

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Scott Rafferty SN 224389 1913 Whitecliff Ct Walnut Creek CA 94596		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> <div style="font-weight: bold;">MAR 21 2018</div> <small>STEPHEN H. NASH CLERK OF THE COURT SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF CONTRA COSTA</small> By <u>D. WAGNER</u> , Deputy Clerk	
TELEPHONE NO.: 202-380-5525 ATTORNEY FOR (Name): Plaintiffs Linda Lozito and Anaya Young		FAX NO.:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF			
STREET ADDRESS: 725 Court St			
MAILING ADDRESS:			
CITY AND ZIP CODE: Martinez CA 94553			
BRANCH NAME: Wakefield Taylor			
CASE NAME:			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)		<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
<input type="checkbox"/> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold;">C18-00570</div>	
JUDGE:		DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input checked="" type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	--

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 3/21/2018

Scott Rafferty
 (TYPE OR PRINT NAME)

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUPERIOR COURT - MARTINEZ
COUNTY OF CONTRA COSTA
MARTINEZ, CA, 94553

RUIZ-LOZITO VS WEST CONTRA COSTA UNIFIED SCHOOL

NOTICE OF CASE MANAGEMENT CONFERENCE

CIVMSC18-00570

1. NOTICE: THE CASE MANAGEMENT CONFERENCE HAS BEEN SCHEDULED FOR:

DATE: 08/28/18 DEPT: 12 TIME: 8:30

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, A BLANK CASE MANAGEMENT CONFERENCE QUESTIONNAIRE, AND A BLANK STIPULATION FORM ARE TO BE SERVED ON OPPOSING PARTIES. ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT OR THEIR ATTORNEY OF RECORD MUST APPEAR.

2. You may stipulate to an earlier Case Management Conference. If all parties agree to an early Case Management Conference, please contact the Court Clerk's Office at (925)608-1000 for Unlimited Civil and Limited Civil cases for assignment of an earlier date.

3. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference and to discuss the suitability of this case for the EASE Program, private mediation, binding or non-binding arbitration, and/or use of a Special Master.

4. At any Case Management Conference the court may make pretrial orders including the following:

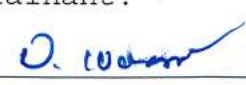
- a. an order establishing a discovery schedule
- b. an order referring the case to arbitration
- c. an order transferring the case to limited jurisdiction
- d. an order dismissing fictitious defendants
- e. an order scheduling exchange of expert witness information
- f. an order setting subsequent conference and the trial date
- g. an order consolidating cases
- h. an order severing trial of cross-complaints or bifurcating issues
- i. an order determining when demurrers and motions will be filed

SANCTIONS

If you do not file the Case Management Conference Questionnaire or attend the Case Management Conference or participate effectively in the Conference, the court may impose sanctions (including dismissal of the case and payment of money).

Clerk of the Superior Court of Contra Costa County
I declare under penalty of perjury that I am not a party to this action, and that I delivered or mailed a copy of this notice to the person representing the plaintiff/cross-complainant.

Dated: 03/22/18


D. WAGNER
Deputy Clerk of the Court

1 Scott Rafferty, Esq (SBN 224389)
2 1913 Whitecliff Court
3 Walnut Creek CA 94596
4 202-380-5525
5 rafferty@gmail.com

6 Attorney for Plaintiffs

7 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

8 COUNTY OF CONTRA COSTA

9 LINDA RUIZ-LOZITO
10 AYANA YOUNG
11 BAY AREA VOTING RIGHTS INITIATIVE,

12 Plaintiffs,

13 vs.

14 WEST CONTRA COSTA UNIFIED
15 SCHOOL DISTRICT,

16 Defendant

Case No.: [Number]

COMPLAINT FOR VIOLATION OF THE
CALIFORNIA VOTING RIGHTS ACT
AND RELATED FEDERAL STATUTES

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 12 FOR ALL
PURPOSES.

18 COMPLAINT

19 COMES NOW Plaintiffs Linda Ruiz-Lozito, Ayana Young, and the Bay Area Voting
20 Rights Initiative, who complain and allege as follows:

21 NATURE OF THIS ACTION

22 1. Plaintiffs bring this action for declaratory and injunctive relief against the
23 West Contra Costa Unified School District (WCCUSD) for its violation of the California
24 Voting Rights Act of 2001 (hereinafter "CVRA"), Elections Code, Sections 14025, et seq.,
25 and in the alternative, for its violations of Section 2 of the Voting Rights Act, 52 U.S.C.
26 §10301, and of Section 2 of the Third Enforcement Act, 42 U.S.C. §§1983, 1985(3). By

27 COMPLAINT FOR VIOLATION OF THE CALIFORNIA VOTING RIGHTS ACT AND RELATED FEDERAL
28 STATUTES - 1

FILED
MAR 21 2018

STEPHEN H. NASH CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By D. WAGNER Deputy Clerk

1 electing its trustees at-large, WCCUSD dilutes the votes of Latino and African-
2 American citizens and neighborhoods, depriving them of influence in the outcome of
3 Board elections that equals the influence of other citizens and neighborhoods. At-large
4 voting also impairs the ability of Latinos as a class (or in coalition with black voters), to
5 elect candidates of their choice. Large geographic areas with minority communities are
6 chronically underrepresented.

7 2. Ultimately, this inequality of electoral influence victimizes voters and
8 students of all races and in most areas of West County, other than El Cerrito. Because
9 the Board is neither racially nor geographically representative of the District, its current
10 trustees cannot meaningfully engage with the full range of their constituents.
11 Furthermore, the high cost of running at-large means that many successful candidates
12 rely heavily on campaign contributions from highly organized groups. Board
13 deliberations often reflect the dependence of some trustees on these special interests.
14 This polarizes debate, prolongs meetings, and makes it difficult for the Board to
15 compromise or even to decide issues collectively. Resources are disproportionately
16 allocated to areas with high voter turnout, which has racially discriminatory effects,
17 leaving many high-minority schools with facilities that are inferior, if not unsafe.
18 Parents in these underrepresented communities disrespect the Board and lack
19 confidence in district-operated schools, some fleeing to charter schools. This
20 neighborhood disengagement compounds the loss of academic opportunity at
21 WCCUSD's most challenged schools. As a result, Latino and black students have
22 persistently lower indicators of academic performance, and persistently higher rates of
23 suspensions.

24 3. The social damage caused WCCUSD's unlawful governance structure is
25 not limited to racial discrimination in public education. Poorly performing,
26 undermaintained schools depress property values in Latino and African-American
27 neighborhoods, reinforcing racial segregation in housing and depressing the tax rolls.
28 Latino electors are discouraged by decades of inability to influence their school board –
the public institution they care most deeply about. Among Latino citizens of voting
age, registration levels are abnormally low, which makes it more difficult for WCCUSD
to win parcel tax elections that could boost teacher pay. This political demoralization

1 also reduces the influence of West County's Latino community in municipal, county,
2 and state elections.

3 4. Plaintiffs attempted to avoid litigation by petitioning the Board to comply
4 with CVRA, in accordance with the process established in AB 350 (2015). On January
5 20, 2018, plaintiffs served a petition, triggering an opportunity for the Board to create
6 trustee areas without litigation. 45 days elapsed without a resolution of intent to do so,
7 rendering this civil action timely.

8 5. Although the CVRA is intended to relax the requirements for challenging
9 at-large elections under the Section 2 of the Voting Rights Act, [52 U.S.C. §10301](#)
10 ("Federal Act"), this case also appears to satisfy the conditions for requiring single-
11 member districts under the Federal Act. The Federal Act prohibits at-large systems
12 only if it is possible to create one district with in which minorities are a majority. In
13 WCCUSD, it may be possible to create a trustee area with a Latino majority and another
14 with a black majority, even if the Board does not expand to seven trustees.

14 PARTIES

15 6. Linda Ruiz-Lozito is a Latina voter who resides in Richmond, California,
16 which is within WCCUSD. She is a member of a "language minority" within the
17 meaning of [52 U.S.C. §10310\(d\)\(3\)](#).

18 7. Ayana Young is a black voter who resides in Hercules and who ran for
19 trustee in 2014. By virtue of her race, she is a member of a group protected by Section 1
20 of the [Fifteenth Amendment](#) and Title I of the Civil Rights Act of 1964, [52 U.S.C.](#)
21 [§10101\(a\)\(1\)](#) (Title I).

22 8. Bay Area Voting Rights Initiative ("BAVRI") is a California unincor-
23 porated association of which each of the other parties is a member. BAVRI has
24 additional members, including persons protected by the Enforcement Act, the Fifteenth
25 Amendment, and Title I, and voters who belong to groups protected by Section 2 of the
26 Federal Act and by the CVRA. BAVRI is committed to representing the interests of the
27 groups protected by CVRA and Section 2.

28 9. Defendant WCCUSD is a unified school district within the State of
California, as defined in Education Code, [Section 83](#), and a political subdivision within

1 the meaning of [52 U.S.C. §10310\(c\)\(2\)](#). WCCUSD is governed by a five-member Board
2 of trustees elected at-large, and is subject to the CVRA, Elections Code, [Section 14026\(c\)](#);
3 and [52 U.S.C. §10301, et seq.](#)

4 JURISDICTION

5 10. Elections Code, Section [14032](#) provides that any voter who is a member of
6 a protected class and who resides in a political subdivision (as those terms are defined
7 in [52 U.S.C. §10310\(c\)](#)) where a violation thereof is alleged may file an action pursuant
8 to the CVRA.

9 11. Courts have also recognized civil rights organizations as plaintiffs in
10 CVRA actions.

11 12. Plaintiffs reserve the right to seek leave to amend this complaint to state a
12 claim under Section 2 of the Federal Voting Rights Act, [52 U.S.C. §10301](#). This Court has
13 a concurrent duty to enforce federal law, including Section 2, and additional federal
14 rights, such as those set forth in 42 U.S.C. §§[1983](#), [1985\(3\)](#), [1988](#), according to its regular
15 modes of procedure. The Federal Act does not exclude operation of the CVRA, or
16 invalidate any of its provisions. 42 U.S.C. [§2000h-4](#). In the case of counties, munici-
17 palities and special districts, the Code expressly requires that districts comply with the
18 Federal Voting Rights Act. Elections Code, Sections [21601](#), [21620](#), [21500](#), [22000](#);
19 Government Code, Section [34884](#).

20 13. Courts have recognized that aggrieved organizations and individuals
21 have a private right of action to enforce Section 2. BAVRI and LULAC file on behalf of
22 their members who belong to a protected class and reside within WCCUSD and as
23 entities whose voter registration and education activities are impeded by the
24 discriminatory practices detailed in this complaint.

25 FACTS

26 14. WCCUSD is governed by five trustees, who are elected at-large to four-
27 year terms. These trustees are elected on a staggered basis at each statewide general
28 election. Three members are scheduled to be elected in November 2018; two will be
elected in 2020.

15. With approximately 30,596 students, WCCUSD is the 30th largest school district in California. Some of these districts have always had trustee areas, but at least nine have abandoned at-large elections since enactment of the CVRA. Only nine larger districts, two of which are in Contra Costa County, still elect trustees at large. WCCUSD is exactly the “unusually large election district” that Senate Report No. 97-417, 97th Cong., 2d Sess. (1982) cited (at 28) as an example of a circumstance that could establish a violation of Section 2.

DEMOGRAPHICS

16. WCCUSD includes five cities – Richmond, San Pablo, Hercules, El Cerrito, and Pinole – and eight unincorporated areas that the census recognizes as “places” – El Sobrante, Kensington, Tara Hills, North Richmond, East Richmond Heights, Rollingwood, Montalvin Manor, and Bayview. Richmond has approximately 44 percent of WCCUSD’s population. The city is neither compact nor homogeneous. San Pablo and North Richmond are enclaves, and annexations east of El Cerrito and El Sobrante are narrowly connected to the core of the city. Richmond’s eastern extensions, such as Briones, include some of the wealthiest census tracts in WCCUSD.

17. Due to the system of at-large election, low-minority areas have influence that exceeds that indicated by their share of their population. El Cerrito is 20% smaller than the most Latino community, San Pablo, but has more than twice the median household income (\$92,675 v. \$45,504) and casts twice as many votes for school board. 72% of the El Cerrito population are citizens of voting age, of which 90% register to vote, of which 86% cast ballots in 2016. By contrast, 57% of San Pablo's residents are citizens old enough to vote, of which 75% register, of which 67% turned out to vote. As a result, there were 18,271 votes for school board from El Cerrito in 2016, but only 9125 from San Pablo. This disproportionate influence is persistent. In 2006, El Cerrito cast 3.6 times as many votes per capita than San Pablo.

18. El Cerrito further magnifies its influence through organizations that play the leading role in endorsing candidates, which identifies those endorsees to entities that make campaign contributions or that engage in independent expenditures for or against candidates. These processes generally have not endorsed or promoted Latino

1 candidates, and may have promoted black candidates who are not the first choice of the
2 protected (minority) group to which they belong.

3 ELECTORAL HISTORY

4 19. Throughout the history of WCCUSD, and of its predecessor Richmond
5 Unified School District, few minorities have served as trustees. Until 2014, only two
6 Latinos had been elected or appointed in the previous 50 years, and each served only
7 one term. There have been only six black trustees. Five of them, all from Richmond,
8 served only one term.

9 20. In recent elections, districts with higher percentages of minority voters
10 have voted differently than those with lower percentages, which constitutes racially
11 polarized voting.

12 21. In the last two elections, every non-minority candidate won higher
13 percentages of the vote in low-minority precincts. Every black candidate performed
14 better in precincts with higher percentages of black voters. With one exception, every
15 Latino candidate performed better in high-Latino precincts. The sole Asian candidate
16 did best in precincts with higher numbers of Asians.

17 22. Minority vote dilution has allowed white voters and the areas in which
18 they are concentrated to dominate the Board. Three of the current at-large members are
19 white and from El Cerrito, whose residents have often constituted a majority of the
20 Board. Since 2000, there have been 90 trustee years-in-service. Over this period, more
21 than 60% of the trustees have resided in El Cerrito, which has only 10% of the
22 population. 30% have been from Richmond. All other communities combined, which
23 account for 45% of WCCUSD population, have elected only two trustees, each of whom
24 served only four years.

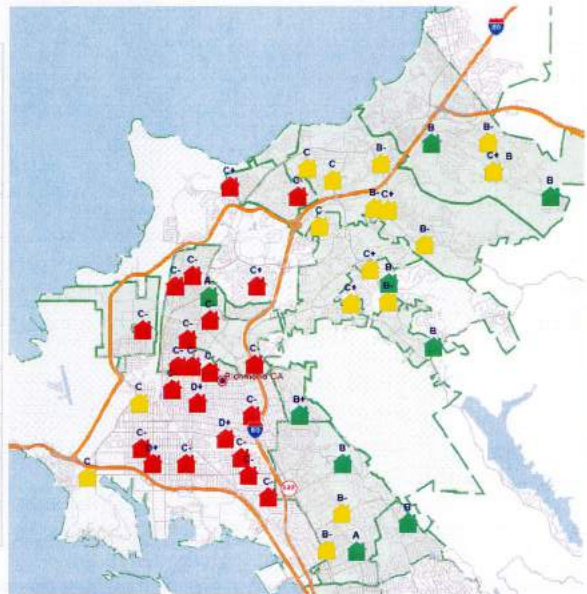
25 23. The underrepresented geographic areas have large minority populations.
26 San Pablo, which has the greatest concentration of Latinos (57%) is 11% of WCCUSD,
27 but has not been represented since 1984. Hercules is 13% of WCCUSD, is 47% Asian,
28 19% black, and 13% Latino, but has not elected a trustee since 1997. No resident of
Pinole (which is 8% of WCCUSD and majority- minority) has been elected in at least 50
years.

24. The practice of at-large elections interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.

CONSEQUENCES AND FACTORS THAT REINFORCE DISCRIMINATION

25. Schools in minority areas are perceived to be inferior. According to [Niche](#), which rates public schools nationally, the elementary and middle schools in urban Richmond get C- 's and D+ 's, and the two high schools are both C-. [El Cerrito High](#), which has a \$20 million football stadium, gets an "A" rating. All of WCCUSD's Title I schools in program improvement were either in urban Richmond or San Pablo, and all but two had been in PI status for over a decade .

City	Ratings Niche	Great School	schools in PI (2016)
Kensington	B	9	none
El Cerrito	B+	6	none
El Sobrante	B-	4	none
Hercules	B	6	none
Pinole	C+	4	none
Richmond (suburb)	C+	4	none
Richmond (urban)	C	3	85%
San Pablo	C-	2	63%



26. In January 2016, an independent forensic audit found that WCCUSD "may have expended bond funds inequitably across the district" and that there was a "high risk" that WCCUSD "would not be able to pass additional bond measures."

27. The forensic audit also found a "high risk" based on historic controls that a Board member was "possibly overriding and/or circumventing district controls," in ways that "could have resulted in inappropriate payment to vendors and contractors," and that "vendors may have been hired based on willingness to pay kickbacks."

28. During the debate on trustee elections on February 28, 2018, one trustee stated: white people are "just not sending their children to our schools." Video at COMPLAINT FOR VIOLATION OF THE CALIFORNIA VOTING RIGHTS ACT AND RELATED FEDERAL STATUTES - 7

1 5:19:32. Approximately 20% of the non-minority school age population of El Cerrito
2 attends private schools, which diminishes enthusiasm for bond and parcel tax measures
3 in this high-turnout jurisdiction. Many Latino and black parents have enrolled their
4 children (13% and 6%, respectively) in charter schools, which are 99% non-white. Both
5 outflows compromise the economics of the District, and reduce the community's
6 support for District schools and teachers.

7 29. The high cost of campaigning at-large in one of California's largest school
8 districts led to substantial fundraising, which became a barrier to most Latino and black
9 candidates who are authentic choices of their communities. Until 2014, no Latino
10 candidate and only two black candidates (one of whom lived in El Cerrito) had access
11 to substantial campaign contributions. That year marked the onset of large
12 independent expenditures, positive and negative. Construction interests supported one
13 white and one Asian candidate, while charter school advocates one white and one
14 Latino. Three of the four beneficiaries of independent expenditures were elected.

15 30. Organizations that seek to increase minority voter registration and
16 participation are impaired by the demoralization of minority voters who cannot
17 influence the elected body they most care about, and therefore do not bother to register
18 or to turn out to vote.

19 31. Low levels of voter participation among minorities further reduces
20 WCCUSD's capacity to pass revenue measures to increase teacher pay.

21 32. The climate of Board meetings and the capacity of the Board to
22 compromise and make complex decisions is compromised because they are unrepresentative of and geographically remote from most of their constituents. During public
23 comment, minority parents from unrepresented areas express anger and disrespect to
24 an unusual degree, which both aggravates the polarization of the Board and increases
25 the alienation of the minority community. By contrast, parents would be more likely to
26 know, directly or indirectly, and to respect a trustee elected in their own area, and be
27 more likely to engage productively in policy-making.

ABILITY TO CREATE TRUSTEE AREAS IN WHICH MINORITIES HAVE EFFECTIVE INFLUENCE

33. WCCUSD contains approximately 263,833 persons, of whom approximately 35 percent are Latino. However, because the Latino population includes disproportionate numbers of person who under 18, who have not yet qualified for citizenship, or who are demoralized by chronic dilution of the Latino vote, a smaller percentage of currently registered voters in WCCUSD are Latino. They are concentrated in San Pablo, central Richmond and Rollingwood. If one of five trustee areas includes these precincts, it will be majority Latino.

34. Blacks account for approximately 16 percent of the population. Blacks are concentrated in the remaining areas of Richmond northwest of Interstates 80 and 580. If one of the five trustee areas includes these precincts, the voters will be majority black.

35. Asians account for 20 percent of the population. There are Asian communities in Hercules, Pinole, and El Cerrito. Only two precincts have an Asian majority in total population; it is unlikely that any precinct has a majority of currently registered voters who are Asian. It is possible to create a trustee area around Hercules and Pinole in which about 20 percent of those eligible to vote would be Asian.

36. Plaintiffs intend to solicit community input in refining a map setting forth the districts proposed as part of the remedy for past discrimination. If an additional minority trustee area can be created, it may be appropriate to enlarge the Board to seven members, consistent with Education Code, [Section 1004](#).

37. The Contra Costa county registrar of voters has announced that he will not conduct elections for municipalities that seek to implement CVRA remedies unless they follow existing precinct lines. Precincts are administrative boundaries that do not reflect either traditional districting criteria (such as communities of interest) or the purposes of the CVRA. For this reason, districts determine precincts, not the other way around. Reprecincting is a ministerial act that the registrar's software can perform "on the fly" with minimal labor. However, unlike cities, school districts cannot use private contractors to conduct elections. Plaintiffs believe that any refusal by the county registrar to accommodate boundary changes submitted by July 5, 2018 would be

1 inconsistent with AB 1370 (2017), which amended Elections Code, Section 12262, to
2 require changes to be submitted 125 days prior to an election.

3 38. For the purposes of demonstration, and subject to such changes as citizens
4 may propose best to reflect communities of interest, plaintiffs submit Exhibit A as
5 evidence that it is possible to create at least one "majority minority" district, which is a
6 prerequisite under Section 2 (but not under the CVRA). Maintaining precinct
7 boundaries may compromise the effectiveness of the remedy in meeting the purposes of

8 Section 2 and the CVRA, so an elimination of the precinct constraint would likely
9 improve these results and better reflect communities of interest. The demonstration
10 map splits only one precinct (San Pablo 106) for purposes of maintaining contiguity.
11 Exhibit A illustrates a trustee area with majority Latino population and
12 another trustee area in which blacks are a probable majority of the population eligible to
13 vote. The Latino population of citizens of voting age has a likely majority in the first
14 district (and could likely be increased if precincts were split). If, as AB 350 envisioned,
15 Latino and black populations act in coalition, there are substantial minority majorities in
16 each district. The two minority districts divide Richmond and San Pablo. Each of the
17 other eleven cities or unincorporated places is contained wholly within a single district.
18 The population variance is within constitutional limits, and can be reduced if the
19 constraint of following precinct boundaries is eliminated.

18 ATTEMPTS TO MAINTAIN NON-COMPLIANCE

19 40. Since 2002, WCCUSD and all school districts have been subject to the
20 CVRA and have a duty under [Article IX, Section 14](#) of the California Constitution to
21 take whatever affirmative actions are necessary to bring themselves into compliance
22 with this and all other statutes applicable to their governance and activities, whether or
23 not there a demands or lawsuits to compel such compliance. Except as specified by
24 statute, the primary responsibility for statutory compliance is on the school board and
25 its trustees, and is not dependent upon the receipt of any instructions from the county
26 committee or the State Board of Education.

27 41. In 2008, a group of citizens petitioned for trustee areas, without making
28 explicit reference to the CVRA. Dr. Bruce Harter, then Superintendent, outlined a
"strategy" of opposition. Dr. Harter knew or should have known that racially polarized

1 voting likely existed, and that the CVRA required the transition to trustee areas. Yet, he
2 insisted that it was the responsibility of the county committee, not WCCUSD, to
3 conduct a "demographic study." Nonetheless, the "first and foremost" element of his
4 strategy was to claim that the prospect of a ballot question approving trustee areas
5 would confuse voters and jeopardize a parcel tax that was also on the ballot. Dr. Harter
6 and the trustees also knew or should have known that the State Board of Education
7 routinely grants waivers of the requirements that voters approve a transition from at-
8 large elections to trustee areas whenever such a transition is necessary to achieve the
9 purposes of the CVRA. See paragraph 59. The State Board of Education has granted
10 more than 150 waivers related to CVRA compliance, and has never denied any.

11 42. BAVRI notified WCCUSD of the need to bring itself into compliance with
12 CVRA on January 20, 2018, with sufficient time to complete all processes set forth in
13 Elections Code, Section 10010, and to obtain the waiver, in advance of the July 4, 2018
14 deadline to submit the boundaries to the county registrar. The State Board met on
15 March 14-15, 2018, and will meet again on May 9-10, 2018.

16 43. Board members are repeat this strategy of demanding voter approval in
17 an effort to perpetuate the at-large system, to conduct the 2018 election in violation of
18 state and federal law, and defer any compliance until 2020.

19 44. The Board agendized the resolution of intent to transition to trustee areas
20 for consideration at its February 28, 2018, proposing that the 2018 elections be
21 conducted by trustee areas if possible. After midnight on March 1, 2018, legal counsel
22 announced that he had not prepared a waiver application, that he had discussed the
23 matter with the staff of the State Board of Education, and that, because the Board did
24 not act by February 28, 2018, it was "physically impossible" to obtain the waiver at the
25 May meeting or before the July deadline for boundary changes. At one point, he
26 appeared to concede that the waiver could be approved before March 7, 2018. See video
27 at 5:28. He circulated a handout indicating no intent to comply with the CVRA until
28 2020, which is inconsistent with the resolution as agendized.

45. In reality, the staff of the State Board of Education was willing after
February 28, 2018, after March 7, 2018, and for some additional period to process a

1 waiver request. Upon information and belief, as of the date of this complaint, there is
2 still time to complete this process.

3 46. The voters within WCCUSD cannot, by ballot question, nullify the CVRA
4 or the Federal Act, or exempt themselves from the application of these laws.

5 47. As applied to prevent compliance with election arrangements required by
6 the Fourteenth and Fifteenth Amendments to the United States Constitution, Section 2
7 of the Federal Act, or any other applicable federal law, any state requirement of voter
8 approval violates Article VI of the United States Constitution (the Supremacy Clause).

9 48. On March 7, 2018, the Board agendized the waiver application. Prior to
10 permitting public comment on this agendized item (as required by the Brown Act), one
11 trustee acknowledged that the CVRA applied, announced that she would vote to
12 transition to trustee elections, but then vote against seeking a waiver, and call for an
13 election to allow the people to determine whether they would comply. Video at 2:35:00
14 (9:48PM). Two other trustees adopted this position.

15 49. Upon information and belief, in all cases where ballot questions have
16 failed to approve a transition to trustee elections, the courts have not disregarded the
17 result and usually cited the vote as evidence of discrimination. In Highland, the court
18 summarily adopted plaintiff's map. In Escondido, the court cited the result as evidence
19 of the discrimination effected by at-large voting. An election by the voters in Glendale
20 City Schools District to reject trustee areas was also ineffective, and the court imposed a
21 remedy under the CVRA.

22 50. Plaintiffs reserve the right to seek emergency relief if the Board does not
23 authorize a waiver application, and provide assurances that it can be presented to the
24 May 2018 meeting of the State Board of Education for approval.

25 COUNT ONE - CALIFORNIA VOTING RIGHTS ACT

26 51. Plaintiffs incorporate by reference paragraphs 1 through 5039 as though
27 fully set forth herein.

28 52. Unless a jurisdiction is completely homogenous in its politics and voting
behavior, at-large elections give disproportionate influence to areas that have high
levels of voter eligibility and turnout. White voters, who comprise 52 percent of those
registered in WCCUSD overall, have much higher eligibility and turnout. They are

1 more organized and more capable of making political contributions. These factors
2 dilute the ability of minority voters and the communities in which they live to have an
3 equal opportunity to influence elections and elect candidates of their choice.

4 53. The CVRA reflects a strong preference by the Legislature that cities, school
5 boards, and other jurisdictions elect from single-member districts, unless voting
6 patterns are completely unrelated to race. The United States Constitution requires local
7 districts to be apportioned by population, without consideration of the extent to which
8 residents have not reached voting age or not yet become citizens. A minority district
9 with one-fifth of the total population is guaranteed a representative, even if other
10 districts have higher voter turnout. Similarly, one trustee area can no longer elect a
majority of the Board.

11 54. This Court has broad remedial powers upon a showing that a school
12 district is out of compliance with the CVRA.

13 55. There has been racially polarized voting that enables an at-large majority
14 to elect candidates that are not the authentic candidates of choice for Latino and black
15 voters and would be less likely to be elected if each area, potentially including a
16 majority Latino and a majority black area, elected its own trustee. Standing alone,
17 racially polarized voting is a sufficient predicate to prohibit at-large elections and
require the creation of trustee areas.

18 56. It is also probative that the at-large system has only elected three Latinos,
19 six blacks, and no Asians in the past 50 years. Only one minority candidate has served
20 more than one term.

21 57. The scale of mounting a successful campaign in at-large in an unusually
22 large school district makes campaign contributions and independent expenditures more
23 effective, and grass-roots campaigning by among neighbors less effective. Prior to the
24 commencement of this action, construction vendors and entities in support of
25 construction have excluded most Latino candidates from financial support. The at-large
26 system also dilutes the effectiveness of volunteer canvassing among neighboring voters,
27 which denies an effective role in the political process to blacks and Latinos who are not
yet citizens of voting age.

1 58. It is possible to create majority minority trustee areas that will increase the
2 opportunities of Latino and black voters to elect candidates of their choice.

3 59. The defeat of a ballot question as to whether to move to at-large elections
4 would not excuse compliance with the CVRA. Intent to discriminate is not a
5 requirement, but such an action would provide evidence that the at-large majority
6 intends to discriminate against racial and language minorities. The requirements of
7 Education Code, Sections [5019](#), [5020](#), and [5030](#) that a change to trustee areas be
8 submitted to popular vote. These waivers are routinely granted by the State Board of
9 Education, as required by Education Code, Section [33051](#). Any action by the Board to
10 acknowledge its duty to create trustee areas under state and/or federal law, and yet to
11 neglect to file in a timely manner for such a waiver violates [Article IX, Section 14](#) of the
California Constitution and/or [Article VI, Clause 2](#) of the United States Constitution.

12 60. The creation of trustee areas, in each of which voters will elect a resident
13 as trustee, will provide an opportunity for Latino and black electors to elect candidates
14 of their choice or to influence the outcome of WCCUSD elections.

15 61. The facts recited herein give rise to an actual controversy regarding the
16 rights and duties of plaintiffs and WCCUSD, entitling plaintiffs to declarative relief.

17 62. WCCUSD's wrongful maintenance of at-large elections has caused and,
18 unless enjoined by this Court, will continue to cause immediate and irreparable injury
19 to plaintiffs and all students, teachers, and taxpayers resident in the District.

20 63. There is no adequate remedy at law for the injuries that plaintiffs have
21 suffered and will continue to suffer absent injunctive relief.

22 COUNT TWO – SECTION 2 OF THE FEDERAL ACT

23 64. Plaintiffs incorporate by reference paragraphs 1 through 6363 as though
24 fully set forth herein. Plaintiffs state a federal claim under [52 U.S.C. §10301](#), as an
25 alternative basis for relief, if, for any reason, the CVRA claim does not support the most
26 effective remedy.

27 65. The totality of the circumstances, including each fact stated in paragraphs
28 55 through 59, indicates that the practice of at-large elections has the effect of denying
Latino and black residents an equal opportunity to participate in the political process.

1 66. There has been racially polarized voting that enables an at-large majority
2 to elect candidates that are not the authentic candidates of choice for Latino and black
3 voters and would be less likely to be elected if each area, including a majority Latino
4 and a majority black area, elected its own trustee.

5 67. The Board has not been responsive to the particularized needs of the
6 Latino and black community, as illustrated by the misallocation of resources to the
7 detriment of schools in high-minority areas.

8 68. The policy underlying the system of at-large elections is not only tenuous;
9 it is inconsistent with the findings of the California Legislature.

10 69. Latino and black residents of WCCUSD bear the effects of discrimination
11 in education and employment, which further hinder their efforts to participate in the
12 political process. To the extent that their income and social status have been depressed
13 by historical discrimination, members of these protected groups are even less capable of
14 raising funds and mounting a campaign in an unnecessarily large electoral district, such
15 as WCCUSD at-large.

16 70. Past discrimination has created a sense of futility and ineffectiveness that
17 depresses levels of candidacy, registration, and turnout among the protected class.

18 71. Taken together, these circumstances interact with social and historical
19 conditions to cause an inequality in the opportunities enjoyed by Latino and black
20 voters on one hand, and non-Latino white voters on the other, to elect their preferred
21 representatives as WCCUSD trustees.

22 72. It is possible to create majority minority trustee areas that will increase the
23 opportunities of Latino and black voters to elect candidates of their choice.

24 PRAYER FOR RELIEF

25 WHEREFORE, plaintiffs pray for judgment against WCCUSD as follows:

26 1. For a decree declaring that WCCUSD's current system of electing trustees
27 at-large violates the California Voting Rights Act, or, in the alternative, that it violates
28 Section 2 of the Federal Voting Rights Act, [52 U.S.C. §10301](#).

 2. In the event that the Board does not authorize an application for a waiver
of the statutory requirements of Education Code 5019, 5020, and 5030 at its meeting of

1 March 21, 2018, and successfully obtain such a waiver, for an interlocutory order
2 directing WCCUSD to take all actions appropriate to obtain a waiver, and for an order
3 dispensing with the requirement that voters approve the transition to trustee areas if
4 there is insufficient time for the State Board of Education to grant such a waiver.

5 3. For preliminary and permanent injunctive relief prohibiting WCCUSD
6 from imposing or applying at-large method of election.

7 4. In the event that the Board does not make timely application for a waiver
8 from the State Board of Education, which has never been denied when needed to
9 implement a CVRA remedy, for an order dispensing with the application to this case of
10 provisions in Education Code, Sections [5019](#), [5020](#), and [5030](#) that require voters to
11 approve a change from at-large to trustee area elections.

12 5. For injunctive relief mandating that WCCUSD implement elections from
13 trustee areas no less favorable to Latino and black voters than those mapped in Exhibit
14 A, by proposing boundaries in time for them to be approved by this Court and
15 submitted by WCCUSD to the county registrar of voters by July 3, 2018, so that election
16 of WCCUSD trustees from the Latino-dominant area, the black-dominant area, and a
17 northern area with a concentration of Asian and other minority voters can proceed in
18 November 2018.

19 6. In the alternative, for injunctive relief prohibiting the certification of
20 results from any at-large election conducted in November 2018, and mandating (1) that
21 the president of the county board of education (or another member of the county board
22 whom she designates) shall sit on the Board of WCCUSD, which will establish a
23 quorum (consistent with Education Code, Section [5094](#)), (2) that the Board so
24 constituted shall appoint members from the three areas identified above, whose
25 boundaries will have been approved by the Court; (3) that, in the event the Court
26 determines that such appointments should be provisional, any petition submitted
27 pursuant to Education Code, Section [5091](#)(c)(1) may only call for a special election
28 within one of the trustee areas; and that (4) as the terms of trustees expire in 2020 and
subsequent years, elections be conducted in each trustee area in which the term of a
trustee is expiring.

1 7. For additional injunctive relief mandating that WCCUSD remedy the
2 effects of past discrimination by supporting efforts to increase minority voter
3 registration and political participation at its schools, among students and their parents,
4 and throughout minority communities within the District.

5 8. For an award of plaintiffs' attorneys' and expert witnesses' fees, costs,
6 litigation expenses, and prejudgment interest pursuant to Elections Code, Section [14030](#),
7 and other applicable law, including, to the extent that the federal claims are
8 adjudicated, [52 U.S.C. §10310](#) and [42 U.S.C. §1988](#).

9 9. For such further relief as the Court may deem proper.

10 Dated this 21st day of March 2018 Respectfully submitted,
11

12
13 

14 Scott J. Rafferty
15

EXHIBIT 1. DEMONSTRATION OF POSSIBLE MINORITY DISTRICTS

- 1 San Pablo/Inner Richmond
- 2 Hilltop/N Richmond/Downtown
- 3 Hercules/Pinole/Tara Hills
- 4 El Sobrante/E Richmond
- 5 Marina Bay/El Cerrito/Kensington

