

The California Voting Rights Act: Recent Legislation & Litigation Outcomes

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Agenda

- Overview of the California Voting Rights Act (“CVRA”)
- California cities’ statistics
- Recent Legislation
- District-Drawing Process under Elections Code Section 10010
- Process for Charter Cities – May Vary Depending on Charter
- Practice Pointers
- Recent Litigation

Overview of the CVRA

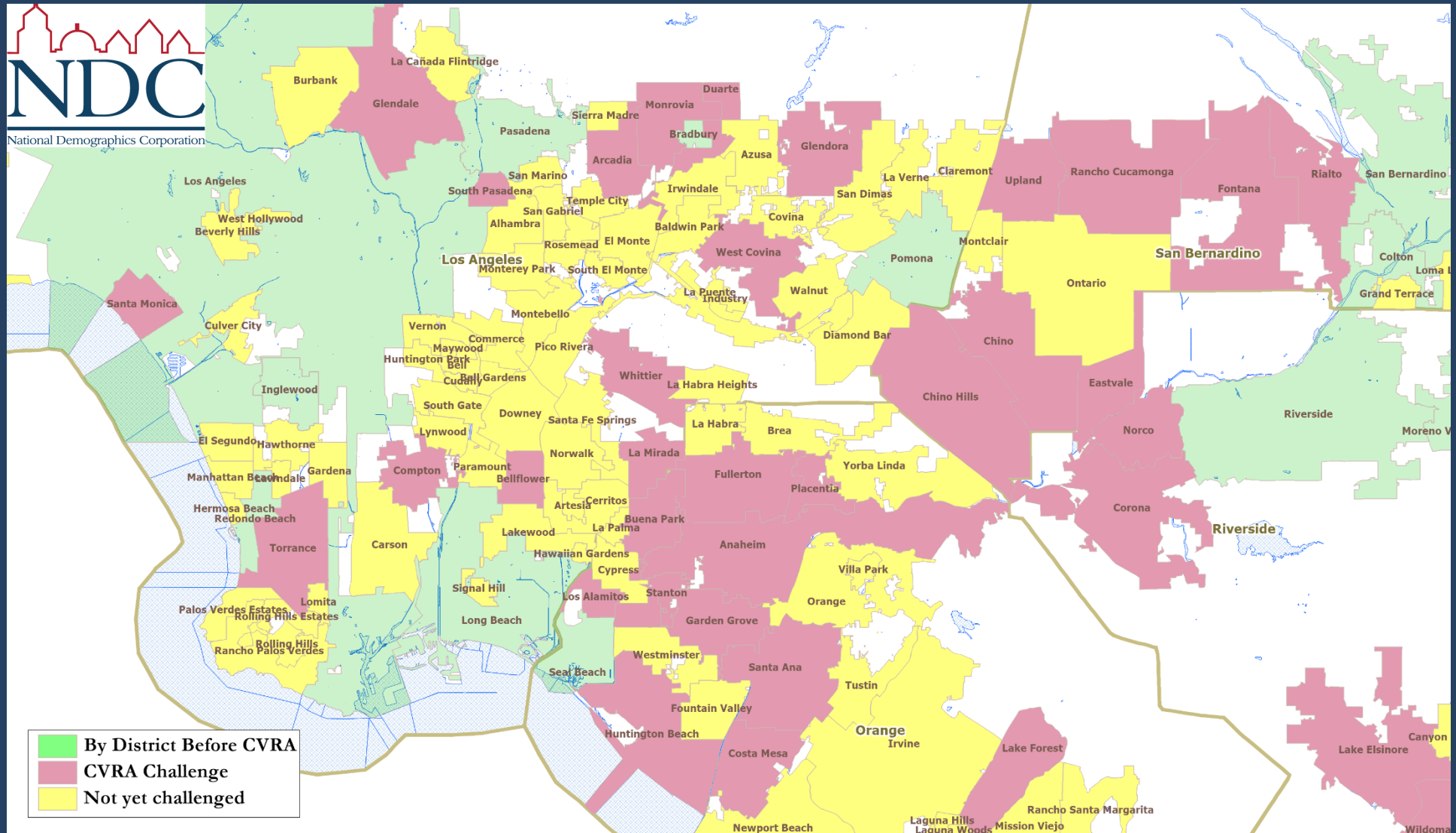
- Applies to at-large election systems (broadly defined)
- Provides a private right of action to members of a protected class
- Violation occurs when there is “racially polarized voting” that “impairs the ability of a protected class to elect candidates of its choice or its ability to influence outcome of an election.”

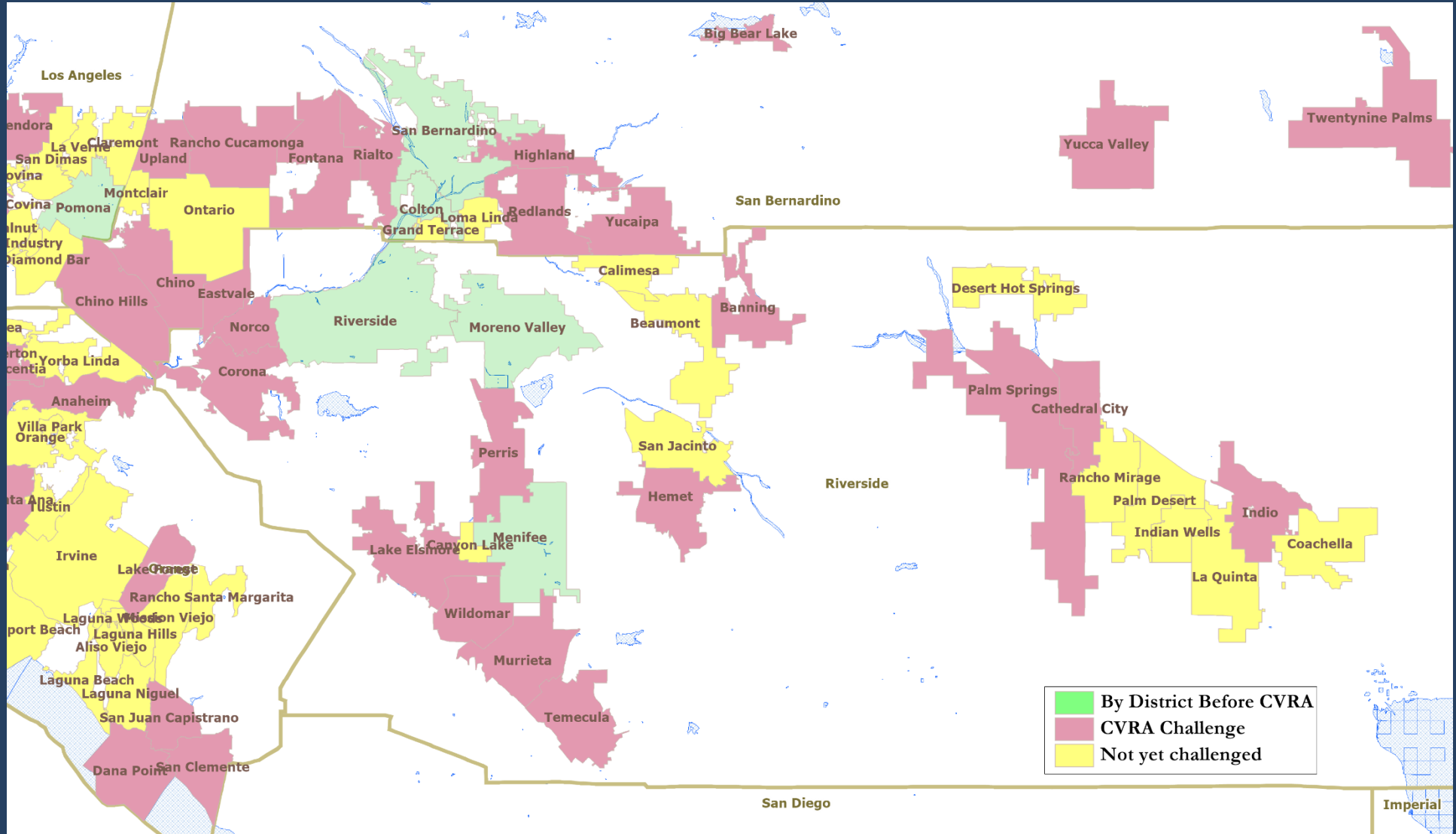
Overview of CVRA (CVRA v. FVRA)

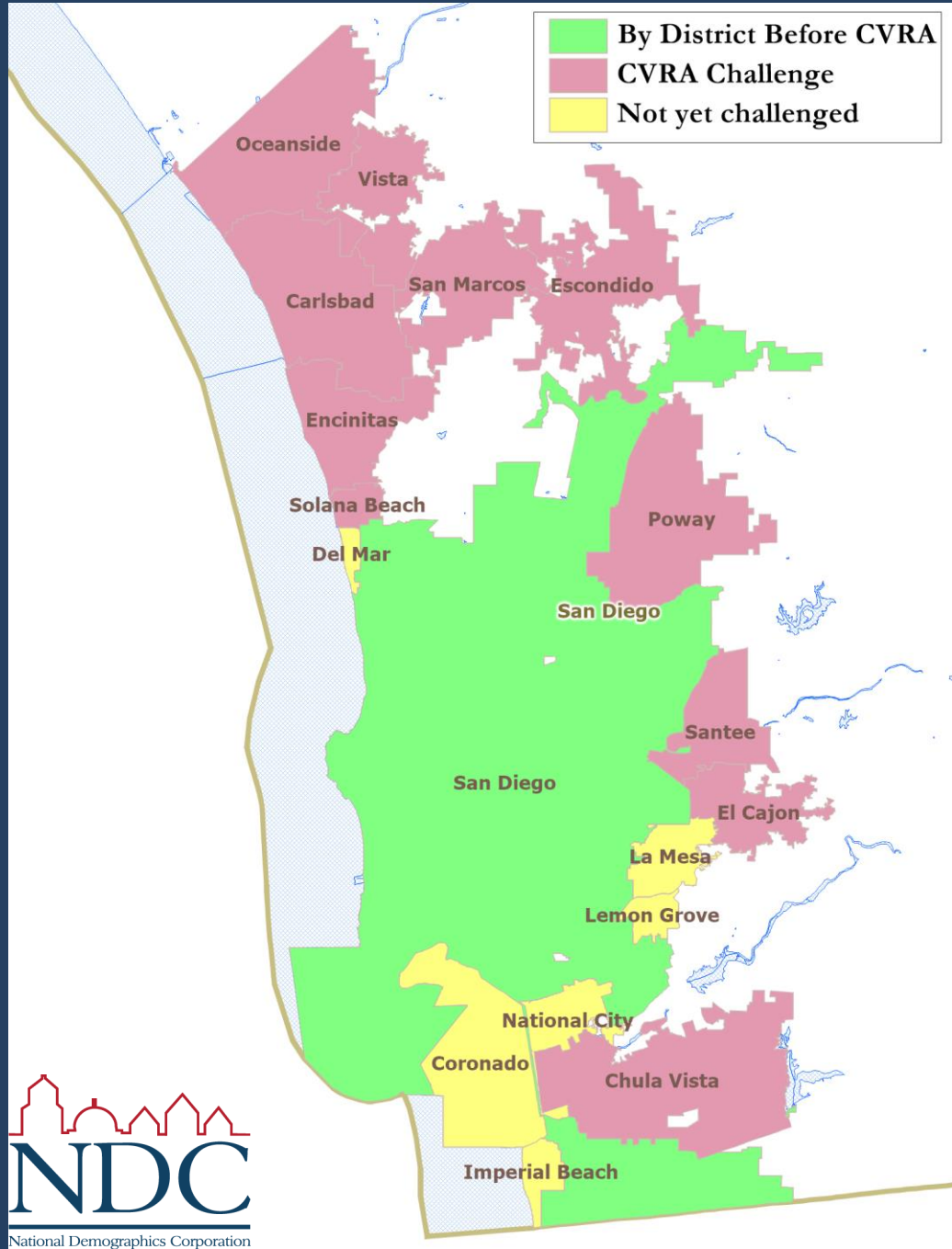
- Modeled after the federal Voting Rights Act of 1965 (“FVRA”)
- Protected class does not have to be geographically compact or concentrate
- Protected class does not have to form a majority of a district
- Proof of intent to discriminate is not required
- Eliminates “totality of circumstances” test

Which Cities Challenged?

Pop. Range	# of Cities	By District Before CVRA	Changed to Districts	Current Challenge	Total CVRA 'Hits'	Pct
< 10,000	109	1	1	2	3	3%
10 - 25,000	109	3	16	1	17	16%
25 - 50,000	93	1	20	3	23	25%
50 - 100,000	104	6	36	6	42	40%
100 - 150,000	32	4	11	2	13	41%
150 - 250,000	21	3	11	3	14	67%
250,000+	13	9	2	1	3	23%
Total	481	27	97	18	115	24%







Excerpts from Demand Letter

- “It is our belief that Rancho Cucamonga’s at-large system dilutes the ability of minority residents – particularly Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of Rancho Cucamonga’s council elections.”
- “Our research shows that in at least the last 20 years, only one Latino has ever been elected to the Rancho Cucamonga City Council – many have run but have been unsuccessful”
- “Give the historical lack of Latino representation on the city council in the context of racially polarized elections, we again urge Rancho Cucamonga to voluntarily change its at-large system of electing council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief”

Government Code Section 34886

- Previously allowed cities with populations less than 100,000 to adopt district elections by ordinance
- Recent amendments eliminated the population cutoff
- Now any city, regardless of population, can transition to district elections by ordinance
 - Potential exception: charter cities

Elections Code Section 10010

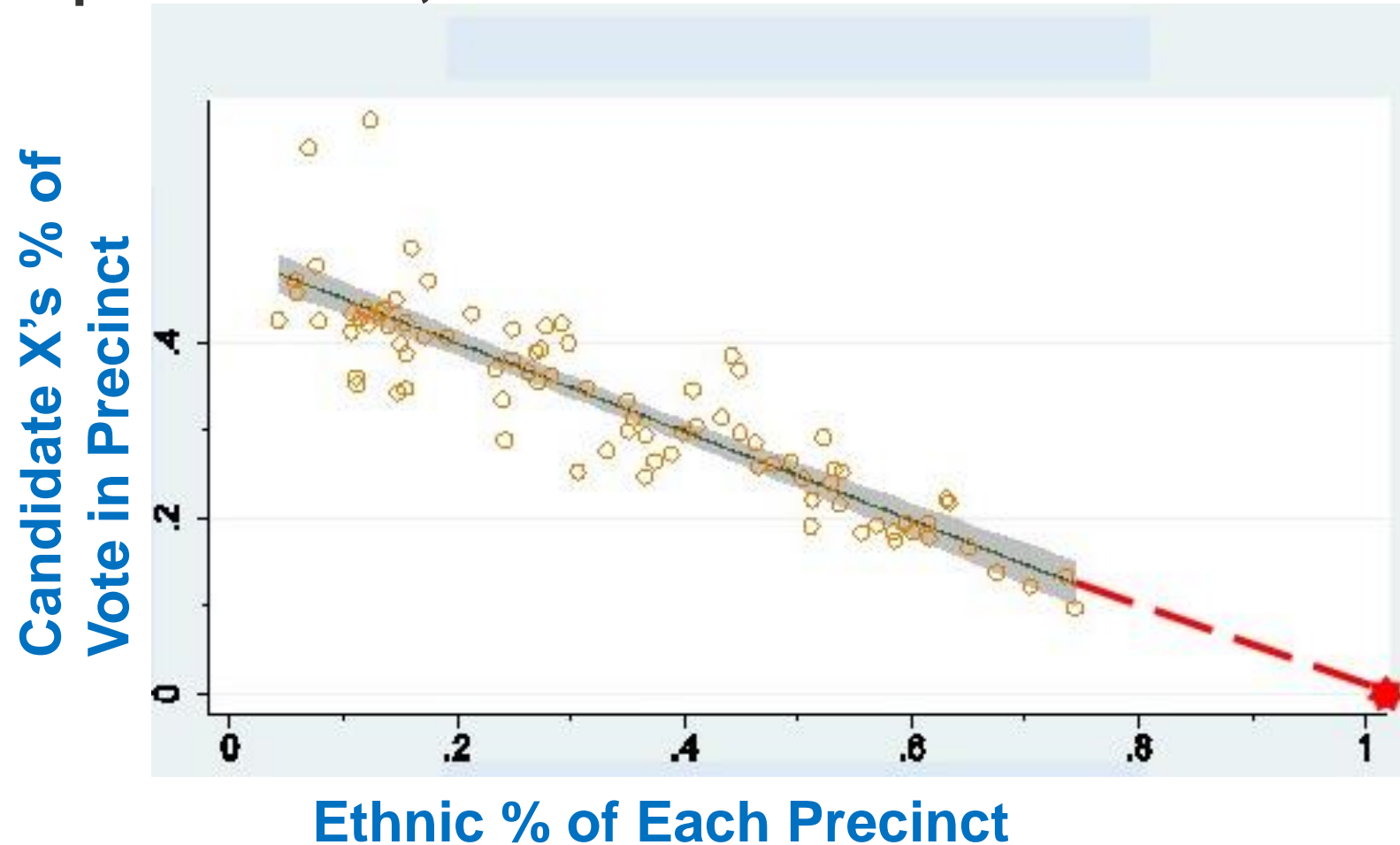
- **“Safe-harbor” provision**
- **Once prospective plaintiff sends a demand letter, that puts a 45-day stay on ability to bring an action.**
- **Within 45 days, if city adopts a resolution establishing intent to transition to districts, that puts an additional 90-day stay.**

Practice Pointers

- Once the city receives a letter, place the matter on closed session to inform council and discuss potential actions;
- Retrieve election results;
- Engage a demographer to determine whether there are any defenses;
- Determine in the 45 days whether to transition to district elections or defend a potential action; and
- If “evidence” used in the demand letter is inaccurate, consider sending back a letter with counter-evidence.

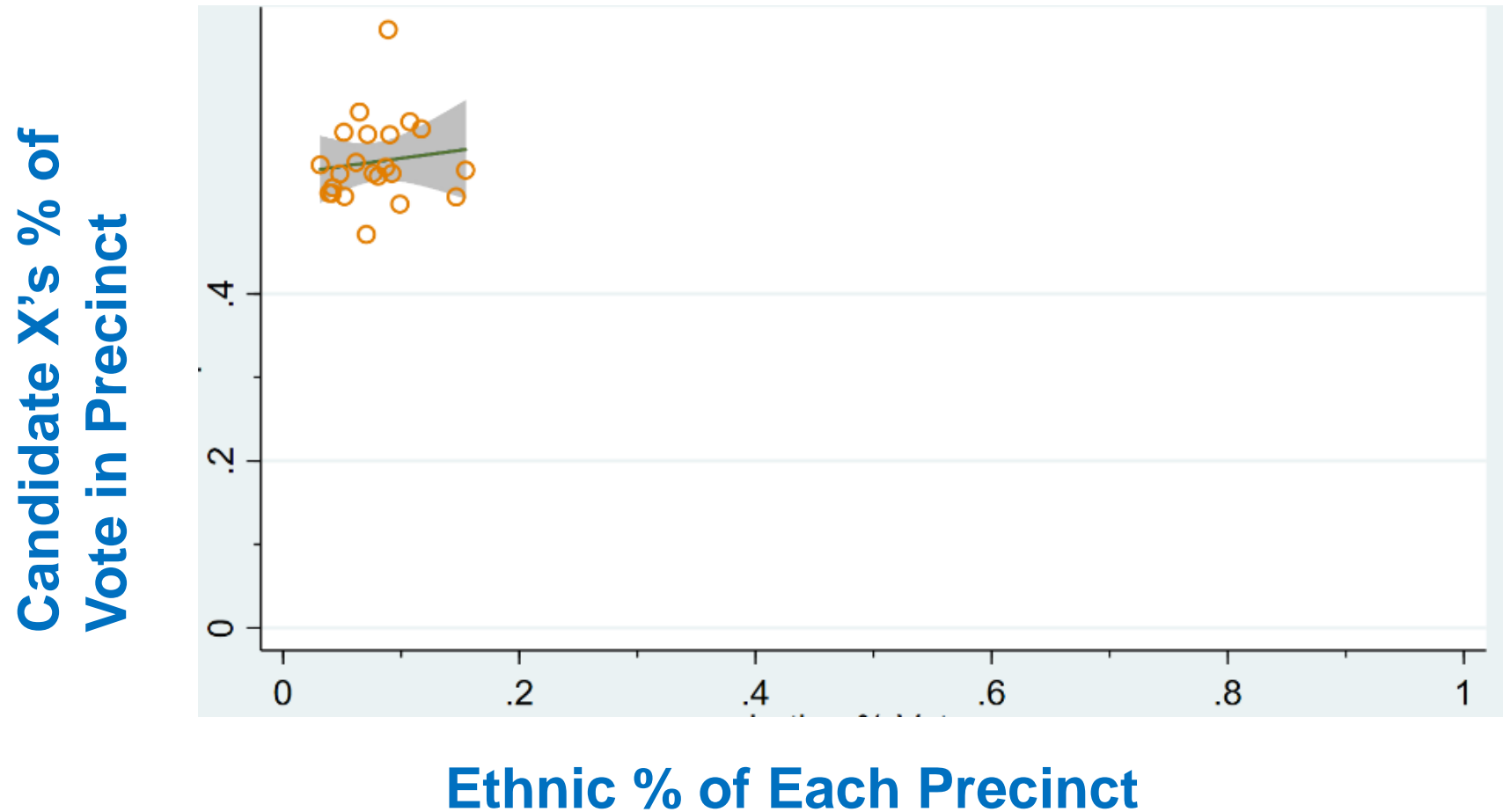
What is Polarization?

Example of a solid, clear statistical dataset:



What is Polarization?

What we often get in the real world:



District Drawing Process

- At least two (2) public hearings prior to drawing district maps → solicit public input Re: composition of districts
- Draw district maps and propose sequencing (to maintain staggered terms)
- “Publish” district maps at least 7 days before consideration at public hearing
- Hold 3rd public hearing to receive input regarding draft maps

District Drawing Process (cont'd)

- “Publish” any revised maps/any new maps at least 7 days before adoption
- Hold 4th public hearing to receive input
- Hold 5th public hearing to adopt ordinance establishing district-based elections
 - May be held on the same day as 4th public hearing
 - Ordinance v. Emergency Ordinance
- If elections are consolidated, demographer to send boundary lines to Registrar to implement.

District-Drawing Criteria

■ Federal Laws

- Equal population
- Federal Voting Rights Act
- No racial gerrymandering

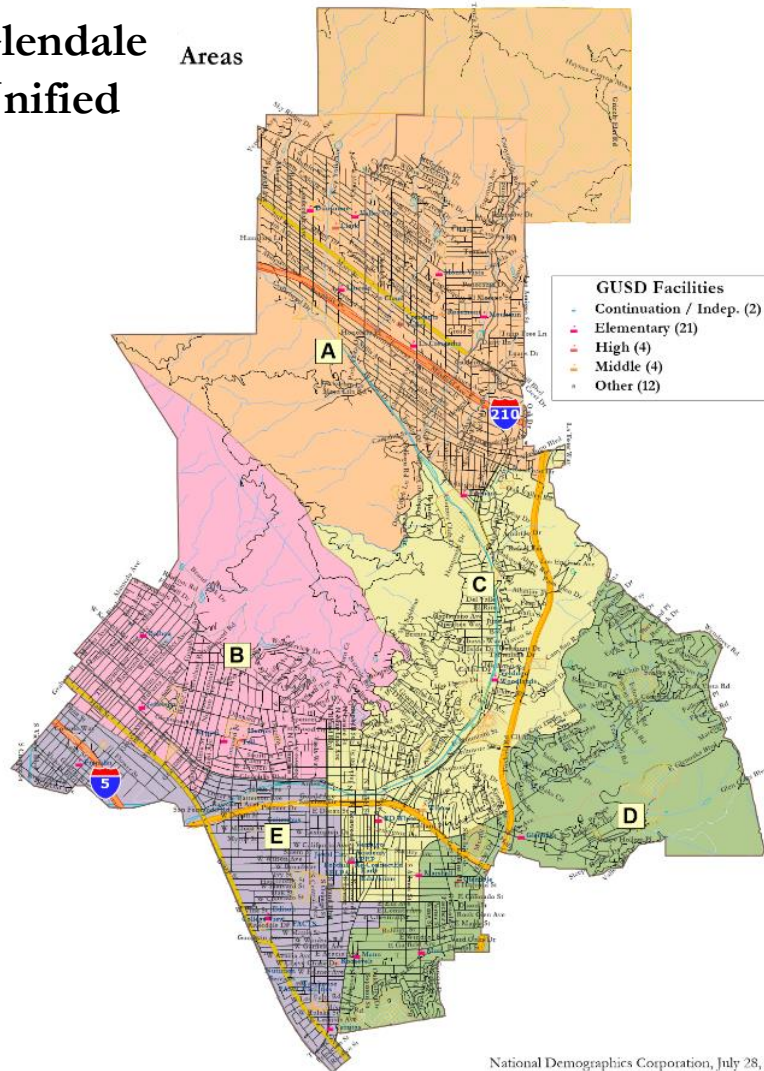
■ Respect for past voter choices and continuity of government

■ Traditional Redistricting Principles (Elec. Code §§ 21601, 21620)

- Communities of interest
- Compact
- Contiguous
- Visible (natural & man-made) boundaries

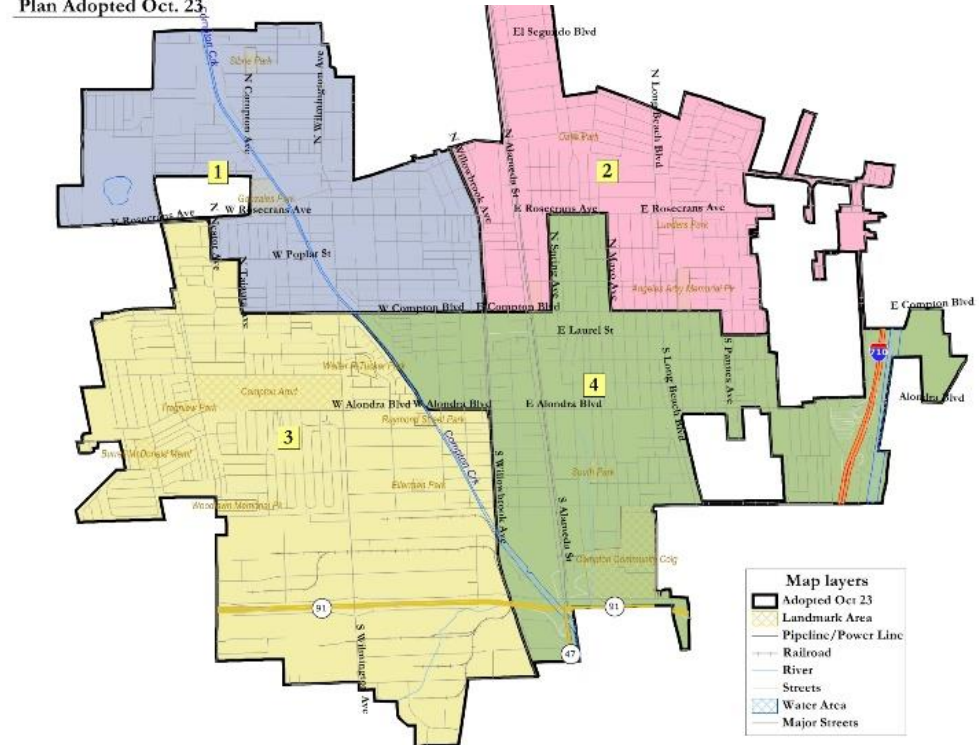
Sample Compact Maps

Glendale Unified



City of Compton 2012 Redistricting Plan Adopted Oct. 23

Compton

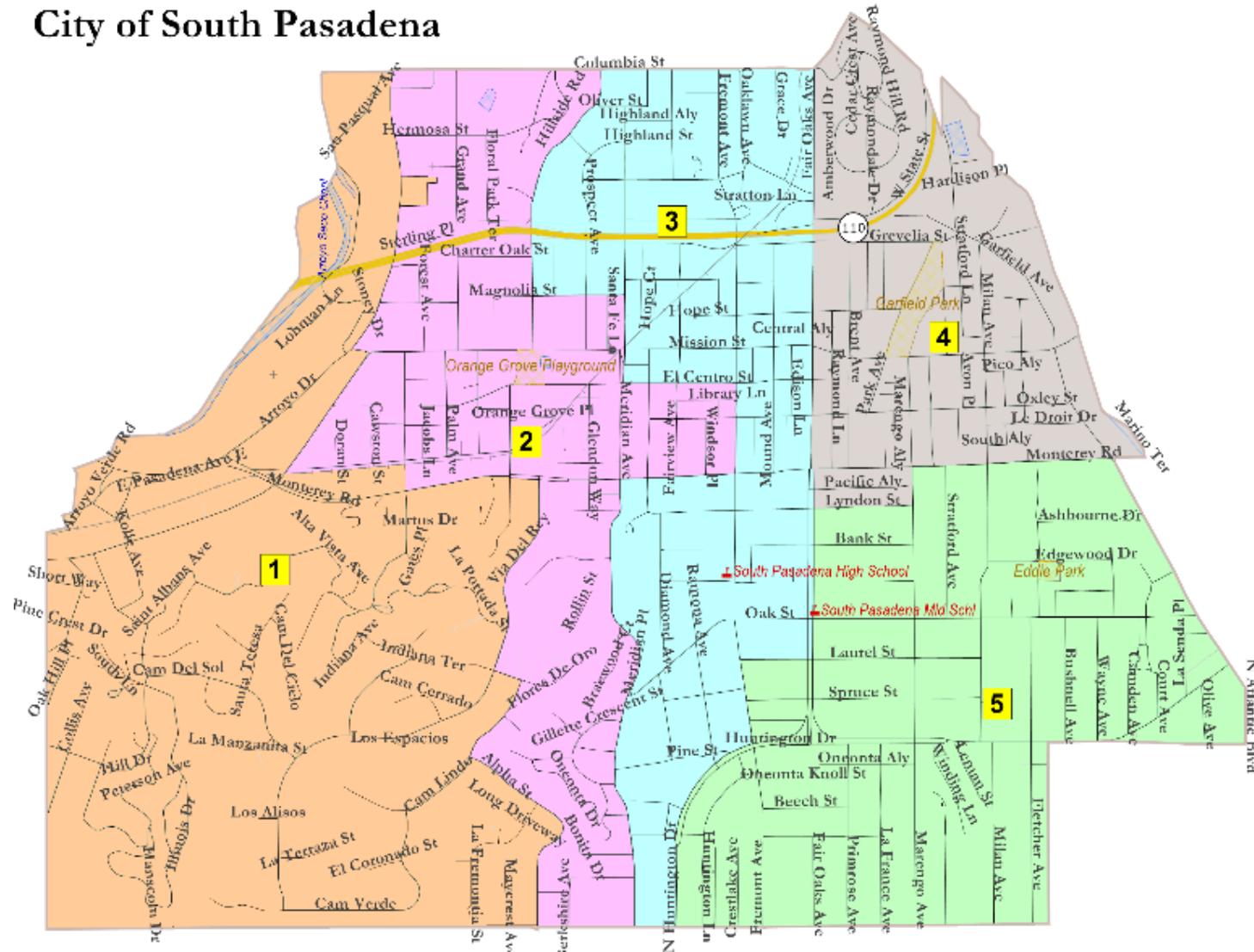


Sample Nontraditional Map I

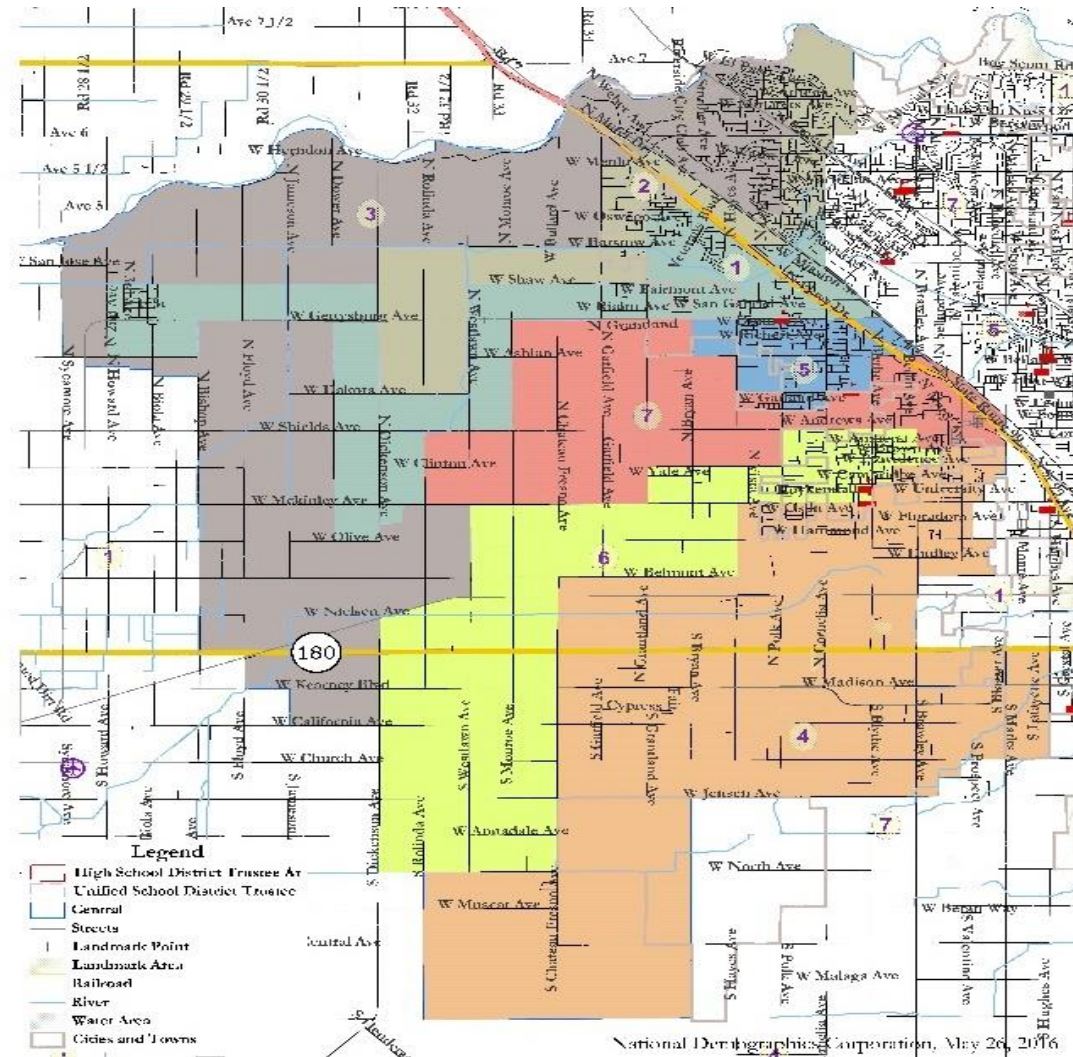


Sample Nontraditional Map II

City of South Pasadena



Sample Nontraditional Map III



Central Unified

Practice Pointers

- Depending on public interest – may be beneficial to hold additional community meetings to solicit public input
- If there is a large minority, have interpreters available at public hearings and community meetings
- Translate material into other languages
- Encourage public to submit proposed maps – depending on city's budget

Charter Cities

- Charter provisions may provide process for charter amendment
- Question regarding the extent of application of Elections Code Section 10010 to charter cities
- Holding public hearings before OR after placing charter amendment on ballot
- Timing may be an issue
- Some charter cities have begun the process of transitioning without amending their charter (Ex: Torrance and Arcadia).

Issues to Keep in Mind

- **Notice and Publication**
 - “Publication” in newspaper vs. other means
 - Translation of notices
 - Potential solution: notice listing locations where maps are available
- **At-large Mayor Position**
 - CVRA definition of at-large elections is broad
 - Gov. Code §§ 34886, 34871
- **Subject to Referendum?**

Recent Litigation

- **Southwest Voter Registration Education Project v. City of Rancho Cucamonga (San Bernardino Superior Court Case No. CIVDS1603632)**
 - Settled, except for attorneys' fees
 - Case should have ended once issue placed on ballot
 - Broadly-interpreted remedies
- **Pico Neighborhood Association, et al. v. City of Santa Monica (Los Angeles Superior Court Case No. BC616804)**
 - Trial is set for July 30, 2018; pending MSJ
 - Minority population is roughly 13%

Recent Litigation (cont'd)

- **Higginson v. Xavier Becerra, et al. (S.D. Cal. Case no. 3:17-cv-02032-WQH-JLB; 9th Cir.) (*City of Poway*)**
 - Case dismissed in district court for lack of standing and subject matter jurisdiction
 - Case was appealed to Ninth Circuit—oral argument set for June 7, 2018
- **Yumori-Kaku, et al. v. City of Santa Clara (Santa Clara Superior Court Case No. 17CV319862)**
 - Case alleges racially polarized voting with respect to Asian-American voters (30.5% of CVAP).
 - City's proposed solution → 2 at-large districts & at-large mayor
 - Trial commenced on April 23 on the liability phase

Summary

- Pending CVRA may form case precedent in the future
- Until then, cities remain susceptible to receiving CVRA demand letter
- First step: determine viability of claim and whether the city will transition to district or defend a potential action
- Second Step: if city will transition, create timeline to insure compliance with Elections Code Section 10010
- Initiate the process set forth in Elections Code Section 10010