Justice 1961- 1963," senior thesis, Woodrow Wilson School, Woodrow Wilson School Thesis Prize, Aaron Austin Godfrey Thesis Prize.

“FDA is Moving too Slow To Promote Private Inspections,” *Food Safety News*, September 6, 2013.

“Third-party Certification of Food Imports,” Food & Drug Administration, 2011-N-0146, September 2013.

“Enhancing the Competitiveness of the American Standards System,” Office of Management & Budget, 2012-0003, October 8, 2012.

“Comment – Third-Party Programs,” Administrative Conference of the United States, October 8, 2012.

“Incorporation by Reference,” National Archives and Records Administration,” May 2012.

“Analyzing New York Telephone Company’s Request for Relief from the Rate Moratorium,” New York Public Service Commission No. 28961, January 11, 1990.

“Transactions Between New York Telephone Company and Unregulated Affiliates of NYNEX Corporation,” New York State Department of Law, New York Public Service Commission No. 90-C-0912, June 1990.

“The Impact of Transactions with Unregulated Affiliates on the Regulated Rates of New York Telephone Company,” New York State Department of Law, New York Public Service Commission No. 90-C-0912, July 1990. (This report was the focus of a front-page story by the Wall Street Journal on July 12, 1990).

“State Regulatory Jurisdiction over Voice-Over-Internet Telephony,” California Public Service Commission I-0402007, June 7, 2006.

“Protecting Ratepayers During the Bankruptcy of PG&E,” California Public Service Commission I-0204026, December 11, 2003.

“Opening Report for the Workshop on Competition in Telecommunications,” Arizona Corporations Commission, January 14, 1994.

“Comments on Competition in Telecommunications,” Arizona Corporations Commission (Residential Utilities Consumer Office), July 21, 1994.

“Incremental Cost and Telephone Calling Area Design,” Arizona Corporations Commission E-1051-93-183 (Residential Utilities Consumer Office), May 26, 1994.

“Rate Design for US West,” Arizona Corporations Commission E-1051-93-183 (Residential Utilities Consumer Office), March 14, 1994.

“Reforming the Universal Service Fund,” Arizona Corporations Commission (Residential Utilities Consumer Office), October 26, 1994.

“Making Retroactive Adjustments to Rates,” Arizona Corporations Commission E-1051-93-183 (Residential Utilities Consumer Office), October 26, 1994; additional comments filed July 3, 1996.

“Designing Alternative Regulation in Telecommunications,” Public Advocate, Delaware Public Service Commission Case No. 33, May 26, 1992; further comments filed June 22, 1993.

“Cost Methodology for Alternative Dialing Plans, Public Advocate, Delaware Public Service Commission Case No. 92-47, February 15, 1993.

“Competition in Long-Distance Telephony,” Public Advocate, Delaware Public Service Commission Case No. 42, November 2, 1994.

“Revenue Requirement and Reform in Rate Design to Reflect Competition, Public Advocate, Delaware Public Service Commission Case No. 92-47, January 15, 1993.

“Reforming the Structure of Regulated Telecommunications Utilities,” Florida Public Service Commission No. 920255-TL, June 1, 1992.

“Planning for the Entry of Competition,” Hawaii Department of Business, Economic Development & Tourism, Hawaii Public Service Commission No. 7702, March 24, 1995.

“Using Auction Mechanisms to Reallocate Utility Franchises,” Hawaii Department of Business, Economic Development & Tourism, Hawaii Public Service Commission No. 7702, April 5, 1995.

“Managing Competitive Entry,” Hawaii Department of Business, Economic Development & Tourism, Hawaii Public Service Commission No. 7702, May 12, 1995.

“Maintaining the Quality of Rural Telephone Service,” Hawaii Department of Business, Economic Development & Tourism, Hawaii Public Service Commission No. 94-0346, June 28, 1994.

“Regulating New Operator Service Providers,” Hawaii Department of Business, Economic Development & Tourism, Hawaii Public Service Commission No. 94-0144, June 5, 1995, further comments, January 16, 1996.

“Calculating the Cost of Capital and Revenue Requirement for Hawaiian Telephone Company,” Hawaii Department of Business, Economic Development & Tourism, Hawaii Public Service Commission

“Criteria for Awarding a Certificate of Public Convenience and Necessity,” Hawaii Department of Business, Economic Development & Tourism, Hawaii Public Service Commission No. 94-0093, November 14, 1994.

“Regulatory Reform Proposals Before the Illinois Legislature,” Conference Committee of the Illinois Legislature, May 3, 1992.

“Compensation for ‘Dial-Around Calls’ from Payphones,” Maryland Public Service Commission, Case No. 8585, April 19, 1993.

“Designing a Cost Allocation System for Regulated Telecommunications Utilities,” Maryland Public Service Commission, Case No. 8333, April 21, 1991.

“Implementing a Cost Allocation System for Regulated Telecommunications Utilities,” Maryland Public Service Commission, Case No. 8333, May 10, 1991; further comments, May 17, 1991.

“Toward a More Competitive Telecommunications Infrastructure for the State of Maryland,” Maryland Public Service Commission, Case No. 8388, November 7, 1991.

“Setting Payphone Rates in a Competitive Environment,” Michigan Public Service Commission U-10282, December 15, 1993.

“Evaluating Price Caps as a Form of Alternative Regulation,” New Jersey Division of Ratepayer Advocate, New Jersey Board of Public Utilities No. T09030358, Sept. 21, 1992.

“Analyzing the Impact of Price Cap Regulation on Regulated Service Quality,” New York Public Service Commission No. 92-C-0665, August 10, 1994.

“Proposing Alternatives to Rate-of-Return Regulation for the Western Reserve Telephone Company,” Ohio Consumers’ Counsel, Public Utility Commission of Ohio No. 93-230-TP-ALT, November 8, 1993.

“Proposing Alternatives to Rate-of-Return Regulation for the Cincinnati Bell Telephone Company,” Ohio Consumers’ Counsel, Public Utility Commission of Ohio No. 93-432-TP-ALT, March 3, 1994.

“Evaluating the Reasonableness of a Rate Settlement Proposed for the Western Reserve Telephone Company,” Ohio Consumers’ Counsel, Public Utility Commission of Ohio No. 92-1525-TP-CSS, January 28, 1994.

“Reforming the System of Cost Allocation and Jurisdictional Separations in the Face of Competitive Entry,” Ohio Consumers’ Counsel, Public Utility Commission of Ohio No. 92-1525-TP-CSS, August 25, 1993.

“Setting Rules for Competitive Entry,” Utah Department of Commerce, Utah Public Service Commission No. 94-2202-01, December 1, 1995.

“Is Regulation of Rates and Quality of Service Appropriate for Residential ISDN,” Utah Department of Commerce, Utah Public Service Commission, July 15, 1996.

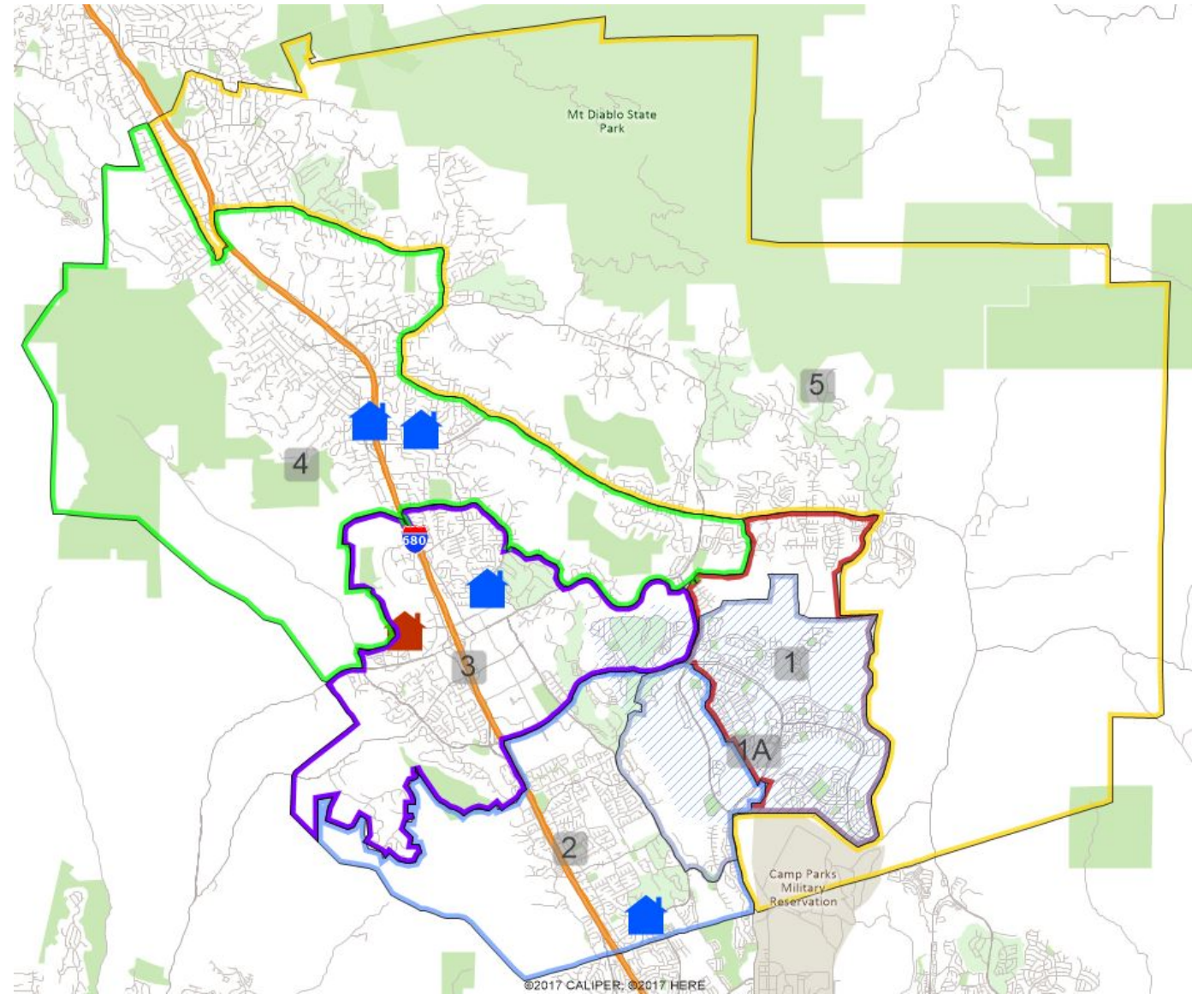
“Developing a System of Cost Allocation for Regulated Utilities,” West Virginia Public Service Commission No. 90-424-T-PC, September 1992.

“Implementing West Virginia’s New Cost Allocation Methodology,” West Virginia Public Service Commission No. 90-424-T-PC, January 14, 1992.

# San Ramon Valley Unified School District

Voting Rights Act Compliance  
County Committee on School  
Board Organization

Presentation of Bay Area Voting  
Rights Initiative  
March 11, 2019





# Our request – continue this hearing

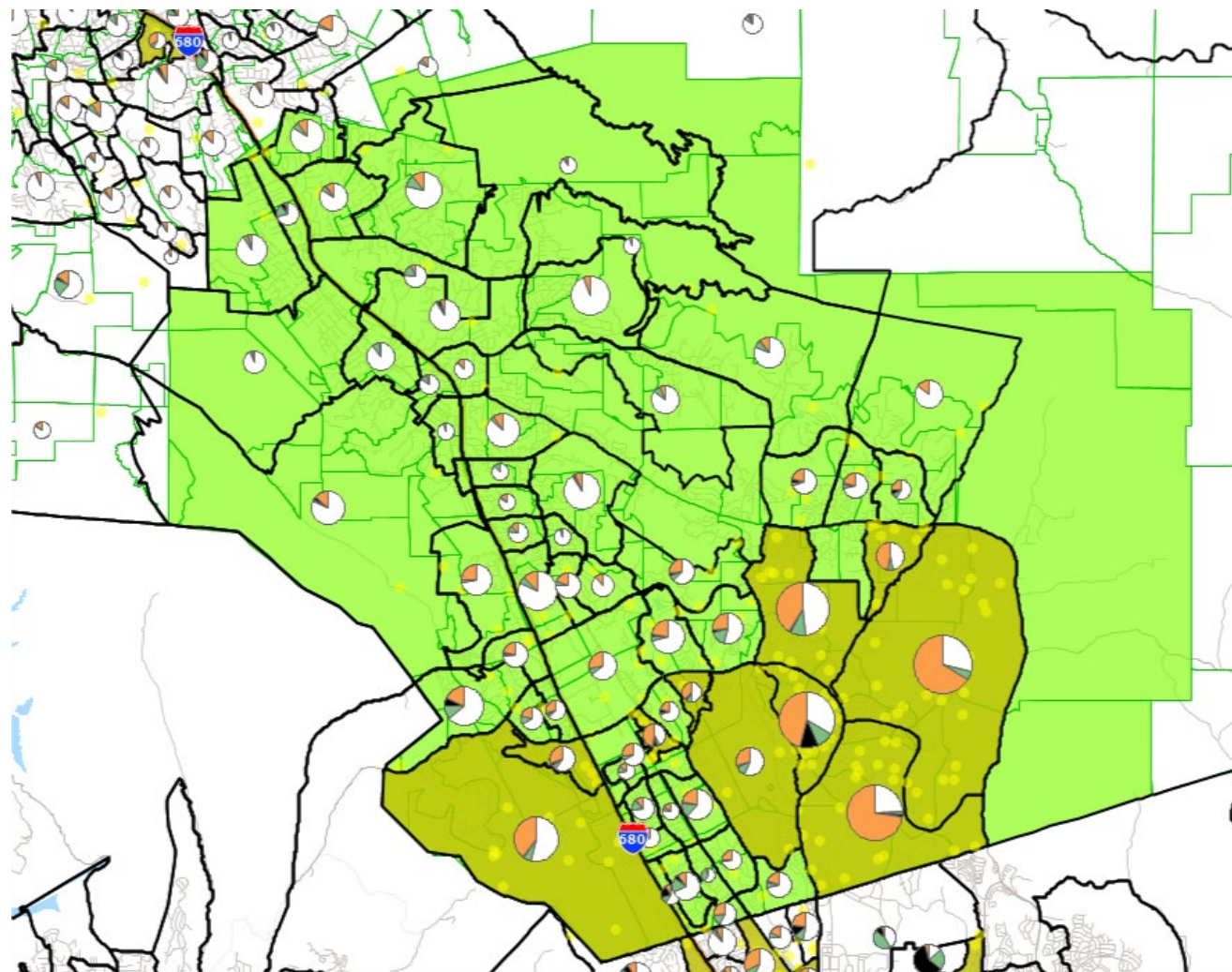
- We are 478 days before SRVUSD's deadline to submit this map.
- None of the 4 maps comply with the federal Voting Rights Act because each combines parts of Dougherty Valley with high-turnout white neighborhoods (and includes their incumbent). This merely entrenches at-large incumbents and perpetuates the illegal effects of winner-take-all. There must be a trustee area based exclusively in Dougherty Valley or nearby neighborhoods with similar demographics.
- Map 102 mixes high-turnout West Danville (and its incumbent) with portions of DV to create an artificial trustee area that is 51% Asian. It is hard to imagine a less coherent area. Indeed the stated purpose of this gerrymander is to perpetuate the status quo.
- Connecting the incumbent to DV requires Area 3 to have 20% more population than non-minority areas. This is only possible by “blindly using” stale census data that fails to count more than > 10,000 Asians who have arrived over the past decade. This violates federal Section 2, Education Code 5019.5(a), and Ninth Circuit caselaw on the 14<sup>th</sup> Amendment. [see [endnote 1](#)]
- SRVUSD has misled the public and this Committee by altering [Res. 51-18/19](#), which stated its original instructions to the demographer. The commitment to adjust the stale census data to achieve actual equality of population was a basis for all public content. The U-turn shows that SRVUSD's attorney and demographer know the law, but are willing to deny it.
- **Therefore, the Committee should continue this hearing to allow SRVUSD to discuss with the Asian community how to create a Dougherty Valley seat, either in 2020 or in 2022, that will provide a truly equal opportunity to elect its candidate of choice.**

# So far.

- Last December, SRVUSD unanimously voted to transition to trustee areas. The at-large trustees serve out their terms but have no entitlement to the new offices.
- But in January, the incumbents boldly passed a resolution demanded that the demographer design an area to protect each of them. Since four trustees live within a 1.25 mile radius, this is no small feat. They also urged him to correct census numbers to reflect future growth and achieve “long-term population balance.”
- Instead of soliciting comments on how to map the areas, at every subsequent hearing, the trustees lectured about the California Voting Rights Act, repeatedly saying it was “Orwellian,” “offensive,” “sickening,” “twisted,” “stupid,” and “written by idiots in Sacramento.” [2] The most critical hearing was on a workday and delayed two-and-a-half hours, forcing constituents to leave. [2a]
- But there was clear consensus on Map 102. The incumbent in majority Asian Area 3 called it a “puzzle piece.” [3] Staff said a “tentacle” attached Dougherty Valley to the incumbent’s West Danville home, saying Map 101 “maybe made more sense.” [4] Every constituent said Map 102 was gerrymandered. [5] One said it would also drive the incumbent living in Area 2 out of office. [6] These two disparate communities can be linked only by overpopulating the area by 20%, adding another violation of law.
- But once they realized that they had to allow a majority Asian area had to elect a trustee in 2020, the Board unanimously adopted Map 102, despite its overpopulated gerrymander. [7] They now claim that they can disregard population balance and refuse to count 10,000 Asians who have moved to SRVUSD since 2010. [8] As submitted, the resolution 51-18/19 makes it appear that they never sought gerrymandering and never instructed the demographer to update the 2010 census.
- The Board refused to coordinate with other jurisdictions, which has increased costs, may make it harder to recruit the best candidates, will confuse voters, and may lead to tiny precincts where voters will be required to vote by mail. [9]

More than half of  
SRVUSD population is in  
San Ramon, which is  
now 49% Asian.

- Pie size reflects  
population
- Orange slice  
reflects Asian share

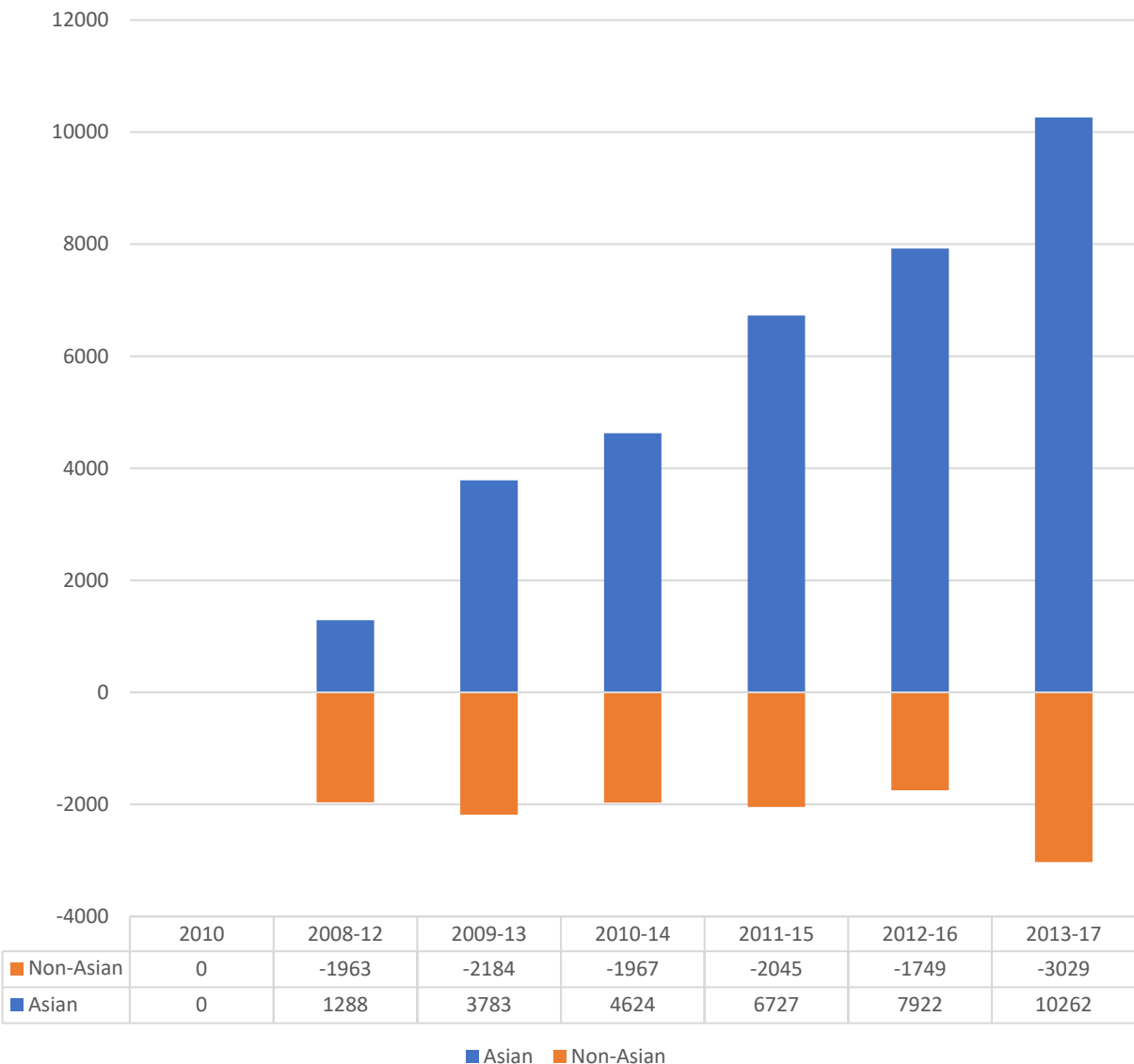


If permitted, this gerrymander will likely be confirmed next year and outlive the tenure of many of the incumbents it seeks to protect.

- This is a low-turnover Board. No appointed or elected trustee has been successfully challenged for over 20 years. Given the size of the district, at-large elections make races difficult to contest, especially when the Board runs as a slate.
- The Board observes that it serves all students equally because of its “longevity,” coupled with the system of rotating responsibility for schools. But preserving the existing membership is not consistent with the purpose of the Voting Rights Act, which is to provide a dedicated representative from each geographical area. On the contrary, efforts to preserve incumbency “through the avenue” of evading a Section 2 remedy constitute intentional discrimination. [Garza v. County of L.A.](#), 918 F.2d 763, 771 (9<sup>th</sup> Cir. 1991).
- The map is a “device” that, like the 19<sup>th</sup> Century “grandfather clause,” replaces one form of vote dilution with another. Instead of being outvoted at-large, most of the Asian stronghold is paired with the high-turnout of an incumbent. The map overpopulates the trustee area by 20% to make the link possible.
- Assuming the gerrymander succeeds, the Asian community has no seat at the table at the 2021 redistricting. After a single hearing, the Board can gerrymander itself in for another decade.
- A gerrymander, whatever its validity in the normal political realm, violates Section 2 when it has an adverse effect on a protected class or is used to evade a remedy. [LULAC v. Perry](#), 548 U.S. 399, 403 (2006)
- 



ACS, the census bureau's 5-year rolling average, shows an increase of more than 10,000 Asians in SRVUSD, 83% in San Ramon and 5% more in adjoining Camino Tessajara.



The Dougherty Valley Specific Plan has driven population growth in San Ramon Valley for 20 years.



11,000 new housing units on 5,000 acres east of San Ramon.



Almost 20% of all new construction in the County over the past two decades.



6,000 of the units are multi-family density



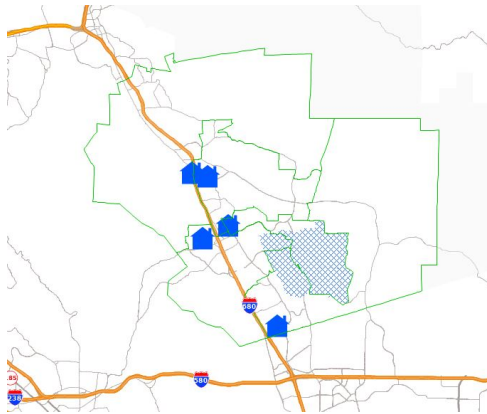
Destination community for many Asian immigrants high citizenship rates, but low voter participation-



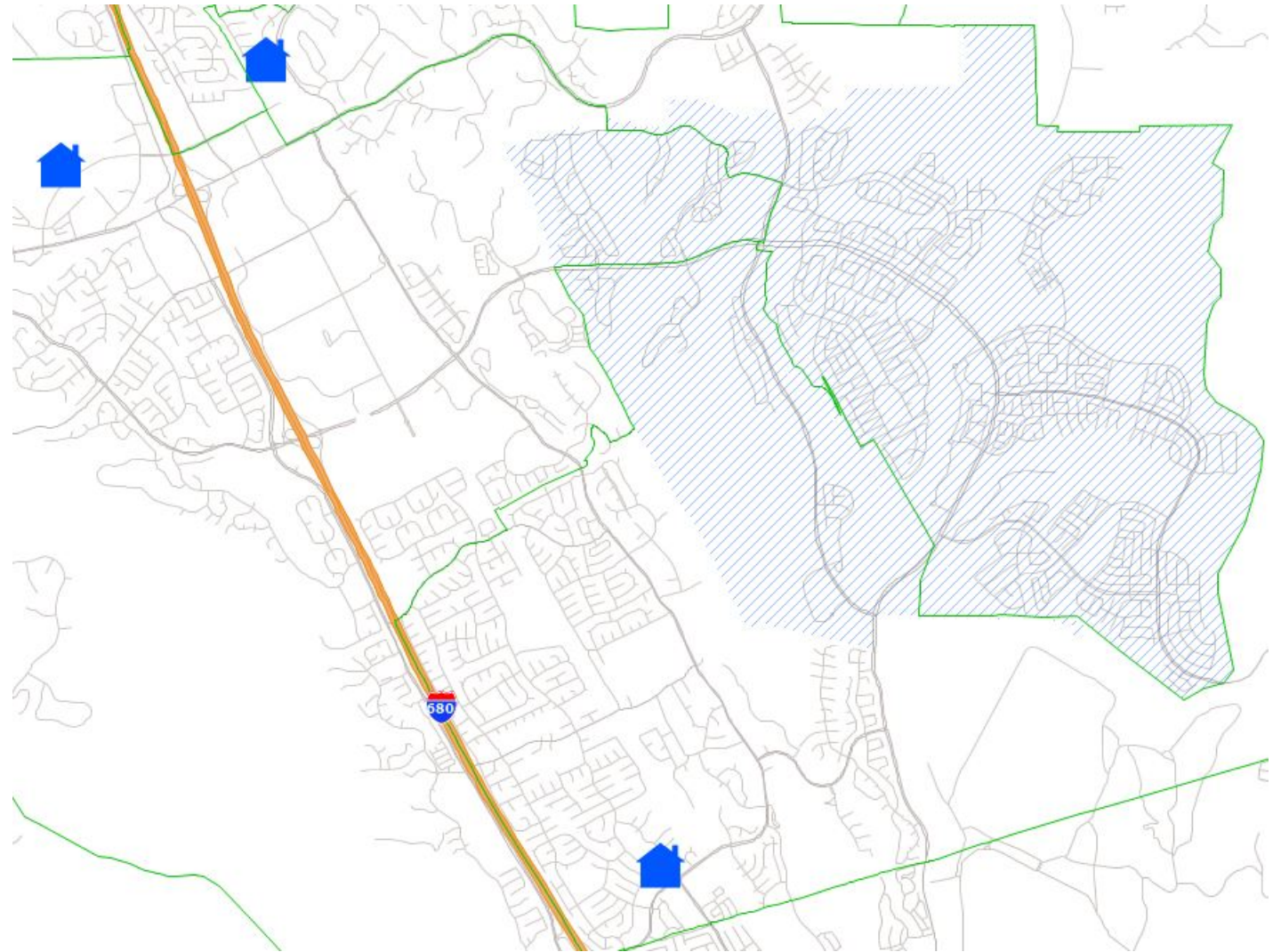
With adjoining new developments in East Danville and Camino Tessajara, a new and different demographic for San Ramon.




The Dougherty Valley Specific Plan area had enough population\* by the 2010 census to be a trustee area and has grown at least 20%. It is 61% Asian.



\*26,513, which is within the 10% benchmark for variance if other areas are equally sized.

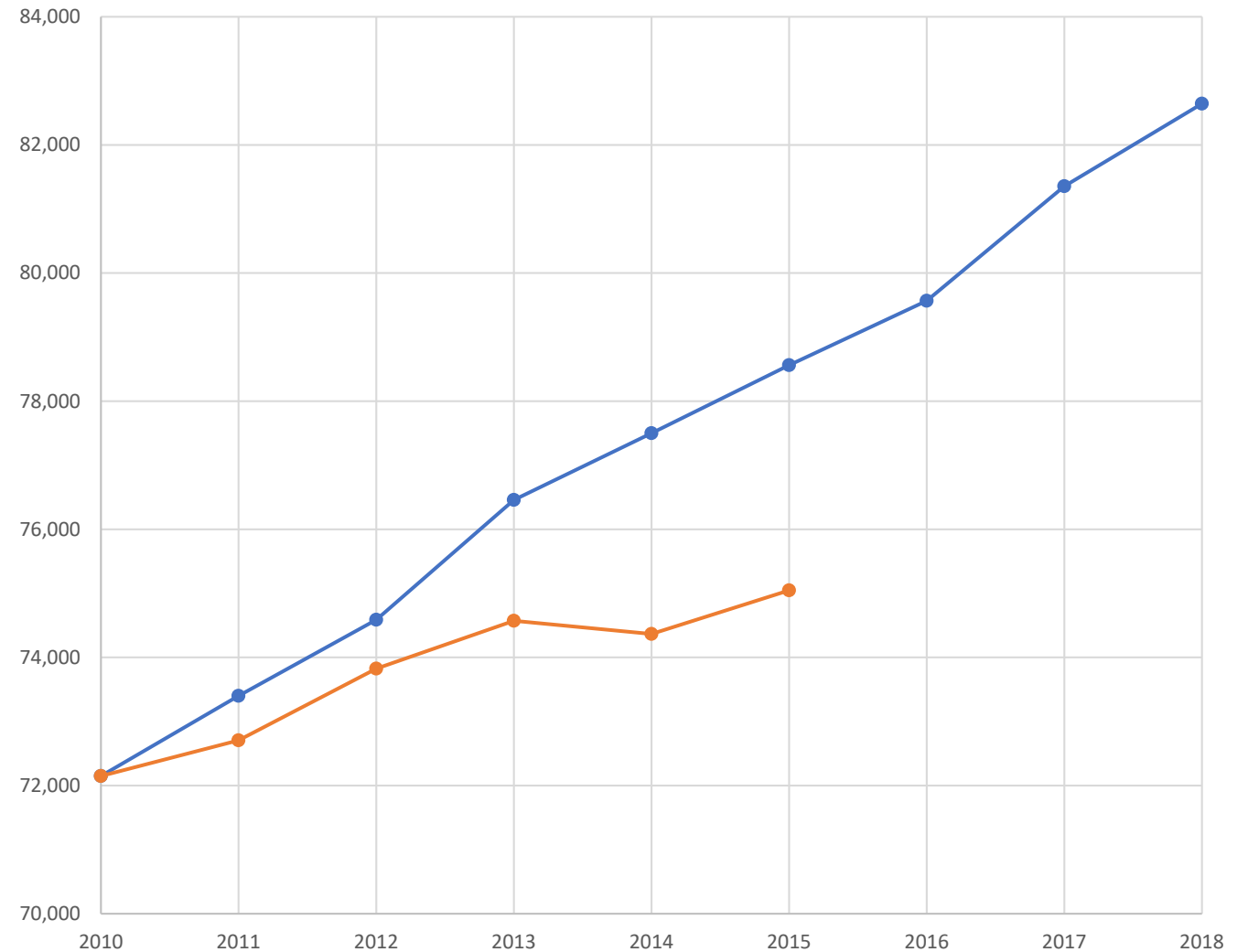



An aerial photograph of a suburban area with a grid-like street pattern. A thick, dark diagonal line runs from the top center towards the bottom right, separating the map into two sections. The area to the left of the line is densely packed with residential buildings. The area to the right, which is the focus of the text, contains several large, rectangular, brownish patches of land that appear to be undeveloped or in the early stages of development. There are some scattered buildings and green spaces in this section as well. Several small, orange house-shaped icons are overlaid on the map, mostly in the developed areas. A red location pin is visible on the right side of the map.

Most of the Dougherty Station  
area was not developed at the  
time of the census.



The state thinks that 2013-17 ACS so far captured only 30% of San Ramon's post-census growth. ACS lags five years, instead of ten.





SRVUSD could have begun the transition when a vacancy arose last year.

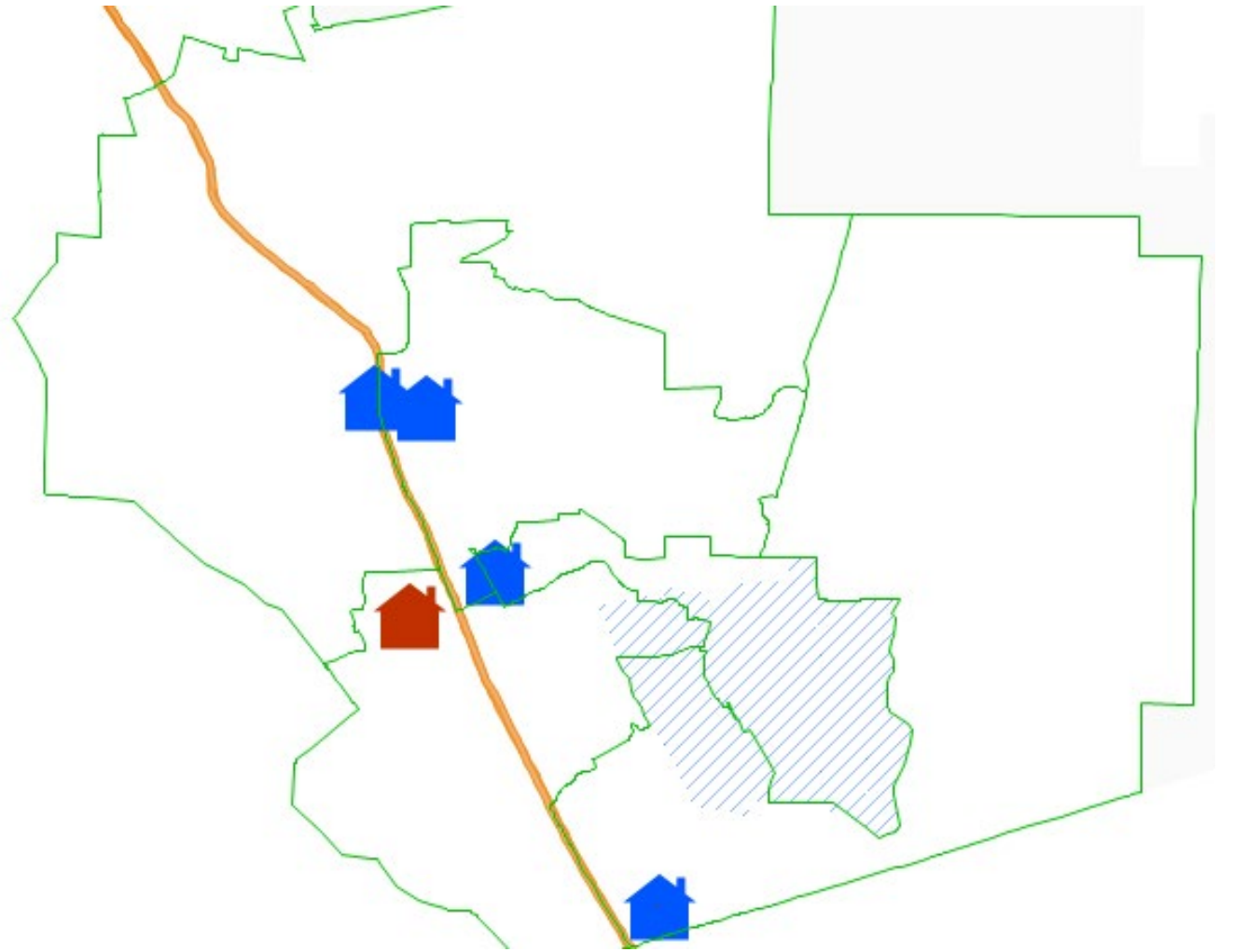
The Board appointed to a vacancy barely over four months before the term expired.

Like WCCUSD, it could have shortened the new term. Then, it could have opened a seat in Dougherty Valley in 2020, avoiding the “musical chairs” situation it now faces

Eight Asians from Dougherty Valley and immediately adjoining areas applied. They had lived in the District for 4-12 years. None was even interviewed.

The incumbents chose a candidate who is highly regarded in the Asian community, but lives very close to the other trustees, six miles from Dougherty Station. She was not opposed and is now as entitled as the other trustees to serve a full term (in her case, 2022).

Four incumbents live along I-680 within a 1.25 mile radius. None lives near Dougherty Valley. Each was guaranteed one of the new trustee areas.



SRVUSD's  
submission to  
this Committee  
alters the  
instructions  
they gave the  
demographer.

They checked the box telling him to create a new trustee area for each of the outgoing at-large members. Now it's unchecked.

They told him to revise census data with projections of future population growth to achieve “long-term population balance.” But once they realized that Dougherty Valley had more than enough population for its own trustee, they unchecked that box as well.

They won't even count actual new development since the 2010 census, even to the extent required by law.

# Res. #51/18-19 – Boxes 8 and 9 were checked, but not anymore. [Click links for each full document]

[As passed Jan. 8, 2019](#)  
[\(From the Internet Archive\)](#)

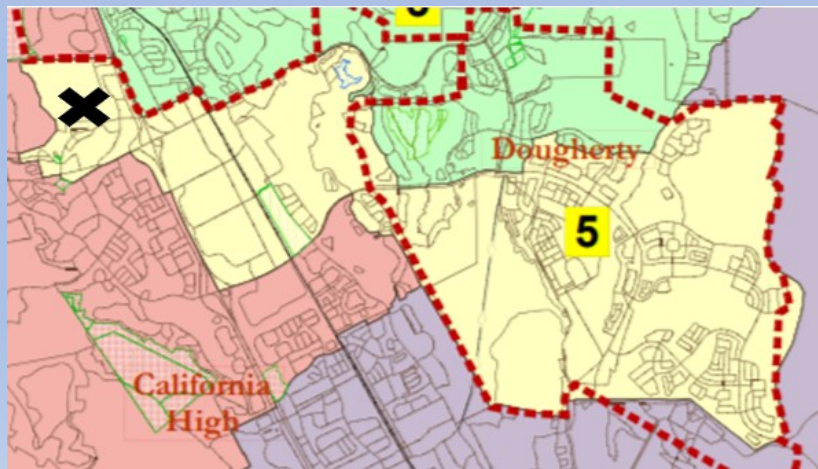
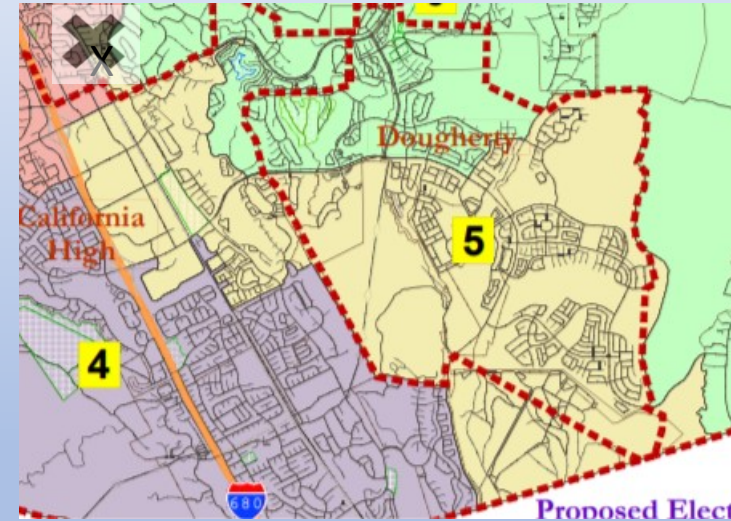
[As submitted to this Committee](#)  
[\(From the CCBOE website\)](#)

- ☒ 8. The boundaries of the trustee-areas may consider avoiding pairing two or more incumbents in a single trustee-area, to the extent legally allowable.
- ☒ 9. To maintain a longer-term population balance, trustee-areas known to be areas of higher-than-average population growth following redistricting may be under-populated within the population deviation amounts allowed by law. To the extent legally allowed, this shall include consideration of anticipated future growth under applicable general plans.

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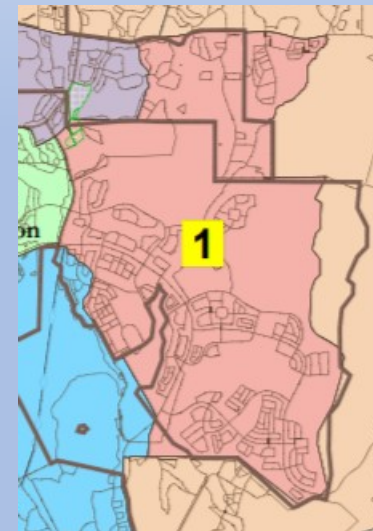
Every one of the proposed Asian majority trustee areas gerrymanders in an incumbent.



 marks the incumbent

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

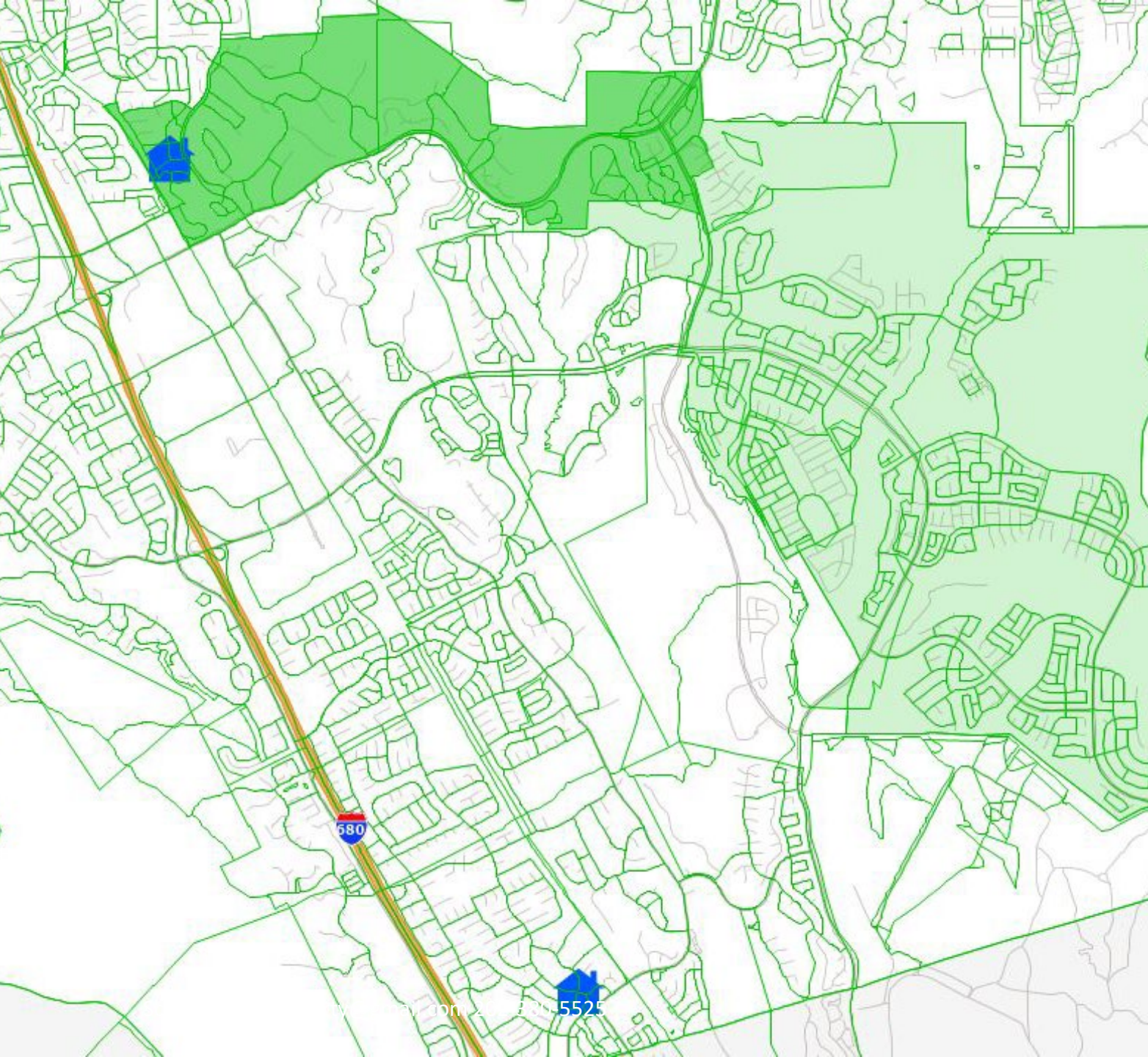
	101	102	103	104/105	community "Core DV"
gerrymandered for	Hurd	Jewett	Jewett	Ordway	no one
2020 election?	no	yes	yes	no	yes
presidential cycle?	no	yes	yes	no	yes
Excess population in 2010 census	3%	none (- 1%)	1%	2%	none (-5%)
Excess population in 2012-16 census data	11%	8%	10%	12%	6%
Asian % of eligible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



[Link to full map](#)

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





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



These two areas have no community of interest.

	Tract 3451.14 W Danville	Tract 3551.11 Dougherty Valley
Average age	50	33
-over 65	25%	5%
Own home	91%	52%
Employed (if over 25)	49%	96%
Speak only English at home	91%	41%
B.S. or B.S.E.	38%	53%
School-age in home	14%	30%
Born in U.S.A.	86%	52%



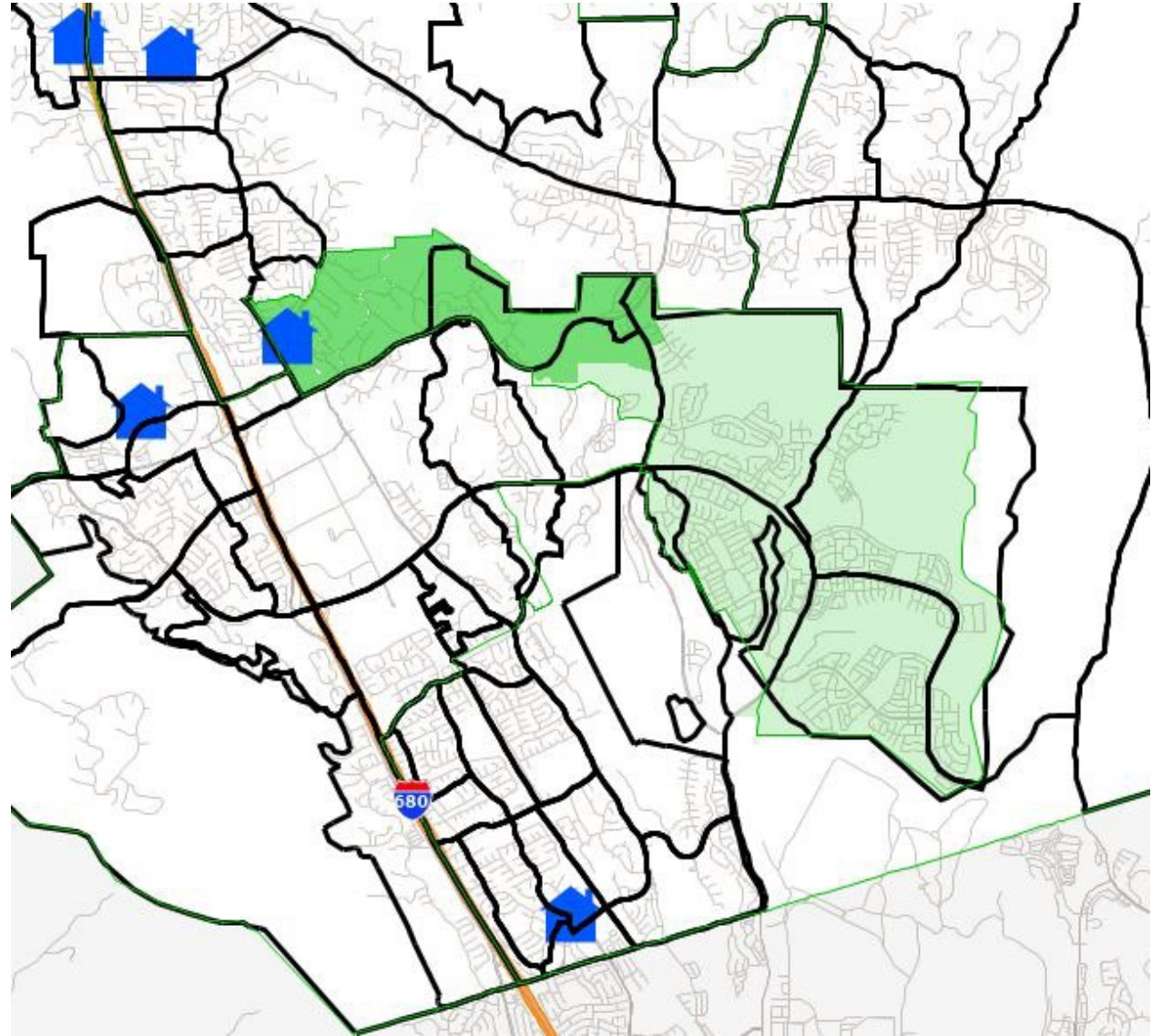
The Department of Finance, which validates population for school board districting, uses occupancy permits to correct stale census data.

- Each dot represents a housing unit for **2014-17 only**. The larger blue dots have 130 and 161 units. The block group population in the ACS 2013-17 is 75%, 13% and 45% higher than the census for these three block groups – or 6563 people.



## SRVUSD isn't working with other jurisdictions

- City and other districts are using block groups
- Easier to estimate population
- Higher costs for all
- No common district
- Voter confusion
- All-mail precincts (like Martinez)



# References to Caselaw and Record

[1] The Constitution requires the use of the decennial census data for one purpose only – the apportionment of congressional seats among the several states. The equal protection clause does not require the states to use federal census data even when they redistrict their congressional districts immediately after the decennial census. [Burns v. Richardson](#), 384 U.S. 73, 91 (1966). The Supreme Court has also approved categorical adjustments made by seven states, including California, to the “small area” data that PL 94-171 requires the census to produce for legislative redistricting. [Evenwel v. Abbott](#), 587 U.S. \_\_\_, 136 S. Ct. 1120, 1124, 194 L. Ed. 2d 291, No. 14-940 (April 4, 2016), Slip op. at 4 & n.3

The California Attorney General is currently suing the Commerce Department, alleging that a potential citizenship question will cause a disproportional undercount throughout California. [California v. Ross](#), 18-cv-01865, N.D. Cal. March 26, 2018. The Legislature is equally concerned with the impact of a low-quality census due to California’s disproportionate concentrations of “hard-to-count populations.” The quality of federal data should be of even greater concern to San Ramon and jurisdictions including parts of the city, because the state Department of Finance believes that its federal population estimate is about 8% too low, a larger discrepancy than any other sizable city in the State.

The Ninth Circuit has directed that alternatives to census data are “logical” when the census is “almost a decade old.” [Garza v. County of Los Angeles](#), 918 F.2d 763, 773 (1990). “post-census data may be used as a basis for ... redistricting [between censuses].” [Garza](#) also held that census data are “no longer accurate” whenever they are “almost a decade old,” which makes use of alternative data “logical.” There is no presumption in favor of stale census data whenever “there exists post-decennial population data that more accurately reflect[] evidence of the current demographic conditions.” [Garza v. County of Los Angeles](#), 756 F.Supp. 1298, 1345 (C.D. Cal. 1990).

A jurisdiction should always supplement census data when it is known to be unrepresentative, and when compliance with the Voting Rights Act is at issue, this is an “overarching duty.” In [Senate of State of Cal. v. Mosbacher](#), 968 F.2d 974, 979 (9th Cir. 1992), the Ninth Circuit approvingly cited [Garza](#): “If the State knows that the census data is under-representative, it can, **and should**, utilize non-census data in addition to the official count in its redistricting process.” [emphasis supplied].

Mosbacher goes on to suggest that the “political subdivision” seeking to comply with the Voting Rights Act had an “overarching duty” to use the most accurate data, even if they were not available from the Census Bureau.

The Court distinguished attempts to use predictions that build in future trends, as Criteria 8 proposed to do. This requires thorough documentation and consistent application. Both the district court and the Ninth Circuit distinguished Supreme Court cases implying such a presumption as relating to attempts to build in consideration of future trends. In the case of predictions, the legislative body must “thoroughly document” its methodology and “apply [it] throughout .... in a consistent manner.” *Id.*, *distinguishing* [McNeil v. Springfield Park District](#), 851 F.2d 937, 947 (7th Cir.1988), cert. denied, 490 U.S. 1031 (1989); [Graves v. Barnes](#), 446 F. Supp. 560, 568 (W.D.Texas 1977), aff’d sub nom. [Briscoe v. Escalante](#), 435 U.S. 901 (1978). [Kirkpatrick v. Preisler](#), 394 U.S. 526, 535 (1969) adjustments based on future population as suspect because they are subject to subterfuge. Reference to existing housing units is not.

[Exon v. Tiemann](#), 279 F. Supp. 603 (D. Neb. 1967) said that a university’s population estimates for 1967 “have more validity than to use 1960 Census figures.” “better evidence of population in 1967 is available than the blind use of the 1960 Census.” See also [Wells and Harrington v. Rockefeller](#), 273 F. Supp. 984 , (S.D.N.Y. 1967) "It is not for this court to dictate to the Legislature the methods whereby substantial equality is to be attained. It may be suggested, however, that population statistics as of December 31, 1966, might well be capable of reasonable ascertainment from various sources to which the Legislature would have access. Such current figures should tend to reflect the radical population changes in the areas where such changes have occurred... Even if perfection cannot be achieved between now and 1973, improvement is worth the effort."

[Westwego Citizens for Better Government v. Westwego](#), 906 F.2d 1042, 1045–46 (5th Cir. 1990).held that non-census data should be used where the information “required was unavailable because of the limited nature of the compilations and manipulations performed by the census.”

## References to Caselaw and Record

The Supreme Court implied criticism of using census numbers in deferring to adjustments made by the district court. [Connor v. Finch](#), 431 U.S. 407, 416 & n.13 (1977). “The census is itself at best an approximate estimate of a State’s population at a frozen moment in time. Because it is taken by census tract rather than along supervisory district or voting precinct lines, relevant population figures for these political districts have to be extrapolated. That process is complicated by the recognition that major shifts in population and in voting precinct lines have occurred since the 1970 census, and by the fact that proportionally more Negroes than whites are ineligible to vote because of age.”

*See also* [Gaffney v. Cummings](#), 412 U.S. 735, 745 (1973) (census inherently less than absolutely accurate) “The United States census is more of an event than a process. It measures population at only a single instant in time. District populations are constantly changing, often at different rates in either direction, up or down. Substantial differentials in population growth rates are striking and well-known phenomena.”

The Supreme Court affirmed the use of a ratio based on the growth in registered voters to update population for purposes of districting in [Gong v. Kirk](#), 278 F.Supp. 133 (S.D. Fla.), *aff’d*, 389 U.S. 574 (1968)

[Valdespino v. Alamo Heights Independent School Dist.](#), 168 F.3d 848, 855 (5<sup>th</sup> Cir. 1999) found that “the housing stock methodology can be appropriate for calculating population changes in small areas”

## References to Record

- [2] “Idiots in Sacramento” e.g., Video, Jan. 8, 2019, 39:10, [42:40](#); [45:34](#); Video, Feb. 5, 2019, [52:20](#) (“twisted by Mr. Rafferty”); Video, Feb. 14, 2019 [1:13:14](#).
- [2a] Written Comments, Beverly Kumar, Feb. 14, 2019. Xinchuan Huang also left without speaking.
- [3] Puzzle piece: Video, Feb. 14, 2019, [1:19:45](#).
- [4] Tentacle: Audio, Feb. 14, 2019, 25:29 (Greg Medici).
- [5] Gerrymandered: Written Comments, Marilyn Lucy, Jan. 24, 2019 (should not deliberately put incumbent in Asian trustee area); Beverly Kumar, Feb. 14, 2019 (DV needs seat at table); Video, Feb. 21, 2019, [39:29](#); 43:12 (prefers 101); [47:10](#) (three-school requirement unnatural); [57:10](#) (need open area for Dougherty Valley parents)
- [6] Video, Feb. 14, 2019, [39:15](#), [45:00](#). She also concludes that the Area 3 incumbent will lose to an Asian candidate. [40:10](#)
- [7] Need to elect DV trustee in 2020: Feb. 14, 2019, [1:14:45](#)
- [8] Intent to keep board together: Feb. 14, 2019, [1:16:07](#);  
<https://www.danvillesanramon.com/news/2019/02/22/srvusd-board-selects-preferred-map-for-district-based-elections>
- [9] No coordination. Video, Feb 5, 2019, 58:17; 56:00 (“they can’t dictate to us”)