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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

STEVE TATE, SWANEE EDWARDS, BRIAN
SULLIVAN, & KATHY SULLIVAN,

Plaintiffs and Petitioners,

vs.

CITY OF MORGAN HILL, CITY COUNCIL
OF THE CITY OF MORGAN HILL,
SHANNON BUSHEY, in her official capacity
as Santa Clara County Registrar of Voters,
and DOES 1-25,

Defendants and Respondents.

Case No.

**VERIFIED PETITION FOR
WRIT OF MANDATE;
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

**[Violation of the California Fair
Maps Act, Elec. Code §§ 21600-
21609]**

**CALENDAR PREFERENCE
REQUIRED BY ELECTIONS
CODE § 13314(c)**

1 **INTRODUCTION**

2 1. This is an action in the public interest to require the City Council of
3 Morgan Hill to fulfill its ministerial obligations to comply with applicable state law,
4 the FAIR MAPS Act, [Elec. Code §§ 21600-21609](#), in connection with the City’s post-
5 2020 Census redistricting of city council districts. Despite the plain, unambiguous
6 requirement of that Act that “[t]o the extent practicable, *council districts shall be*
7 *geographically contiguous,*” see [Elec. Code § 21601\(c\)\(1\)](#) (emphasis added), the Council
8 adopted a district map that is not geographically contiguous to the extent practicable.
9 In so doing, it has disregarded the explicit advice of the city attorney, the City’s
10 special redistricting counsel, the City’s redistricting consultant, and many others.
11 Intervention by this Court is therefore necessary to ensure compliance with state law.

12 **GENERAL ALLEGATIONS**

13 2. In 2017, the Morgan Hill City Council transitioned from at-large voting
14 to district-based voting, adopting a council district map with four districts and a
15 separately-elected mayor pursuant to [Government Code §§ 34871\(c\)](#) and [34886](#).

16 3. Historically, city councils had broad discretion in adopting district maps.
17 Provided they complied with constitutional equal population requirements, see, e.g.,
18 [Reynolds v. Sims, 377 U.S. 533 \(1964\)](#), and with Section 2 of the federal Voting Rights
19 Act, [52 U.S.C. § 10301](#), city councils generally could consider any other reasonable
20 factor in drawing district lines and could choose how to balance and weigh the
21 importance of each factor. See [Nadler v. Schwarzenegger, 137 Cal. App. 4th 1327](#)
22 [\(2006\)](#); [Griffin v. Bd. of Supervisors, 60 Cal. 2d 751 \(1964\)](#); [Griswold v. Cty. of San](#)
23 [Diego, 32 Cal. App. 3d 56 \(1973\)](#); [64 Ops. Cal. Atty Gen. 597 \(1981\)](#).

24 4. The map the Council adopted in 2017, crafted in accordance with this
25 broad discretion, included a noncontiguous district, District D.

26 5. In 2019, however, the Legislature completely re-wrote the rules of
27 redistricting for city councils. In response to perceived abuses of city councils’
28 discretion, the Legislature adopted the “Fair And Inclusive Redistricting for

1 Municipalities And Political Subdivisions (FAIR MAPS) Act,” [Assembly Bill No. 849](#)
2 [\(2019-2020 Reg. Sess.\), 2019 Cal. Stats., ch. 557.](#)

3 6. Recognizing that under pre-existing state law “even basic redistricting
4 criteria, like contiguity, [we]re listed as discretionary considerations, and as a
5 consequence [we]re sometimes ignored,” the FAIR MAPS Act was adopted to
6 “establish mandatory, ranked redistricting criteria” for county and municipal
7 redistricting. *See* Assem. Comm. on Local Govt., Analysis of A.B. 849 (2019-2020 Reg.
8 Sess.) as amended Apr. 11, 2019, pp. 7 & 11. The goal was to “establish standardized
9 criteria for city and county redistricting.” *See* Sen. Comm. on Governance & Fin.,
10 Analysis of A.B. 849 (2019-2020 Reg. Sess.) as amended July 3, 2019, p. 2.

11 7. One of the main objections of the local governments who opposed the Act
12 was “to creating a one-size-fits-all redistricting criteria.” *See* Sen. Rules Comm., Floor
13 Analysis of A.B. 849 (2019-2020 Reg. Sess.) as amended Sept. 14, 2019, p. 8. The
14 Legislature adopted the Act over these objections.

15 8. In short, the FAIR MAPS Act was adopted to constrain city councils’
16 discretion in adopting district boundaries, by specifying the criteria that must be
17 considered and the order that they must be considered in. To that end, [Elections Code](#)
18 [§ 21601](#) now provides in relevant part as follows:

19 (a) Following a city’s decision to elect its council using district-based elections,
20 or following each federal decennial census for a city whose council is already
21 elected using district-based elections, the council shall, by ordinance or
22 resolution, adopt boundaries for all of the council districts of the city so that the
23 council districts shall be substantially equal in population as required by the
24 United States Constitution. ...^[1]

25 (b) The council shall adopt council district boundaries that comply with the
26 United States Constitution, the California Constitution, and the federal Voting
27 Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

28 ¹ The omitted text represented by these ellipses, not relevant here, relates to
adjustments to the population figures to reassign incarcerated felons to their last known place
of residence.

1 **(c) The council shall adopt district boundaries using the following**
2 **criteria as set forth in the following order of priority:**

3 (1) To the extent practicable, **council districts shall be**
4 **geographically contiguous.** Areas that meet only at the points of
5 adjoining corners are not contiguous. Areas that are separated by water
6 and not connected by a bridge, tunnel, or regular ferry service are not
7 contiguous.

8 (2) To the extent practicable, the geographic integrity of any local
9 neighborhood or local community of interest shall be respected in a
10 manner that minimizes its division. A “community of interest” is a
11 population that shares common social or economic interests that should
12 be included within a single district for purposes of its effective and fair
13 representation. Communities of interest do not include relationships
14 with political parties, incumbents, or political candidates.

15 (3) Council district boundaries should be easily identifiable and
16 understandable by residents. To the extent practicable, council districts
17 shall be bounded by natural and artificial barriers, by streets, or by the
18 boundaries of the city.

19 (4) To the extent practicable, and where it does not conflict with the
20 preceding criteria in this subdivision, council districts shall be drawn to
21 encourage geographical compactness in a manner that nearby areas of
22 population are not bypassed in favor of more distant populations.

23 (Emphasis added.)

24 9. As this section plainly states, contiguity is the highest-ranked priority
25 after compliance with the U.S. and California Constitutions and the federal Voting
26 Rights Act. Despite that fact, the Morgan Hill City Council voted to adopt a
27 redistricting map, Map 103, that is virtually identical to the 2017 districts, and
28 maintains the noncontiguous configuration of District D. A true and correct copy of
Map 103 is attached hereto as Exhibit 1 and incorporated herein by this reference.

10 10. Map 103’s noncontiguity was not required to comply with any higher-
11 ranked criterion, specifically federal or constitutional requirements or the federal
12 Voting Rights Act.

13 11. As to the constitutional equal population requirements, the Council’s
14 demographic consultants presented the Council with multiple map options that

1 complied with equal population requirements while also containing contiguous
2 districts, thereby demonstrating the City’s ability to meet both requirements.

3 12. Nor does any other provision of the federal constitution prohibit the
4 enforcement of a contiguity requirement. To the contrary, adherence to traditional
5 redistricting criteria like contiguity is, in some instances, necessary to comply with
6 the U.S. Constitution. *See, e.g., Miller v. Johnson, 515 U.S. 900, 916 (1995)* (contiguity
7 among the “traditional race-neutral districting principles” that, if subordinated to
8 racial considerations, may give rise to a violation of the equal protection clause).

9 13. As for the California Constitution, while it prescribes specific
10 redistricting criteria for congressional, Assembly, state Senate, and Board of
11 Equalization districts, *see CAL. CONST. art. XXI, § 2(d)*, no provision therein
12 specifically prescribes any redistricting criteria for local governments.² And in the
13 redistricting and voting rights context, California’s courts apply federal constitutional
14 standards to equal protection and due process claims under the California
15 constitution. *See Castorena v. City of L.A., 34 Cal. App. 3d 901, 910 (1973)* (in a
16 challenge to Los Angeles’ redistricting plan under both the U.S. and California
17 Constitutions holding that “[t]he basic principles for evaluating petitioners’ claims are
18 set forth in a series of United States Supreme Court cases.”); *Jauregui v. City of*
19 *Palmdale, 226 Cal. App. 4th 781, 799-800 (2014)* (“Our Supreme Court has described
20 the Fourteenth Amendment and article I, section 2 as providing comparable
21 protections in voting rights cases. [Citations.] California decisions involving voting
22 issues quite closely follow federal Fourteenth Amendment analysis.”). *See also*
23 *Edelstein v. City & County of San Francisco, 29 Cal. 4th 164, 179 (2002)* (“[i]n
24 analyzing constitutional challenges to election laws, this court has followed closely the
25

26
27 ² The FAIR MAPS Act criteria are very similar, though not identical, to the
28 constitutional criteria applicable to state districting, including ranking contiguity above all
other considerations other than equal population requirements and compliance with the
Voting Rights Act.

1 analysis of the United States Supreme Court.” (quoting [Canaan v. Abdelnour](#), 40 Cal.
2 [3d 703, 710 \(1985\)](#)).

3 14. As for the federal Voting Rights Act, the United States Supreme Court
4 has held that Section 2 does not mandate any particular district shape unless (among
5 other things) it is possible to draw a district in which residents of a particular racial
6 or ethnic group comprise at least 50%+1 of eligible voters, *i.e.*, citizen voting age
7 population. See [Bartlett v. Strickland](#), 556 U.S. 1, 19-20 (2009); [Reyes v. City of](#)
8 [Farmers Branch Tex.](#), 586 F.3d 1019 (5th Cir. 2009). It is not possible to draw a
9 district in Morgan Hill in which any minority group is a majority in a single district.
10 Thus, Section 2 does not compel Map 103’s noncontiguity either.

11 15. The City Council has been advised repeatedly by city staff, including the
12 city attorney, and by its experienced demographic consultants, National
13 Demographics Corporation, that Map 103 is inconsistent with the FAIR MAPS Act.

14 16. Nevertheless, in January 2022, in response to demands by a segment of
15 the public that the Council maintain the existing non-contiguous districts, the city
16 attorney retained experienced elections/redistricting counsel to advise him with
17 regard to the requirements of the law. Specifically, he obtained an opinion from Tom
18 Willis of the Olson Remcho firm, who has advised a number of public agencies with
19 respect to redistricting over the past several decades and who has litigated a number
20 of redistricting cases. See, *e.g.*, [Legislature of State of Cal. v. Padilla](#), 9 Cal. 5th 867,
21 [870-71 \(2020\)](#) (representing the Legislature in connection with the timing of the 2021
22 state redistricting); [Lee v. City of L.A.](#), 908 F.3d 1175, 1178 (9th Cir. 2018)
23 (successfully representing City of Los Angeles in defense of 2011 council districting
24 plan); [Nadler](#), 137 Cal. App. 4th at 1330 (representing California Assembly in
25 successfully defending 2001 Assembly district plan).

26 17. With a subject line reading “Contiguity as Applied to the City’s
27 Redistricting Process,” Mr. Willis’s opinion surveyed various arguments for
28 maintaining a non-contiguous district in Morgan Hill and rejected them all, advising

1 the City Attorney that “the State FAIR MAPS Act requires districts to be contiguous
2 where possible, meaning that the North and South Areas must be included in districts
3 that are geographically connected with other parts of the City.” (See page 2.) Mr.
4 Willis’s opinion was attached to the agenda for the city council meeting on February
5 16, 2022, and a true and correct copy of the opinion is attached hereto as Exhibit 2
6 and incorporated herein by this reference.

7 18. In particular, the supporters of Map 103 have argued that the “purpose”
8 of the California Voting Rights Act (CVRA), [Elec. Code §§ 14025-14032](#), permits or
9 requires the City to retain the noncontiguous configuration of District D. The CVRA is
10 the statute pursuant to which the City moved from at-large voting to district-based
11 voting in 2017.

12 19. However, the CVRA only prohibits the use of at-large voting. *See* [Elec.](#)
13 [Code § 14027](#) (“An at-large method of election may not be imposed or applied in a
14 manner that impairs the ability of a protected class to elect candidates of its choice or
15 its ability to influence the outcome of an election, as a result of the dilution or the
16 abridgment of the rights of voters who are members of a protected class, as defined
17 pursuant to Section 14026”). In a jurisdiction that uses district-based voting, like
18 Morgan Hill, the CVRA does not contain any provision that prescribes the criteria for
19 drawing district lines. It is simply silent on the issue. And in fact, in adopting the
20 FAIR MAPS Act, the Legislature explicitly required that maps drawn to implement
21 the CVRA comply with the FAIR MAPS Act, rather than the other way around.
22 [Government Code § 34886](#) is the statutory provision that allows city councils to
23 transition from at-large to district-based voting without a vote of the people, to comply
24 with the CVRA. That section was expressly amended in 2019—by the FAIR MAPS
25 Act itself—to provide as follows:

26 Notwithstanding Section 34871 or any other law, the legislative body of a city
27 may adopt an ordinance that requires the members of the legislative body to be
28 elected by district or by district with an elective mayor, as described in
subdivisions (a) and (c) of Section 34871, without being required to submit the

1 ordinance to the voters for approval. ***An ordinance adopted pursuant to***
2 ***this section shall comply with the requirements and criteria of Section***
3 ***21601 or 21621 of the Elections Code, as applicable***, and include a
4 declaration that the change in the method of electing members of the legislative
5 body is being made in furtherance of the purposes of the California Voting
Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division
14 of the Elections Code).

6 (Emphasis added.)

7 20. [Elections Code §§ 21601](#) and [21621](#) are the provisions of the FAIR MAPS
8 Act that prescribe, for general law and charter cities respectively, the prioritized
9 redistricting criteria that Map 103 violates.

10 21. Supporters of Map 103 also urged that District D should be maintained
11 in its current configuration to unify a purported “community of interest.” Initially,
12 this community of interest was identified as Latino voters, but drawing a district
13 based “predominantly” on this racial consideration, when not required by the Voting
14 Rights Act, constitutes unconstitutional gerrymandering. *See, e.g., Abbott v. Perez*,
15 138 S. Ct. 2305, 2334 (2018).

16 22. The supporters thereafter shifted gears to try to identify the purported
17 community of interest in less explicitly racial terms, as “renters.” Factually-speaking,
18 this recharacterization is highly dubious, suggesting that it is pretextual. For one
19 thing, the members of the public suggesting this community of interest did not
20 identify any geographic location for this community of renters other than simply the
21 District they sought. Moreover, District D has the lowest proportion of renters of any
22 District in Map 103.

23 23. Ultimately, however, the plausibility of this or any other so-called
24 community of interest is beside the point. Even if were actually *bona fide*, it would not
25 justify the City’s violation of the contiguity requirement of the FAIR MAPS Act. In
26 the “order of priority” specified in the Act, contiguity ranks above minimizing the
27 division of communities of interest. *See* ¶¶ 8-9, *supra*; [Elec. Code § 21601\(c\)\(1\)-\(2\)](#).

1 24. In sum, there is no provision of state or federal law that permitted the
2 Council to ignore the contiguity requirement of the FAIR MAPS Act.

3 25. After the City Council voted to adopt Map 103 at its meeting on March 2,
4 2022, by a 3-2 vote, counsel for Petitioner/Plaintiffs herein sent a letter to the Council,
5 asking that it reconsider its decision to adopt an illegal map. A true and correct copy
6 of that letter is attached hereto as Exhibit 3 and incorporated herein.

7 26. At a meeting on April 6, 2022, the Council conducted a public hearing to
8 consider whether to withdraw Map 103 and adopt a legally-compliant map instead. At
9 the meeting, the city attorney and the City's demographic consultants continued to
10 advise the Council regarding the requirements of the FAIR MAPS Act. The Council
11 nevertheless voted—again, by a 3-2 vote—to retain Map 103.

12 27. The deadline for the City to adopt a legally-compliant map is April 17,
13 2022. See [Elec. Code § 21602\(a\)\(3\)](#). Thereafter, control over redistricting shifts to this
14 Court. See [Elec. Code §§ 21600\(b\), 21605, 21609](#).

15 **VENUE**

16 28. Venue in this Court is proper pursuant to [Code of Civil Procedure §§](#)
17 [393\(b\)](#) and [394\(a\)](#). Morgan Hill is a city situated in Santa Clara County; all of the
18 relevant occurrences giving rise to this case occurred within the County; and the
19 Santa Clara County Registrar of Voters will conduct the election on behalf of CITY in
20 consolidation with the statewide general election in November.

21 **PARTIES**

22 29. Defendant and Respondent CITY OF MORGAN HILL (hereafter “CITY”)
23 is a general law city organized under the Constitution and laws of the State of
24 California.

25 30. Defendant and Respondent CITY COUNCIL OF THE CITY OF
26 MORGAN HILL (hereafter “COUNCIL”) is the main legislative and governing body of
27 the CITY.

28 31. Defendant and Respondent SHANNON BUSHEY (the “REGISTRAR”) is

1 sued in her official capacity as Registrar of Voters of Santa Clara County. She is
2 named for remedial purposes only, as her office will conduct the November election on
3 behalf of the CITY.

4 32. Plaintiffs and Petitioners STEVE TATE, SWANEE EDWARDS, BRIAN
5 SULLIVAN, & KATHY SULLIVAN are residents and registered voters in the City of
6 Morgan Hill.

7 **FIRST CLAIM FOR RELIEF**

8 **(Violation of the FAIR MAPS Act, Elec. Code §§ 21601-21609)**

9 **Against All Defendants**

10 33. Plaintiff/Petitioners hereby incorporate by reference the allegations
11 contained in Paragraphs 1 through 25 of this Complaint.

12 • **Entitlement to Writ of Mandate**

13 34. [Elections Code § 13314](#) authorizes the issuance of a writ of mandate if
14 any “error, omission, or neglect” has occurred “or is about to occur” that “is in
15 violation of th[e Elections] code or the Constitution,” and where the “issuance of the
16 writ will not substantially interfere with the conduct of the election.”
17 Petitioner/Plaintiffs are informed and believe, and on that basis allege, that unless
18 this Court directs otherwise the illegal Map 103 will be used for City Council elections
19 at the City’s regularly scheduled municipal election in November 2022 and thereafter,
20 constituting an “error, omission, or neglect” in violation of [Elections Code § 21601\(c\)](#).

21 35. [Elections Code § 13314\(a\)\(3\)](#) provides that an “action or appeal” brought
22 under that section “shall have priority over all other civil matters.”

23 36. [Code of Civil Procedure § 1085](#) also authorizes issuance of a writ of
24 mandate to compel the performance of a ministerial duty by government officials. The
25 CITY COUNCIL has a mandatory, ministerial duty to comply with the FAIR MAPS
26 Act. See [CAL. CONST. art. XI, § 7](#) (“A county or city may make and enforce within its
27 limits all local, police, sanitary, and other ordinances and regulations *not in conflict*
28 *with general laws*” (emphasis added)). Petitioners have no speedy or adequate remedy

1 at law if a writ of mandate does not issue prohibiting the use of a noncontiguous map,
2 such as the illegal Map 103.

3 • **Entitlement to Injunctive Relief**

4 37. [Code of Civil Procedure § 526a](#) provides in relevant part,

5 An action to obtain a judgment, restraining and preventing any illegal
6 expenditure of, waste of, or injury to, the estate, funds, or other property of a
7 local agency, may be maintained against any officer thereof, or any agent, or
8 other person, acting in its behalf, either by a resident therein, or by a
9 corporation, who is assessed for and is liable to pay, or, within one year before
the commencement of the action, has paid, a tax that funds the defendant local
agency...

10 38. Petitioner/Plaintiffs are residents of Morgan Hill and have paid taxes
11 that fund the City of Morgan Hill.

12 39. Petitioner/Plaintiffs have no speedy or adequate remedy at law to
13 prevent or redress the illegality alleged herein. Unless the CITY and REGISTRAR are
14 enjoined and restrained from enforcing or threatening to enforce Map 103,
15 Petitioner/Plaintiffs and other citizens similarly-situated will suffer irreparable injury
16 and damage.

17 • **Entitlement to Declaratory Relief**

18 40. [Code of Civil Procedure § 1060](#) provides that any person “who desires a
19 declaration of his or her rights or duties with respect to another” to file a complaint
20 seeking declaratory relief.

21 41. A dispute has arisen between Petitioner/Plaintiffs, on the one hand, and
22 Respondent/Defendants, on the other. Plaintiff/Petitioners believe and contend, as set
23 forth above, that Map 103 is illegal for failing to comply with the contiguity
24 requirement set forth in the FAIR MAPS Act. Petitioners are informed and believe,
25 and on that basis allege, that Respondent/Defendants intend to nevertheless direct
26 the use of Map 103 in municipal elections this November and thereafter. A judicial
27 declaration is therefore necessary and appropriate regarding the validity of
28 Respondent/Defendants’ actions.

1 **PRAYER**

2 WHEREFORE, Plaintiff/Petitioners pray for relief as follows:

- 3 1. That this Court issue an alternative writ of mandate prohibiting
4 Respondents and their officers, agents, and all persons acting by,
5 through or in concert with them, including the REGISTRAR, from
6 conducting any election using Map 103 or any non-contiguous map, or to
7 show cause why they should not be ordered to do so;
- 8 2. That this Court issue a peremptory writ of mandate prohibiting
9 Respondents and their officers, agents, and all persons acting by,
10 through or in concert with them, including the REGISTRAR, from
11 conducting any election using Map 103 or any non-contiguous map;
- 12 3. That this Court issue a preliminary injunction prohibiting Respondents
13 and their officers, agents, and all persons acting by, through or in concert
14 with them, including the REGISTRAR, from conducting any election
15 using Map 103 or any non-contiguous map, pending final judgment of
16 this Court;
- 17 4. That this Court issue a permanent injunction prohibiting Respondents
18 and their officers, agents, and all persons acting by, through or in concert
19 with them, including the REGISTRAR, from conducting any election
20 using Map 103 or any non-contiguous map;
- 21 5. That this Court issue its judgment declaring that Map 103 violates the
22 FAIR MAPS Act and cannot lawfully be used to conduct elections in
23 Morgan Hill this November and thereafter.
- 24 6. That if the COUNCIL does not adopt a lawful district map by the
25 deadline of April 17, 2022, this Court exercise its authority to do so. *See*
26 *See [Elec. Code §§ 21600\(b\)](#)* (“This article shall not be interpreted to limit
27 the discretionary remedial authority of any federal or state court.”),
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21605, 21609; Wilson v. Eu, 1 Cal. 4th 707 (1991) (adopting district map in light of Legislature’s failure to timely do so).

7. That Petitioner/Plaintiffs be awarded their reasonable costs and attorney’s fees pursuant to Code of Civil Procedure § 1032, Code of Civil Procedure § 1021.5, or any other provision of law authorizing such an award; and

8. That Petitioner/Plaintiffs be awarded such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: April 11, 2022

NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP

By: 

Christopher E. Skinnell

Attorneys for Petitioner/Plaintiffs
STEVE TATE, SWANEE EDWARDS,
BRIAN SULLIVAN, & KATHY
SULLIVAN

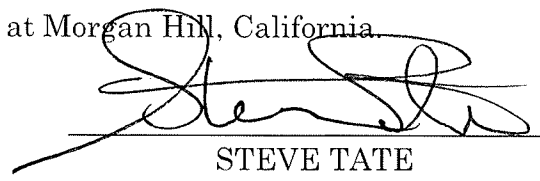
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VERIFICATION

I am a petitioner in the above-titled matter. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE; COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF. I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 9, 2022, at Morgan Hill, California.



A handwritten signature in black ink, appearing to read 'Steve Tate', is written over a horizontal line. The signature is cursive and somewhat stylized.

STEVE TATE

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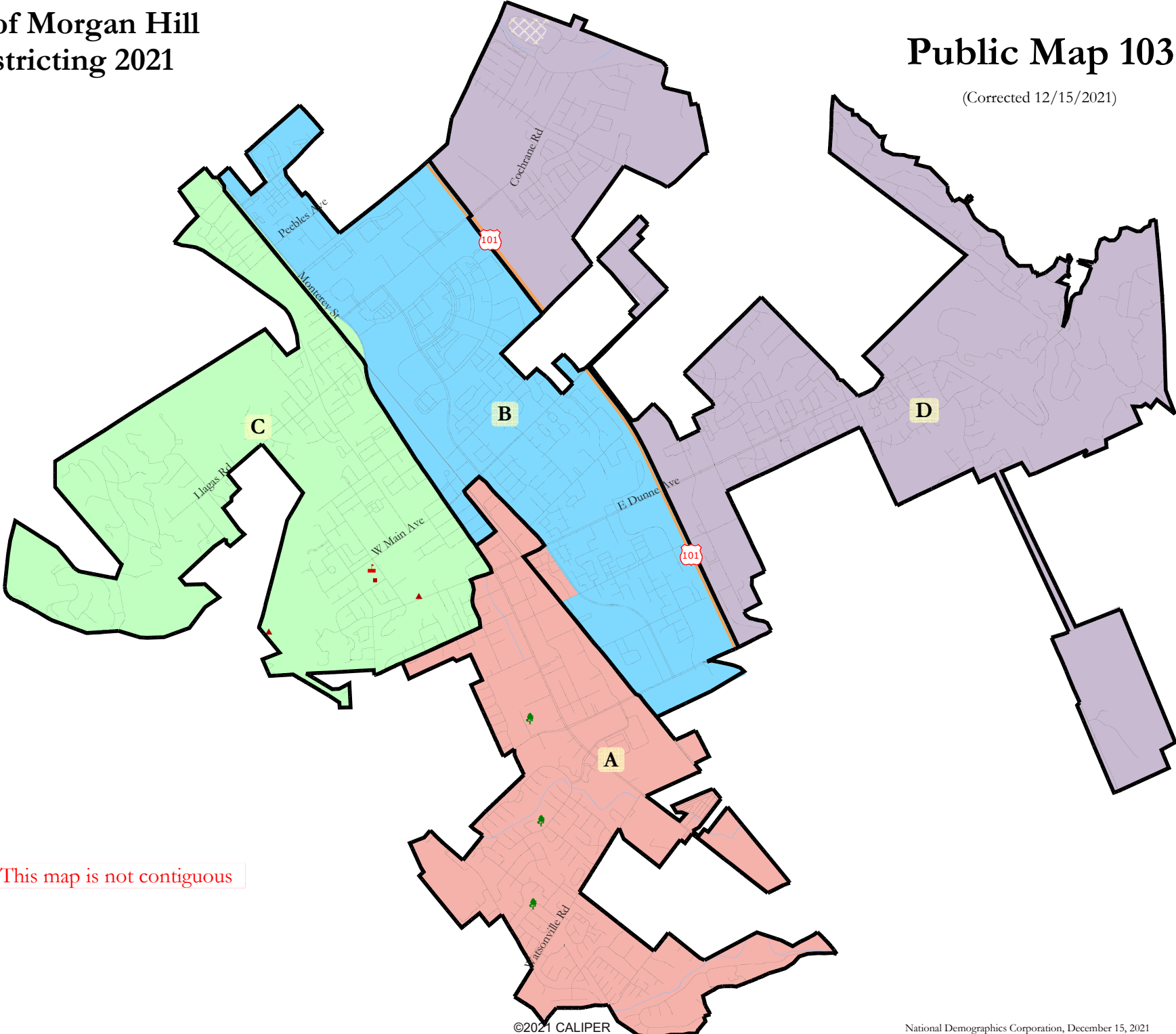
EXHIBIT 1

Verified Petition for Writ of Mandate/Complaint
Tate, et al. v. City of Morgan Hill, et al.

City of Morgan Hill Redistricting 2021

Public Map 103

(Corrected 12/15/2021)



This map is not contiguous

City of Morgan Hill - Public Map 103

District		A	B	C	D	Total
2020	2020 Census (Raw)	11,509	11,174	11,117	11,766	45,566
	Deviation from ideal	118	-218	-275	375	649
	% Deviation	1.03%	-1.91%	-2.41%	3.29%	5.70%
2020 Total Pop	% Hisp	39%	35%	39%	21%	33%
	% NH White	43%	40%	40%	52%	44%
	% NH Black	3%	3%	2%	3%	3%
	% Asian-American	12%	19%	16%	21%	17%
Citizen Voting Age Pop	Total	7,020	7,628	7,083	8,175	29,905
	% Hisp	25%	26%	28%	18%	24%
	% NH White	56%	52%	53%	62%	56%
	% NH Black	3%	3%	2%	2%	2%
	% Asian/Pac.Isl.	14%	18%	16%	16%	16%
Voter Registration (Nov 2020)	Total	6,807	6,829	6,468	8,015	28,119
	% Latino est.	25%	27%	27%	17%	24%
	% Spanish-Surnamed	23%	25%	24%	16%	22%
	% Asian-Surnamed	5%	10%	9%	11%	9%
	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	66%	59%	62%	69%	64%
Voter Turnout (Nov 2018)	% NH Black	3%	2%	2%	2%	2%
	Total	4,151	3,784	3,900	5,184	17,019
	% Latino est.	20%	23%	22%	15%	20%
	% Spanish-Surnamed	19%	21%	21%	14%	18%
	% Asian-Surnamed	4%	8%	7%	8%	7%
	% Filipino-Surnamed	1%	2%	1%	1%	1%
Voter Turnout (Nov 2020)	% NH White est.	72%	65%	68%	74%	70%
	% NH Black	3%	2%	2%	2%	2%
	Total	5,806	5,770	5,428	7,114	24,118
	% Latino est.	24%	26%	25%	16%	22%
	% Spanish-Surnamed	22%	24%	23%	15%	21%
	% Asian-Surnamed	6%	10%	9%	11%	9%
ACS Pop. Est.	% Filipino-Surnamed	1%	2%	2%	1%	2%
	% NH White est.	67%	60%	64%	70%	66%
	% NH Black est.	3%	2%	2%	2%	2%
	Total	10,604	11,285	11,219	11,412	44,520
Age	age0-19	29%	28%	27%	27%	28%
	age20-60	50%	54%	53%	52%	52%
	age60plus	22%	18%	20%	21%	20%
Immigration	immigrants	17%	21%	22%	14%	18%
	naturalized	54%	63%	52%	71%	59%
Language spoken at home	english	74%	65%	66%	77%	70%
	spanish	18%	22%	20%	8%	17%
	asian-lang	6%	8%	8%	9%	8%
	other lang	2%	5%	6%	6%	5%
Language Fluency	Speaks Eng. "Less than Very Well"	8%	12%	16%	6%	11%
Education (among those age 25+)	hs-grad	36%	42%	43%	35%	39%
	bachelor	34%	25%	21%	32%	28%
	graduatedegree	12%	12%	14%	20%	15%
Child in Household	child-under18	35%	40%	36%	43%	39%
Pct of Pop. Age 16+	employed	65%	68%	67%	67%	67%
Household Income	income 0-25k	8%	12%	6%	4%	7%
	income 25-50k	12%	16%	15%	6%	12%
	income 50-75k	11%	10%	15%	7%	11%
	income 75-200k	44%	41%	45%	43%	43%
	income 200k-plus	25%	21%	19%	40%	26%
Housing Stats	single family	82%	81%	79%	98%	85%
	multi-family	18%	19%	21%	2%	15%
	rented	28%	31%	36%	11%	27%
	owned	72%	69%	64%	89%	73%

Total population data from the California adjustment to the 2020 Decennial Census. Surname-based Voter Registration and Turnout data from the California Statewide Database. Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.

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EXHIBIT 2

Verified Petition for Writ of Mandate/Complaint
Tate, et al. v. City of Morgan Hill, et al.

MEMORANDUM

VIA EMAIL

TO: Don Larkin, City Attorney

FROM: Tom Willis

DATE: January 10, 2022

RE: Contiguity as Applied to the City's Redistricting Process

SUMMARY

The City is in the midst of redistricting its city council districts to conform to the 2020 census and comply with the recently-enacted State FAIR MAPS Act. The City has released several draft maps including three by its demographer NDC.

Each of NDC's draft maps splits current District B in order to bring portions of neighboring District D that currently are not contiguous into contiguous districts. Current District B runs through the entire center of the City and is generally bounded by Highway 101 to the North and Monterey and Butterfield Streets to the South. The current architecture puts all of the portions of the City to the north of Highway 101 into one district, District D, even though those portions are not geographically connected; in redistricting terms those portions are not contiguous.

District D consists of four non-contiguous areas: (1) in the south, an area containing Nordstrom and the Jackson Meadows, Jackson Oaks, and Holiday Lake Estates neighborhoods (the South Area); (2) an island containing Live Oak High School; (3) in the north an area containing Mission Ranch and Coyote Creek Estates neighborhoods (the North Area); and (4) an island containing the Math Institute Golf Course. The NDC plans would connect the North and South Areas to the rest of the City in districts that are contiguous. Since the Live Oak School and Golf Course are on islands not connected to any other City land, they cannot be drawn in contiguous districts but in the draft maps have been included in the council districts closest to them.

On December 15, 2021, the City received a letter from Armando Benavides and eight other individuals opposing NDC's draft maps or any draft map that would split current District B into two or more council districts. In addition to arguing that District B is a community of interest that should be kept whole, Mr. Benavides contends that splitting

District B would violate the State FAIR MAPS Act, the California Voting Rights Act, and the federal Voting Rights Act. For the reasons set forth below, we believe those arguments are without merit. Rather, the State FAIR MAPS Act requires districts to be contiguous where possible, meaning that the North and South Areas must be included in districts that are geographically connected with other parts of the City. This will necessitate splitting current District B.

ANALYSIS

I. The State FAIR MAPS Act Requires Contiguous Districts in Morgan Hill

In his letter, Mr. Benavides does not really dispute that current District D is not contiguous, that it's possible to include the North and South Areas of District D in contiguous districts, or that in order to do that current District B must be split.

Instead, he contends that contiguity is only one of four traditional redistricting criteria that the City must consider when drawing districts and that the other three criteria favor keeping Districts B and D as they are.¹ Letter at 4. But even if we assume for present purposes that Mr. Benavides is correct that the three other redistricting criteria support keeping Districts B and D unchanged, the argument still fails as a matter of law and is at odds with the plain text of the State FAIR MAPS Act.

Mr. Benavides is referring to the four redistricting criteria that a city must follow once it has ensured that a plan complies with higher ranked criteria set forth in federal and state constitutional and statutory requirements.² The State FAIR MAPS Act states as follows:

(c) The council shall adopt district boundaries using the following criteria *as set forth in the following order of priority*:

(1) To the extent practicable, council districts shall be geographically contiguous. Areas that meet only at the points of adjoining corners are not contiguous. Areas that are separated by water and not connected by a bridge, tunnel, or regular ferry service are not contiguous.

¹ Those other criteria are keeping neighborhoods and communities of interest whole, making districts easily understandable, and making districts compact. See Elec. Code § 21601(c)(2)-(4).

² Those include equal population, the Equal Protection Clause of the Fourteenth Amendment, and the federal Voting Rights Act. See Elec. Code § 21601(a)-(b).

(2) To the extent practicable, the geographic integrity of any local neighborhood or local community of interest shall be respected in a manner that minimizes its division. A “community of interest” is a population that shares common social or economic interests that should be included within a single district for purposes of its effective and fair representation. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(3) Council district boundaries should be easily identifiable and understandable by residents. To the extent practicable, council districts shall be bounded by natural and artificial barriers, by streets, or by the boundaries of the city.

(4) To the extent practicable, and where it does not conflict with the preceding criteria in this subdivision, council districts shall be drawn to encourage geographical compactness in a manner that nearby areas of population are not bypassed in favor of more distant populations.

Cal. Elec. Code § 21601 (emphasis added).

As the plain text makes clear, the criteria are to be applied in order of priority and contiguity is the first criterion. Thus, contiguity must be prioritized over all other criteria. Moreover, the requirement of contiguity is mandatory: “council districts shall be geographically contiguous.” Thus, section 21601(c) clearly requires all portions of a district to be geographically connected, and that requirement must be satisfied before a city moves on to the other criteria, such as keeping neighborhoods whole or districts compact.

Despite the clear language of Elections Code section 21601, Mr. Benavides argues that the qualifier “to the extent practicable” introduces some flexibility into the contiguity requirement. We disagree. Given the mandatory nature of the requirement, we believe the phrase “to the extent practicable” means that districts must be contiguous if it is possible to do so but the standard also realizes that in some cases it is impossible to make municipal districts contiguous because there may be islands of incorporated areas that are surrounded by other cities or unincorporated areas. That is the case with respect to two incorporated islands of the City: the golf course and Live Oak High School. It is impossible to draw those areas into a contiguous district. Thus, the standard accommodates those situations when contiguity is impossible but nonetheless requires contiguity where it is possible. That is the case for the South and North Areas of the city – it is possible to include them in contiguous districts. Therefore, Elections Code section 21601 requires them to be so drawn.

II. Splitting District B Would Not Violate the California Voting Rights Act

Mr. Benavides next contends that splitting District B could subject the City to liability under the California Voting Rights Act (CVRA). His argument is not that splitting District B by itself would violate the CVRA. Rather he seems to be arguing that the potential plaintiffs who demanded the City convert to district elections under the CVRA agreed to the City's remedial plan of keeping the mayor position at-large, instead of requiring all five council seats to be elected by district elections, in return for an agreement that the City would draw and maintain District B in its current form, namely stretching through the urban center of the City. He implies that if District B were redrawn, those potential plaintiffs could sue the City over the fact that the mayor is elected at-large instead of by-district, and that the CVRA requires all city council seats to be elected by-district.

Mr. Benavides is correct that the CVRA defines an "at large" method of election as, among other systems, "one that combines at-large elections with district-based elections." Cal. Elec. Code § 14027. That could cover an election of an at-large mayor with other council members elected from districts. The CVRA contains no apparent exception for jurisdictions that want to convert to district elections but maintain an at-large mayoral election. Thus, Mr. Benavides finds some support from the text of the CVRA when viewed in isolation.

However, notwithstanding section 14027, there is a provision in the Government Code that supports the position that a general law city can comply with the CVRA by converting to district elections for councilmembers but retaining an at-large election for mayor. Well after the CVRA was adopted in 2002, the Legislature passed legislation that encouraged jurisdictions to move to district elections by limiting their liability from a CVRA challenge if they did so. See Cal. Elec. Code § 10010. As part of those changes, the Legislature also passed SB 493 in 2015 that allowed general law cities to transition to district elections without first having to seek voter approval. That provision has been amended twice since then and currently states:

Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall comply with the requirements and criteria of Section 21601 or 21621 of the Elections Code, as applicable, and include a declaration that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001

(Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code).

Cal. Gov't Code § 34886 (emphasis added).

Government Code section 34871 states that a city's "legislative body may submit to the registered voters an ordinance providing for the election of members of the legislative body in any of the following ways: . . . (c) By districts in four, six, or eight districts, with an elective mayor pursuant to Article 5 (commencing with Section 34900)."

Given that section 34886 allows general law cities to convert to districts to comply with the CVRA but retain an at-large election for mayor "notwithstanding . . . any other law", the section appears to trump Elections Code section 14027. In addition, section 34486 was added by statute in 2015, and amended both in 2017 and 2019, all of which occurred well after the California Voting Rights Act was adopted in 2002. "It is well established that a statute enacted later in time controls over an earlier-enacted statute, and it is equally well established that a specific statute prevails over a statute that is more general." *Cross v. Superior Court*, 11 Cal. App. 5th 305, 322 (2017) (citing *State Dept. of Public Health v. Superior Court*, 60 Cal. 4th 940, 946 (2015)).

Further, at least two CVRA cases that were tried to judgment required the cities to adopt district elections but permitted the jurisdictions to maintain an at-large mayor even though the mayor was a voting member of the council. See *Yumori-Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385, 408 (Dec. 30, 2020) (trial court approved district-based elections with a mayor elected at-large; the issue was not, however, addressed in the appellate opinion); see also *Juarequi v. City of Palmdale* (Los Angeles Superior Court Case No. BC483039) (same). Although those courts did not analyze the issue, apparently neither the court nor plaintiffs objected.

III. **Splitting District B Would Not Violate the Federal Voting Rights Act**

Finally, Mr. Benavides argues that if the City "splits District B in two parts a practice known in Section 2 parlance as 'cracking' when it disproportionately concentrates minority voters – it would run the risk of a Section 2 action in federal court." Letter at 8. Again, we believe the argument is not supported by the facts or law.

Section 2 of the Voting Rights Act provides that no "standard, practice, or procedure shall be imposed or applied . . . in a manner which results in a denial or abridgement of the right . . . to vote on account of race or color" or membership in a language minority group. 52 U.S.C. § 10301. "A violation [of Section 2] is established if, based on the totality of circumstances, it is shown that the political processes . . . are not equally open to participation

by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.*

The Supreme Court has established a number of elements that a plaintiff must prove to demonstrate that a redistricting plan violates section 2. Initially, a section 2 plaintiff must satisfy the three so-called *Gingles* preconditions. Then, only if those are met, will a court consider whether under the totality of the circumstances, the challenged practice impairs the ability of the minority voters to participate equally in the political process. Courts have, however, stated that it would be a very unusual case in which plaintiffs could establish the existence of the *Gingles* preconditions but fail to establish a violation of section 2 under the totality of the circumstances test. See *NAACP v. City of Niagara Falls*, 65 F.3d 1002, 1007 (2nd Cir 1995).

The three *Gingles* factors are the following:

1. The minority group must be sufficiently large and compact to constitute a majority in a single district;
2. The minority group must be politically cohesive; and
3. The minority group must be able to demonstrate that the majority votes sufficiently in a bloc to enable it to usually defeat the minority’s candidate of choice.

Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986).

To meet the first *Gingles* factor, a minority group must establish it could constitute a majority (50%+1) of the citizen voting age population (CVAP) of a district. *Bartlett v. Strickland*, 556 U.S. 1, 186 (2009); *Romero v. City of Pomona*, 883 F.2d 1418, 1425 (9th Cir. 1989) (requiring CVAP rather than total population to show a majority district under section 2).

Mr. Benavides claims District B in its current form is or should be protected by the VRA. Thus, to state a claim under the VRA, a plaintiff would have to establish that all three *Gingles* are present with respect to District B. But on its face District B does not meet the first *Gingles* factor: no minority group constitutes a majority of CVAP. The relevant CVAP numbers for District B are: 26% Latino, 3% Black, 18% Asian, and 52% White. Moreover, not even a claim that District B should be treated as a coalition district – where more than one minority group prefer the same candidates and have similar voting patterns – would be meritorious since the White population still constitutes a majority of the CVAP.

Don Larkin, City Attorney
January 10, 2022
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For this reason, it is clear that the VRA does not require or compel the City to maintain District B in its current form.

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EXHIBIT 3

Verified Petition for Writ of Mandate/Complaint
Tate, et al. v. City of Morgan Hill, et al.

March 23, 2022

VIA PDF E-MAIL

Richard Constantine, Mayor rich.constantine@morganhill.ca.gov
Members of the City Council gino.borgioli@morganhill.ca.gov
City of Morgan Hill yvonne.martinezbeltran@morganhill.ca.gov
17575 Peak Avenue rene.spring@morganhill.ca.gov
Morgan Hill, California 95037 john.mckay@morganhill.ca.gov

**Re: Demand to Reconsider Resolution No. 22-013
(Adoption of Redistricting Map 103) to Comply with
the FAIR MAPS Act**

Dear Mayor Constantine & Members of the City Council:

I write on behalf of Steve Tate, Swanee Edwards, Brian Sullivan, and Kathy Sullivan, residents and registered voters of Morgan Hill, to demand that you comply with California's FAIR MAPS Act, Elec. Code §§ 21601-21609, by reconsidering the illegal map that the Council adopted on March 2, 2022, before the deadline to complete the redistricting process, April 17, 2022.

The illegality of Map 103 could not be more patently obvious—indeed, both the City's consultants, National Demographics Corporation, and the City Attorney advised the Council as much. The FAIR MAPS Act specifies a particular list of criteria to be followed in municipal redistricting and the "order of priority" in which those criteria should be considered. The top criteria, of course—based as they are on supreme federal law—are compliance with the equal population requirements of the Fourteenth Amendment and with the federal Voting Rights Act, 52 U.S.C. § 10301. *See* Elec. Code § 21601(a)-(b).

Assuming those two criteria are met, however, the foremost criterion specified by the Act is that "[t]o the extent practicable, council districts shall be geographically contiguous." Elec. Code § 21601(c)(1). Map 103 fails this basic requirement. Indisputably—as the City's demographic consultants explicitly advised the Council—District D is geographically non-contiguous.

We understand that the Council was acting under an apparent threat of litigation and, further, that it was advised that it could adopt Map 103 because the requirement of contiguity is qualified by the phrase “to the extent practicable.” However, neither argument remotely justifies the adoption of that illegal map.

As to the threat of litigation, the City would have faced no risk of liability under the equal population requirements if it had adopted any of the other proposed maps, nor would it have faced any threat of litigation under the Voting Rights Act. As to the latter point, the United States Supreme Court has held that liability under the VRA is not triggered unless it is possible to draw a district in which members of a given minority group constitute of at least 50% of the citizen voting age population (*i.e.*, eligible voters). *See Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009). Obviously, such a district cannot be drawn in Morgan Hill, as evidenced by the fact that no district in Map 103 exceeds 30% Latino citizen voting age population.¹ Thus, any claim that the Voting Rights Act justifies the non-contiguity of District D is wholly without merit.

We recognize that members of the public supporting Map 103 urged that District D should be drawn in its current configuration to unify a purported “community of interest.” Initially, this community of interest was identified as Latino voters, but drawing a district based “predominantly” on this racial consideration, when not required by the Voting Rights Act, constitutes unconstitutional gerrymandering. *See, e.g., Abbott v. Perez*, 138 S. Ct. 2305, 2334 (2018).

The supporters thereafter shifted gears to try to identify the purported community of interest in less explicitly racial terms, such as “renters.” Factually-speaking, this recharacterization is highly dubious,

¹ Even if such a district could be drawn, that would not be the end of the inquiry—the Voting Rights Act still might not require the drawing of such a district. However, the failure to meet this basic criterion is would be fatal to any claim under the act. *See, e.g., Romero v. Pomona*, 883 F.2d 1418, 1422 (9th Cir. 1989); *Overtton v. Austin*, 871 F.2d 529, 538 (5th Cir. 1989).

suggesting that it is pretextual. For one thing, the members of the public suggesting this community of interest did not identify any geographic location for this community of renters other than simply the District they sought. Moreover, District D has the lowest proportion of renters of any District in Map 103.

But, ultimately, the plausibility of this or any other so-called community of interest is beside the point. Even if were actually bona fide, it would not justify the City's violation of the contiguity requirement of the FAIR MAPS Act. In the "order of priority" specified in the Act, contiguity ranks above minimizing the division of communities of interest.

We also recognize that Map 103's supporters have latched onto the fact that contiguity is required only "to the extent practicable" to argue that it is not an absolute requirement. And, of course, it isn't. It is conceivable (though hard to imagine, realistically) that the contiguity requirement might have to be violated to a limited extent to comply with a *higher-ranked* criterion—*i.e.*, the equal population requirement or the Voting Rights Act. But that is not the case in Morgan Hill, as reflected in the fact that there were five other focus maps presented for the Council's consideration on March 2 that complied with those federal requirements *and* the contiguity requirement.

The phrase "to the extent practicable" does not, however, permit the Council to ignore contiguity in favor of a *lower-ranked* criterion; to conclude otherwise entirely defeats the purpose of prescribing the order of priority in the first instance. (We would note, moreover, that the directive to minimize the division of communities of interest is also to be followed only "to the extent practicable," *see* Elec. Code § 21601(c)(2), in recognition of the fact that it, too, must sometimes yield to higher-ranked criteria, such as the contiguity requirement.)

The illegality of Map 103 is transparent and indisputable. We therefore urge the Council to reconsider the adoption of that map before the deadline for the Council to adopt a final redistricting map on

Mayor & City Council
City of Morgan Hill
March 23, 2022
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April 17. After that date, the Council loses jurisdiction to make changes without a court order, and my client will have to consider alternative legal avenues.

Should you have any questions, please do not hesitate to contact me at 415/389-6800 or by e-mail at cskinnell@nmgovlaw.com.

Sincerely,

A handwritten signature in blue ink that reads "Christopher Skinnell". The signature is written in a cursive style with a large initial "C".

Christopher E. Skinnell

Cc: Donald Larkin, City Attorney
Donald.Larkin@morganhill.ca.gov