



## **MEMORANDUM**

**TO: Redistricting Advisory Commission**

**FROM: Zoey Merrill, Deputy County Counsel**

**DATE: October 13, 2021 RAC Meeting**

**SUBJECT: Federal Voting Rights Act, Section 2**

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Following the federal 2020 census, the County is required to adopt boundaries for all supervisorial districts that are substantially equal in population *and* comply with the United States Constitution, the California Constitution, and the federal Voting Rights Act of 1965. (*Elections Code Section 21500 (a) and (b)*)

Section 2 of the Voting Rights Act of 1965 prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified in the Act. The section's prohibition against discrimination in voting applies to any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of race, color, or membership in a language minority group.

In terms of redistricting, Section 2 prohibits the dilution of minority voting power in the drawing of district lines.

To ensure that the County complies with Section 2 in drawing the new district boundary lines based on the 2020 census data, the Office of the County Counsel had a study done of racially polarized voting history in San Joaquin County elections. The Office also obtained a thorough demographic analysis of the 2020 census data, which is consistent with the analysis done by Redistricting Partners and County GIS staff.

The 2020 census data shows that like in 2010, Districts 2, 3, 4, and 5 do not have a minority group that is sufficiently large and geographically compact to constitute a majority of the eligible voters and, therefore, do not create a risk that drawing new boundaries will result in a Section 2 violation. However, the 2020 Census data shows that District 1 has a current Latino Citizen Voting Age Population of 47.7%. Accordingly, District 1 is the only district in which a single minority group is nearly or actually the majority of eligible voters. Additionally, District 1 is short of the ideal population of 155,462 by at least 5.86% and perhaps as much as 7% or more. There are many redistricting scenarios in which population would need to be added or

subtracted from District 1 to balance the population among all Supervisorial Districts. Based on the conclusions discussed below, that balance will need to be done in compliance with Section 2.

To ensure compliance with Section 2, a jurisdiction may be required to create a particular district configuration where the district's population meets the following preconditions:

1. The racial or language minority group "sufficiently large and geographically compact to constitute a majority in a single-member district ";
2. The minority group is "politically cohesive" (meaning its members tend to vote similarly);
3. The "majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate;" and
4. Assuming the first three criteria are met, the "totality of circumstances" suggests that failing to create the district would give minority voters less opportunity than other voters to elect candidates of their choice.

*Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986) ("*Gingles*"); *Bartlett v. Strickland*, 556 U.S. 1, 11-12 (2009).

These preconditions are known as the Gingles test. Under this test, compliance with Section 2 is almost certainly a concern regarding redistricting effects on Latino voters in Supervisorial District 1, but not in any of the other Supervisorial Districts.

However, focusing redistricting efforts on the racial percentages in Supervisorial District 1 could constitute a violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment. The Equal Protection Clause prohibits a redistricting authority, without sufficient justification, from "separat[ing] its citizens into different voting districts on the basis of race." *Miller v. Johnson*, 515 U. S. 900, 911 (1995); *Alabama Legislative Black Caucus v. Alabama*, 575 U. S. 254, 263 (2015). Where a challenger succeeds in establishing that racial considerations predominated in the creation of electoral districts, strict scrutiny applies and the burden shifts to the redistricting authority to "demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." *Miller, supra*, at 920; *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788 (2017). Compliance with the federal Voting Rights Act has been assumed by the Supreme Court to constitute a "compelling interest." *Id.*, at 801. Essentially, a district in which racial concerns predominated in its design will survive a challenge so long as the jurisdiction can show a "strong basis in evidence" that the race-based choices were made to achieve compliance with Section 2. *Alabama, supra*, 575 U.S., at 279; see also, *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct., at 788

In balancing these complex legal requirements, we have come to the following conclusions regarding drawing the Supervisorial District 1 boundaries:

1. The Latino eligible voter percentage in District 1 should not be reduced because the district is an effective “opportunity” district, which means a district where some majority voters cross over to vote with racial minorities to elect the minority-preferred candidate.
2. While the Latino eligible voter percentage in District 1 does not need to be significantly increased because most of the time there is not polarization in the voting patterns that defeat Latino preferences, the percentage of the Latino eligible voter should be increased to a clear majority status or a little more to protect the effectiveness of District 1 given the following:
  - a. The lower voter turnout among Latinos,
  - b. The mostly tepid support of non-Latino voters for the Latino preferred candidate, and
  - c. The evidence that when there was a difference in electoral preference between the Latino and non-Latino groups, the bloc voting of the majority of voters—the non-Latino group—defeated the preferred candidate or position of the Latino voters.
3. Increasing the Latino eligible voter percentage in District 1 must be done with a goal of uniting neighborhoods and communities of interest.

Counsel will be available during the map drawing process to provide ongoing guidance and advice to the RAC regarding these conclusions to avoid any inappropriate dilution of minority voting power in District 1. Additionally, Redistricting Partners has been provided this information and will utilize it in elevating maps submitted by the public and in drawing maps provided to the RAC for its consideration.