

Introduction to 2021 Redistricting Santa Clara Valley Open Space Authority

November 18, 2021

Why Are We Doing This?

- Every 10 years the federal government conducts the Census, and each district must update its director divisions to reflect the latest population counts, so that they are equal in population.
- Requirement is both statutory, *see* Elec. Code § 22000, and constitutional, *see Reynolds v. Sims*, 377 U.S. 533 (1964).

Redistricting Process: Key Dates

- **August 16, 2021:** Census Bureau releases PL94-171 redistricting data
 - Usually released in Feb/March of year following Census
- **September 21 & 27, 2021:** Statewide Database released adjusted data
- **January – April 2022:** public hearings (schedule TBD with consultant). At least two required.
- **April 17, 2022:** deadline for completion of redistricting process (Elec. Code § 22000.1(b)(1))

Process: Effect on Current Directors

- No director's term cut short, *see* Elec. Code § 22000(e), but
- When his or her term ends, an incumbent can only run from the new division in which he or she resides.

Federal Criteria: Equal Population

- Overriding criterion is total population equality, *see Reynolds v. Sims*, 377 U.S. 533 (1964).
- Unlike congressional districts, local electoral districts do not require perfect equality—some deviation acceptable to serve valid governmental interests.
- Total deviation less than 10% presumptively constitutional. (Caution: the presumption *can* be overcome!)

Federal Criteria: Equal Population (cont.)

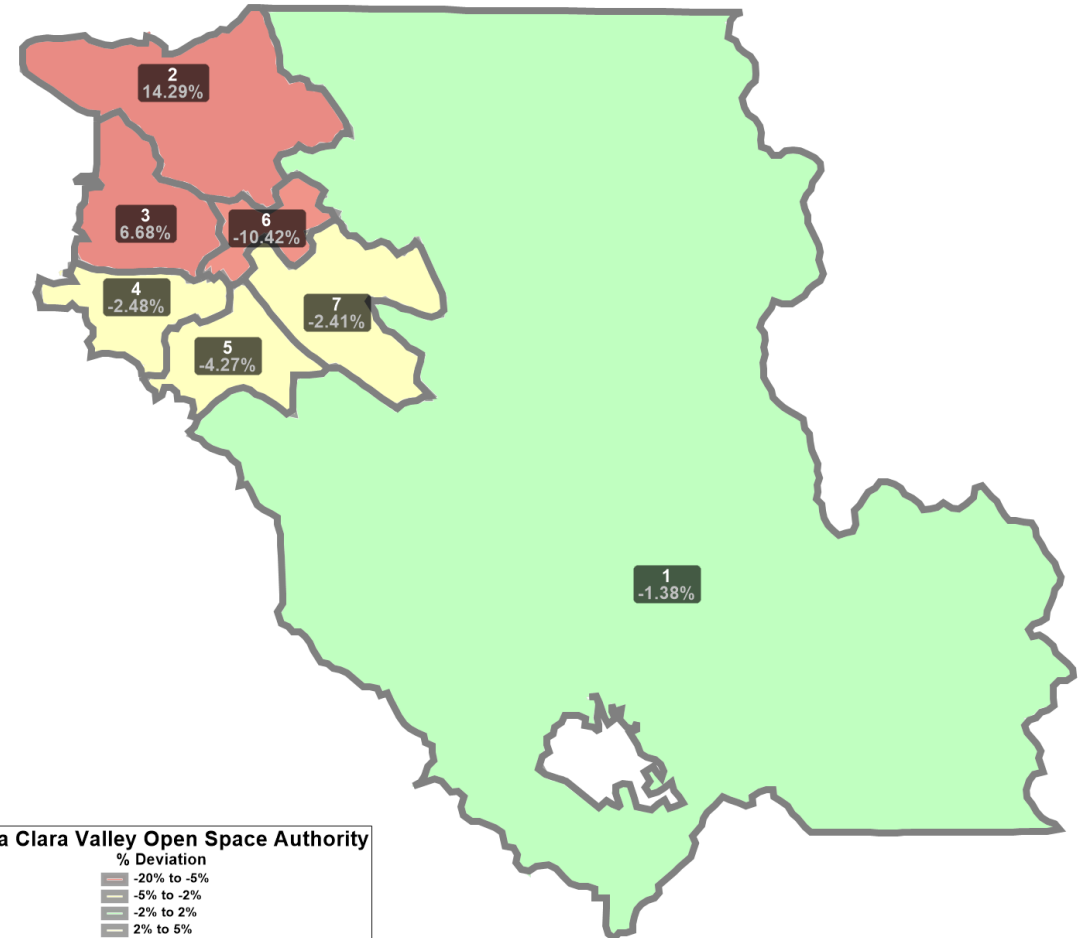
Total Population:	414,076		1	2	3	4	5
Ideal:	82,815	Pop.	84,683	82,167	83,661	80,568	82,997
Deviation Range:	4,115	Dev.	1,868	-648	846	-2,247	182
Total Deviation %:	4.97%	Dev. %	2.26%	-0.78%	1.02%	-2.71%	0.22%

1. Divide the **total population** by the **number of seats** to get the **ideal population**
2. Subtract the **smallest district's population** from the **largest** to get the **deviation range**
3. Divide #2 by #1 to get the **total plan deviation**

Estimated District Demographics

Dist.	Est. Pop.	Dev.*	% Dev.
1	193,872	-2,714	-1.4%
2	224,671	28,085	14.29%
3	209,709	13,123	6.68%
4	191,719	-4,867	-2.48%
5	188,187	-8,399	-4.27%
6	176,103	-20,483	-10.42%
7	191,843	-4,743	-2.41%
Total	1,376,105	23,606	24.71%

* Ideal Director Division Population:
196,586 total persons



Federal Criteria: Voting Rights Act

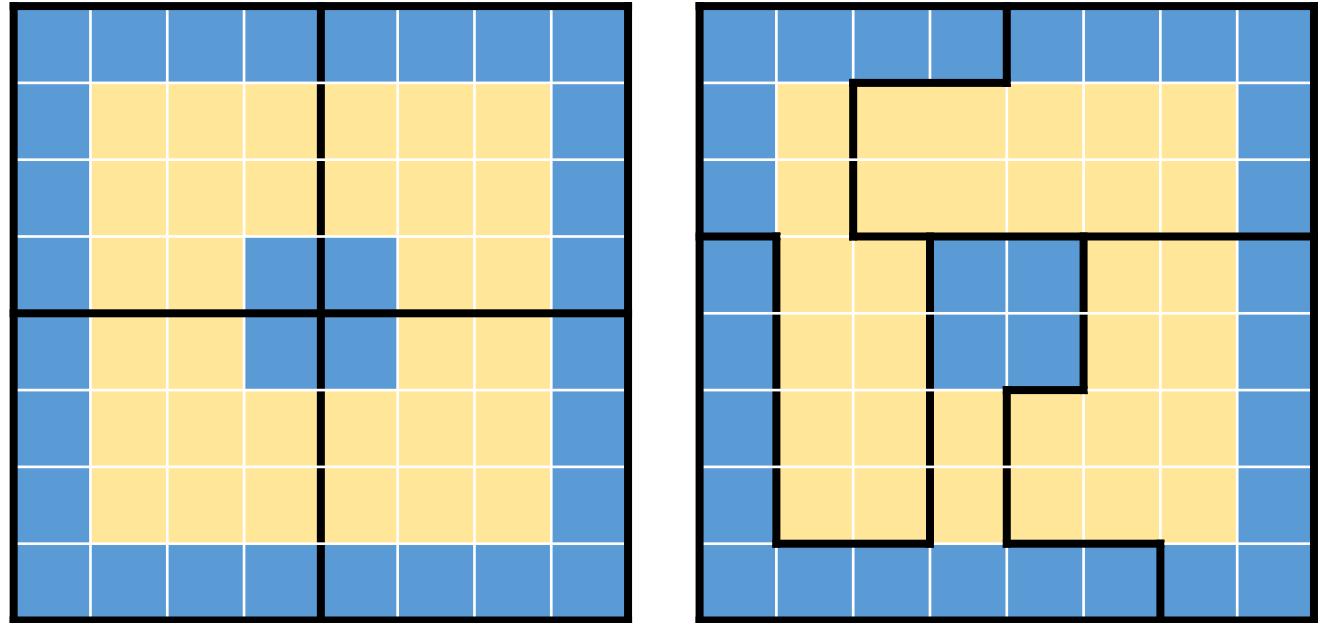
- Section 2 of the federal Voting Rights Act prohibits electoral systems (including district plans), which dilute racial and language minority voting rights by denying them an equal opportunity to nominate and elect candidates of their choice.
- “Language minorities” are specifically defined in federal law to mean persons of American Indian, Asian American, Alaskan Natives or Spanish heritage.

Federal Criteria: Voting Rights Act (cont.)

“‘Packing’ refers to the practice of filling a district with a supermajority of a given group or party. ‘Cracking’ involves the splitting of a group or party among several districts to deny that group or party a majority in any of those districts.”

-*Vieth v. Jubelirer*,
541 U.S. 267, 286 n.7 (2004)

- Creation of minority districts required only if the minority group can form the majority in a single member district that otherwise complies with the law.
Bartlett v. Strickland, 556 U.S. 1 (2009).

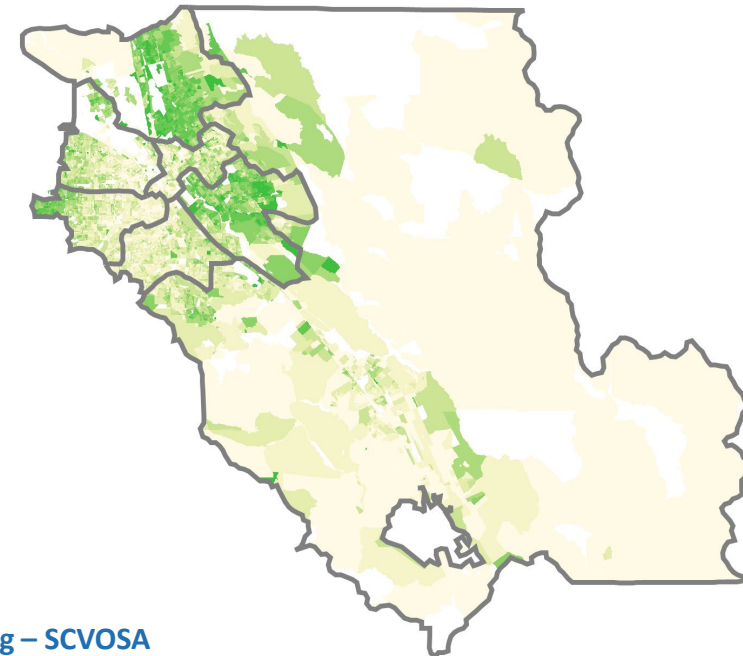
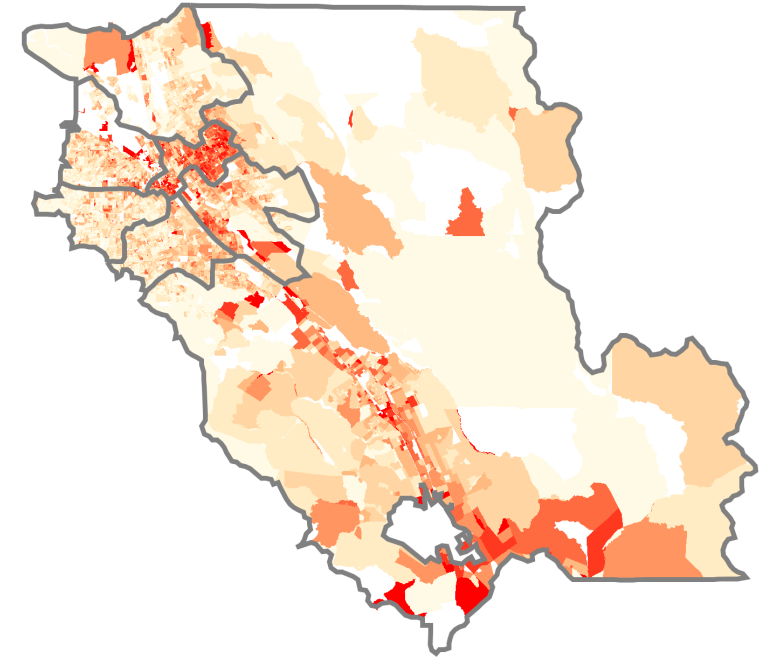


Four districts of even “Blue” and “Gold” party voters, OR one “packed” district of 14 Blue voters and two Gold voters with the remaining 18 Blue voters “cracked across the other three districts. The result is a 3-1 advantage for the Gold party

District Demographics

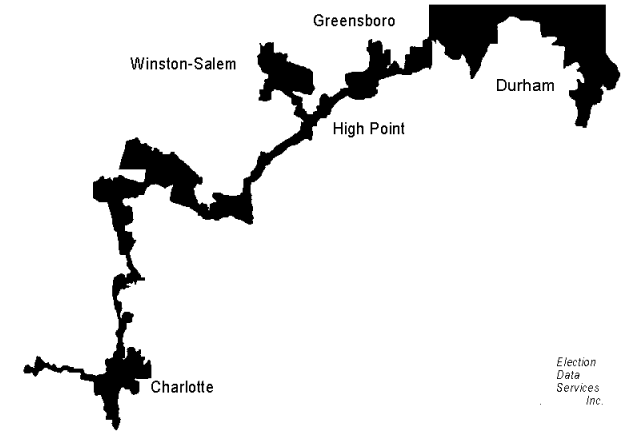
Dist.	% Latino CVAP	% NH Black CVAP	% NH Asian CVAP	% NH White CVAP
1	21.4%	2.5%	23.8%	50.7%
2	15.9%	3.6%	61.4%	17.5%
3	20.4%	4.8%	29.0%	43.9%
4	15.0%	3.9%	25.8%	53.5%
5	20.1%	3.6%	21.3%	53.3%
6	51.7%	3.7%	25.5%	16.6%
7	27.9%	2.9%	55.4%	12.6%
Total	23.9%	3.6%	34.9%	35.9%

“CVAP” = citizen voting age population



Federal Considerations: No Racial Gerrymandering

- The Fourteenth Amendment restricts the use of race as the “predominant” criterion in drawing districts and the subordination of other considerations. *Shaw v. Reno*, 509 U.S. 630 (1993); *Miller v. Johnson*, 515 U.S. 900 (1995).
 - Such predominant use must be justified as narrowly tailored to fulfill a compelling state interest – *i.e.*, strict scrutiny
- Looks matter! Bizarrely shaped electoral districts can be evidence that racial considerations predominate. (See, *e.g.*, North Carolina CD 12, which stretched 160 miles across the central part of the State, for part of its length no wider than the freeway right-of-way.)
- But bizarre shape is not required for racial considerations to “predominate.”
- Fourteenth Amendment does not, however, prohibit all consideration of race in redistricting. *Easley v. Cromartie*, 532 U.S. 234 (2001).
 - **Focus on communities of interest.**



Other Permissible Criteria

- Topography.
- Geography.
- Cohesiveness, contiguity, compactness and integrity of territory.
- Communities of interest.

See Elec. Code § 22000

Other Permissible Criteria

- Some other legitimate criteria include:
 - Preventing head-to-head contests between incumbents.
 - Preserving the cores of existing divisions & minimizing switching voters to different election cycles.
 - Respecting the boundaries of political subdivisions (*e.g.*, existing director divisions, city boundaries, county boundaries, school district boundaries, etc.).
 - Use of whole census geography (*e.g.*, census blocks).

Questions?