



Northern  
California

October 25, 2021

*Sent via e-mail*

Madera County Board of Supervisors  
c/o Karen Scrivner  
Chief Clerk  
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**Re: Public Comment on the Supervisorial Redistricting Process**

Dear Members of the Madera County Board of Supervisors:

The American Civil Liberties Union Foundation of Northern California (“ACLU”) writes regarding Madera County’s ongoing redistricting process. We highlight below certain procedural and substantive legal requirements regarding redistricting and raise several concerns about the Board’s current process. We also attach as **Exhibit 1** a short document with recommendations on best practices for outreach and education. We urge the Board to strictly adhere to, if not go well above, minimum state and federal requirements for the redistricting process to maximize public participation, increase transparency, and adopt a map that ensures fair representation for all Madera County communities.

**I. Redistricting Process Requirements**

The Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (FAIR MAPS) Act (hereinafter, the “Fair Maps Act” or “Act”)<sup>1</sup> provides detailed procedural requirements that the Board must follow before adopting a final district map by December 15, 2021. Among other things, the Fair Maps Act mandates a thorough public education and outreach program because the Act recognizes that to draw equitable maps, line drawers must collect detailed testimony about communities of interest from as many residents as possible.<sup>2</sup> While we appreciate the County’s efforts to maintain a redistricting webpage and hold the minimum number of public hearings, the County must comply with all procedural requirements

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<sup>1</sup> The supervisorial districts provisions of the Fair Maps Act are codified in sections 21500 to 21509 of the California Elections Code.

<sup>2</sup> Cal. Elec. Code § 21508(a).

**American Civil Liberties Foundation of Northern California**

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in the Act. The County should also consider implementing the best practices outlined in this letter to ensure a fair and transparent process.

First, the County is required to “encourage residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting public review process.”<sup>3</sup> Among other things, the County must make a “good faith effort” to provide redistricting information to “good government, civil rights, civic engagement, and community groups or organizations that are active in the county, including those active in language minority communities, and those that have requested to be notified concerning county redistricting” and to “media organizations that provide county news coverage, including media organizations that serve language minority communities.”<sup>4</sup> Although the Act clearly contemplates affirmative outreach efforts, the County seems to be taking a passive approach by waiting for the public to request redistricting information rather than affirmatively reaching out to communities.<sup>5</sup> Indeed, as noted by members of the public at the October 20, 2021 hearing, many county residents appear unaware of the County’s redistricting process.<sup>6</sup> This suggests that the County’s current outreach efforts are not effective. This is particularly concerning given the substantial cultural, ethnic, and linguistic diversity of Madera County residents and the County’s current intent to conduct the minimum of four public hearings required by the Act.<sup>7</sup> Accordingly, the Board should engage in ongoing, robust affirmative outreach efforts for the remainder of the redistricting process.

Second, we thank the Board for heeding the calls of members of the public at the October 20, 2021 hearing and scheduling two additional public workshops beyond the legal minimum.<sup>8</sup> But in light of the minimal public involvement thus far, we urge the Board both to schedule more opportunities for public input and to extend the County’s plan to select a final map by November 16, 2021.<sup>9</sup> This deadline is self-imposed. Under the Act, the County must adopt a final supervisorial district map by December 15, 2021.<sup>10</sup> The Board need not, therefore, artificially compress the public’s opportunities to engage with the redistricting process or undermine its ability to draw and adopt equitable maps.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* §§ 21508(a)(1)–(2).

<sup>5</sup> See Agenda Item 7(a), Doc. ID No. 7731 at 55:34–55:47, Regular Meeting of the Madera County Board of Supervisors (Sept. 7, 2021), <https://bit.ly/3phoqbE> (hereinafter “September 7, 2021 Hearing”) (County staff noting that the County has not “gotten any outreach yet” and has “not been approached by any specific group yet”).

<sup>6</sup> See Agenda Item 7(a), Doc. ID No. 7856 at 1:21:35–1:24:41, 1:24:55–1:26:15, 1:26:50–1:27:58, Regular Meeting of the Madera County Board of Supervisors (Oct. 19, 2021), <https://bit.ly/3B1OpWw> (hereinafter “October 19, 2021 Hearing”) (three members of public expressing concern over lack of public participation in redistricting process thus far).

<sup>7</sup> See County of Madera, *2021 Madera County Redistricting In-progress: Anticipated Public Outreach Meetings*, <https://bit.ly/3nfsE0Q> (last accessed Oct. 25, 2021).

<sup>8</sup> See *supra* notes 6 (public comments) & 7 (public hearings schedule); see also Cal. Elec. Code § 21507.1(a) (requiring, at a minimum, four public hearings).

<sup>9</sup> See *supra* note 7.

<sup>10</sup> Cal. Elec. Code § 21501(a)(2).

Third, the Act requires the County to accompany each draft map with “information on the total population, citizen voting age population, and racial and ethnic characteristics of the citizen voting age population of each proposed supervisorial district.”<sup>11</sup> The County’s three draft supervisorial maps include tables with total population data for the entire County and for each proposed district, but omit the required citizen voting age population (“CVAP”) data and the racial and ethnic characteristics of the CVAP of each proposed district.<sup>12</sup> The absence of the required CVAP data, including CVAP data broken down by racial and ethnic characteristics, makes it difficult for the Board and the public to assess whether the draft maps include districts that might comply with Section 2 of the Voting Rights Act, addressed in more detail below.

We request that County staff immediately re-release the draft maps with the data required by the Act, including racial and ethnic CVAP data as percentages of each draft district. We further request that the County provide a breakdown, by district, of select socioeconomic data from the American Community Survey and other voter data broken down by race and ethnicity, including voter registration and voter turnout data. This information will help the Board and the public understand the effectiveness of each district and whether the draft districts comply with the substantive requirements of federal and state law, addressed next.

## II. Supervisorial District Map Requirements

In addition to the procedural requirements and best practices described above, the Board and County Staff must also keep in mind the following substantive requirements when preparing the redistricting plan and drafting and considering maps:

1. The final map must have districts that are substantially equal in population.<sup>13</sup>
2. The final map must comply with the United States and California Constitutions as well as Section 2 of the Voting Rights Act of 1965.<sup>14</sup> This may require the County to include majority-minority districts where Latinx voters have an opportunity to elect candidates of their choice.
3. The County must follow the required redistricting criteria laid out in the Fair Maps Act in this order of priority: contiguity; maintain neighborhoods and communities of interest; maintain cities and census designated places; follow natural and artificial boundaries; and compactness.<sup>15</sup>
4. The County may not adopt a map that favors or discriminates against a political party,<sup>16</sup> and cannot consider relationships with political parties, incumbents, or political candidates when assessing communities of interest.<sup>17</sup>

Two of these requirements warrant further comment.

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<sup>11</sup> *Id.* § 21508(d)(2).

<sup>12</sup> See County of Madera, *2021 Madera County Redistricting In-progress: Draft Maps*, <https://bit.ly/3nfsE0Q> (last accessed Oct. 25, 2021).

<sup>13</sup> Cal. Elec. Code § 21500(a).

<sup>14</sup> *Id.* § 21500(b); 52 U.S.C. § 10301.

<sup>15</sup> Cal. Elec. Code § 21500(c).

<sup>16</sup> *Id.* § 21500(d).

<sup>17</sup> *Id.* § 21500(c)(2).

First, at the October 12, 2021 Board of Supervisors meeting, Supervisor Gonzalez asked whether there is “anything in the law that talks about voting population.”<sup>18</sup> Staff responded generally that the “main characteristic” to be taken into account was “total population.”<sup>19</sup> Staff continued that “we can take a look at the voting age population” but “you can’t necessarily use that voting age population to determine what your district maps are.”<sup>20</sup>

This exchange suggests an incomplete understanding of federal and state redistricting requirements. While federal and state law require line drawers to balance total population, they also require line drawers to consider citizen voting age population. Like all legislative bodies across the country, the County must comply with Section 2 of the Voting Rights Act to ensure that the final district map does not dilute the voting power of any protected communities. And it is well-established that “CVAP is the appropriate measure to use in determining whether an additional effective majority-minority district can be created” under Section 2.<sup>21</sup> Based on the October 12, 2021 exchange and the subsequent omission from the draft maps of the required CVAP data—including the racial and ethnic breakdown of that data, it is unclear what, if any, analyses staff conducted or plan to conduct to ensure that the final supervisorial map complies with the Voting Rights Act.

Recent demographics suggest it is possible to draw multiple districts with greater than 50% Latinx CVAP.<sup>22</sup> It is incumbent on the Board and County staff to work closely with counsel and consultants to avoid potential Voting Rights Act litigation and explore the need to create and/or maintain Section 2 compliant districts where Latinx voters have a real opportunity to elect candidates of their choice.

Second, staff have repeatedly recommended using the same line-drawing methodology as the Board used in 2010 to draw the existing supervisorial districts and to maintain those lines as much as possible except to balance population and rectify split census blocks.<sup>23</sup> Staff have also

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<sup>18</sup> See Agenda Item 8(a), Doc. ID No. 7833 at 1:28:10–1:28:21, Regular Meeting of the Madera County Board of Supervisors (Oct. 12, 2021), <https://bit.ly/2Z9UL9N> (hereinafter “October 12, 2021 Hearing”) (“Regarding the criteria, is there anything in the law that talks about voting population?”).

<sup>19</sup> See *id.* at 1:28:22–1:29:00.

<sup>20</sup> *Id.*

<sup>21</sup> *Luna v. County of Kern*, 291 F. Supp. 3d 1088, 1107 (E.D. Cal. 2018) (internal quotations, citation omitted).

<sup>22</sup> See 2019 American Community Survey 5-Year Data (Latinx population represents 42.7% of Madera County’s CVAP).

<sup>23</sup> See October 12, 2021 Hearing at 1:04:11; *A Deeper Look into the Supervisorial Redistricting Effect and Comparative Analysis of 2010 and 2020 Census Data* at 8, PowerPoint Regarding Agenda Item 8(a), Doc. ID No. 7833 Presented at the Regular Meeting of the Madera County Board of Supervisors (Oct. 12, 2021), <https://bit.ly/2Z9UL9N> (hereinafter “October 12, 2021 Presentation”) (PowerPoint accessible via hyperlink in Agenda appearing under video player) (staff recommending using 2010 supervisorial district boundaries as “precedent” or “starting point” for this redistricting cycle because the Board “previously approved” redistricting methodology used during last decennial redistricting); Agenda Item Submittal for Agenda Item 8(a), Doc. ID No. 7833 at 6–7, Regular Meeting of the Madera County Board of Supervisors (Oct. 12, 2021), <https://bit.ly/3b6GLji> (hereinafter “October 12, 2021 Staff Report”) (report accessible via hyperlink in Agenda appearing under video player) (same).

implied that the Act's criteria are not mandatory,<sup>24</sup> need not be considered in a particular order,<sup>25</sup> and may be given equal or even less weight than non-statutory redistricting principles.<sup>26</sup> These recommendations and comments are extremely concerning because they reflect a fundamental misunderstanding of the substantive legal requirements line drawers must satisfy.

As a threshold matter, the recommendation to maintain district lines as much as possible except to balance population would defeat the central purpose of the redistricting process: to periodically redraw district boundaries to provide residents with fair representation. Equality of population is not important for its own sake. Rather, it serves the larger goal of decennial redistricting: "achieving fair and effective representation for all citizens."<sup>27</sup> The purpose of periodic redistricting is to "maintain[ ] a reasonably current scheme of legislative representation" that reflects not just "population shifts and growths," but also any changes over time in other demographic trends.<sup>28</sup>

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<sup>24</sup> For example, during the October 19, 2021 presentation, County staff explained that they created the draft maps based on "insight regarding Countywide development patterns," "anticipated future developable areas," and an "analysis of the Countywide population . . . in order to reduce the deviation between the most and least populated Districts." *A Review of the Draft Supervisorial District Revisions and Population Differences Using 2020 Census Data* at 9, PowerPoint Regarding Agenda Item 7(a), Doc. ID No. 7856 Presented at the Regular Meeting of the Madera County Board of Supervisors (Oct. 19, 2021), <https://bit.ly/3B1OpWw> (hereinafter "October 19, 2021 Presentation") (PowerPoint accessible via hyperlink in Agenda appearing under video player); October 19, 2021 Hearing at 1:09:32–1:09:57 (same). This list does not, of course, include any of the Act's mandatory criteria. *See also, e.g.*, October 12, 2021 Hearing at 1:19:57–1:20:35 (County staff indicating that the Fair Maps Act criteria "could be" considered"); October 12, 2021 Staff Report at 5–6 (listing "commonly held standards," including but not limited to the Fair Map Act criteria, "that can be used as criteria for guiding potential boundary adjustments").

<sup>25</sup> For example, in the October 12, 2021 presentation, County staff recommended "rectifying new census blocks that are bifurcated by the existing district boundaries" without any mention of the other Fair Maps Act mandatory ranked criteria, including higher-ranked criteria like contiguity and maintaining communities of interest. *See* October 12, 2021 Presentation at 8; *see also id.* at 7 (listing out of order some but not all Fair Maps Act criteria); Agenda Item Submittal for Agenda Item 7(a), Doc. ID No. 7856 at 2, Regular Meeting of the Madera County Board of Supervisors (Oct. 19, 2021), <https://bit.ly/3B1OpWw> (hereinafter "October 19, 2021 Staff Report") (report accessible via hyperlink in Agenda appearing under video player) (emphasizing correcting census blocks without reference to other Fair Maps Act criteria).

<sup>26</sup> For example, in the report submitted for the September 7, 2021 Board of Supervisors meeting, County staff suggested that "State and federal requirements must be considered *along with* traditional considerations for local preference, including" non-statutory criteria like "Preserving the core of existing district[s]." Agenda Item Submittal for Agenda Item 7(a), Doc. ID No. 7731 at 2, Regular Meeting of the Madera County Board of Supervisors (Sept. 7, 2021), <https://bit.ly/3phoqbE> (hereinafter "September 7, 2021 Staff Report") (report accessible via hyperlink in Agenda appearing under video player) (emphasis added); *see also* October 12, 2021 Presentation at 7 (listing without distinction mandatory ranked criteria under the Fair Maps Act in conjunction with other redistricting criteria, like "Respect Incumbency").

<sup>27</sup> *Reynolds v. Sims*, 377 U.S. 533, 565–66 (1964); *id.* at 560–61 (noting that "the fundamental principle of representative government in this country" mandates "equal representation for equal numbers of people").

<sup>28</sup> *See id.* at 583–84.

Line drawers use a series of tools in addition to equality of population to draft maps that “observe and advance neutral democratic values.”<sup>29</sup> The Fair Maps Act reflects the California Legislature’s determination of which tools and criteria best advance these values. And by making certain traditional redistricting criteria mandatory, the California Legislature took the firm position that counties may not simply tweak lines every ten years to address malapportionment. Thus, in light of the intervening passage of the Act and contrary to staff recommendations, the Board should not follow the “previously approved Redistricting methodology” used to draft the current supervisorial districts because those lines were drawn under an entirely different legal scheme. Before, the Board was only required to ensure equality of population and avoid dilution; it could place as much weight as it wanted on other redistricting principles. Now, in addition to maintaining substantially equal population and avoiding the potential vote dilution described above, the County must also follow the Act’s criteria.

The County must follow these criteria in their ordered ranking. This means, for example, that the County must strive to maintain geographic contiguity (ranked first) and the integrity of neighborhoods and communities of interest (ranked second) before attempting to maintain census designated places or cities (ranked third).<sup>30</sup> We are concerned that County staff are placing undue emphasis on rectifying split census blocks and failing to prioritize gathering the information necessary, including public input, to maintain the integrity of neighborhoods and communities of interest.<sup>31</sup>

What is more, prioritizing *other* redistricting criteria over the ranked criteria could risk violating the Fair Maps Act. We are concerned that some of the County’s redistricting materials lump together “Other Criteria for Redistricting Plans,” without distinguishing between the mandatory federal and state law requirements and non-statutory principles, like respecting incumbency and preserving the core of existing districts.<sup>32</sup> Compounding our concern, some of these non-statutory principles conflict with the spirit if not the letter of the Fair Maps Act, which expressly prohibits many of the practices that animate these principles. For example, the Act precludes the County from adopting a map “for the purpose of favoring or discriminating against a political party.”<sup>33</sup> The Act is also clear that “[c]ommunities of interest do *not* include relationships with political parties, *incumbents*, or political candidates.”<sup>34</sup>

We urge the Board to do what is right, prioritize the mandatory criteria in the correct order, and disregard these other redistricting principles, particularly because the Fair Maps Act and the Voting Rights Act may require the Board to start from a blank slate and adopt a dramatically different map than it did during the last redistricting. Engaging in a good faith effort to adopt a fair and equitable map that complies with federal and state law will require extensive public testimony, an understanding of historical discrimination in the County, and demographic and statistical analyses. This only further highlights the need for the County to

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<sup>29</sup> See *Bethune-Hill v. Va. State Bd. of Elec.*, 141 F. Supp. 3d 505, 534–35 (E.D. Va. 2015), *affirmed in part, vacated in part*, 137 S. Ct. 788 (2017).

<sup>30</sup> See Cal. Elec. Code §§ 21500(c)(1), (c)(2), (c)(3).

<sup>31</sup> See *supra* note 25.

<sup>32</sup> See *supra* note 26.

<sup>33</sup> Cal. Elec. Code § 21500(d).

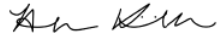
<sup>34</sup> *Id.* § 21500(c)(2) (emphasis added).

extend its self-imposed deadline of November 16, 2021, re-release the draft maps with the required data, and schedule additional public hearings and workshops as soon as possible.

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We look forward to working with you to make this a fair, open, and transparent process. If you have any questions, please feel free to contact us at [hkieschnick@aclunc.org](mailto:hkieschnick@aclunc.org).

Sincerely,



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# EXHIBIT 1



# Engaging Your Constituents in the LOCAL REDISTRICTING PROCESS

This year, your jurisdiction will begin the process of redrawing district lines ahead of the 2022 elections. State law mandates that counties and cities conduct robust public education and outreach. The following are best practices to help facilitate the community engagement process.

## ENCOURAGING CONSTITUENT PARTICIPATION IN THE REDISTRICTING PROCESS\*

*Your jurisdiction is tasked with encouraging residents, including those in underrepresented communities and non-English speaking communities, to participate in the redistricting process.<sup>i</sup> To do this, you must conduct public outreach to local media, good government, civil rights, civic engagement, and community groups or organizations that are active in your jurisdiction, including those serving different language communities, the disability community, and other historically underrepresented communities.<sup>ii</sup>*

### USE TARGETED RECRUITMENT STRATEGIES

- Partner with organizations that were involved with the 2020 Census count in your community, faith-based networks, and community organizations that work with different language communities.
- Reach out to other agencies and departments within your local government and ask them to share information with residents they come in contact with.
- Reach out to other jurisdictions redistricting in your geographical area to help educate and notify residents about getting involved.
- Use ethnic media to promote participating in the redistricting process within different language communities.
- Don't forget about youth! Reach out to high school leadership programs and youth-serving organizations to encourage them to get involved.
- Conduct outreach at virtual and in-person cultural events, community centers, schools, and places of worship.

### CONSIDER DEDICATING A POINT PERSON FOR COMMUNITY OUTREACH

- Consider dedicating one or more staff members or consultants to be point people for outreach. The public should be able to contact them if they have questions about the redistricting process or have outreach and community education suggestions.

## CREATING AND MAINTAINING A REDISTRICTING WEBPAGE\*

*Your jurisdiction must create a dedicated redistricting webpage.<sup>iii</sup> The webpage must include an explanation of the redistricting process in all required languages.<sup>iv</sup> It must also include or link to procedures for the public to testify during a hearing or submit written testimony in all required languages; a calendar of all public hearings and workshop dates and locations; the notice and agenda for each public hearing and workshop; a recording or written summary of each public hearing or workshop; draft maps; and the final adopted map. This webpage will be a critical source of information for your constituents.*

### TAKE ADVANTAGE OF RESOURCES CREATED BY THE SECRETARY OF STATE

- The Secretary of State created templates explaining the redistricting process and made them available in ten languages. You can find the templates [here](#).

### ENSURE THAT TRANSLATED MATERIALS ARE EASY TO FIND

- Arrange your webpage so that translated materials are easy to find.

- Instead of listing available languages in English, list them in their respective language. For example, instead of listing “Spanish” list “Español.”

#### CREATE AND TRANSLATE ADDITIONAL MATERIALS

- Create and translate additional materials, including the procedures for testifying during a public hearing and submitting written testimony.

#### CREATE ENGLISH-LANGUAGE MATERIALS WITH AN EYE TOWARDS TRANSLATION

- Use plain English when creating materials so that they can be more easily translated.

#### CONSIDER PROVIDING TRANSLATION IN ADDITIONAL LANGUAGES

- Translate materials in additional languages, such as those covered by the state elections code, to better reach your constituents.

### CREATING AN INCLUSIVE PUBLIC HEARING & PUBLIC INPUT PROCESS\*

*Before adopting a final map, your jurisdiction must hold at least four public hearings to receive input regarding line drawing.<sup>v</sup> This includes at least one hearing before and at least two hearings after drawing your first draft map.<sup>vi</sup> The fourth required hearing and additional hearings can be held before or after the draft map is drawn.<sup>vii</sup> Your jurisdiction must make available to the public either a recording or written summary of each public comment and council deliberation made at each public hearing or workshop.<sup>viii</sup>*

#### PROVIDE ADDITIONAL OPPORTUNITIES FOR INPUT

- Your jurisdiction should strive to offer more than four hearings, advertise them widely, and make the hearings as accessible as possible.
- Hold hearings in different geographic areas and at different times to improve accessibility for all constituents.
- Make all public hearings and workshops, including in-person hearings and workshops, available over a video platform.
- Consider providing additional days than what is required for constituents to evaluate draft maps and provide feedback.
- Provide a public mapping tool to make the process more accessible.

#### BUILD TRANSPARENCY AND ACCOUNTABILITY INTO THE REDISTRICTING PROCESS

- Following each round of community input and feedback, consider posting all submitted testimony on your webpage, and if received in enough time, include the submitted public comment(s) in the agenda packet for the hearing.

#### COORDINATE WITH OTHER JURISDICTIONS IN YOUR REGION

- Coordinate with other jurisdictions in your region about redistricting-related hearing and workshop dates to minimize conflicts.
- Avoid scheduling hearings that conflict with the California Citizens Redistricting Commission hearings in your region.

#### ENSURE LANGUAGE AND DISABILITY ACCESS

- Consider providing live interpretation and translation in all required languages regardless of whether an advance request was made.
- Include American Sign Language (ASL) interpretation and closed captioning for individuals who are Deaf or hard of hearing.

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- <sup>i</sup> Cal. Elec. Code § 21508(a) (counties); *id.* § 21608(a) (general law cities); *id.* § 21628(a) (charter cities).
- <sup>ii</sup> Cal. Elec. Code § 21508(a)(1)-(2) (counties); *id.* § 21608(a)(1)-(2) (general law cities); *id.* § 21628(a)(1)-(2) (charter cities).
- <sup>iii</sup> Cal. Elec. Code § 21508(g) (counties); *id.* § 21608(g) (general law cities); *id.* § 21628(g) (charter cities).
- <sup>iv</sup> Cal. Elec. Code § 21508(g)-(h) (counties) (Required languages include “any language in which ballots are required to be provided in the county pursuant to Section 203 of the federal Voting Rights Act...”); *id.* § 21608(g)-(h) (general law cities); *id.* § 21628(g)-(h) (charter cities). Note, the Secretary of State’s Office will be releasing a list of required languages by city [here](#).
- <sup>v</sup> Cal. Elec. Code § 21507.1(a) (counties); *id.* § 21607.1(a) (general law cities); *id.* § 21627.1(a) (charter cities).
- <sup>vi</sup> Cal. Elec. Code § 21507.1(a)(1)-(2) (counties); *id.* § 21607.1(a)(1)-(2) (general law cities); *id.* § 21627.1(a)(1)-(2) (charter cities).
- <sup>vii</sup> See generally Cal. Elec. Code § 21507.1(a) (counties); *id.* § 21607.1(a) (general law cities); *id.* § 21627.1(a) (charter cities).
- <sup>viii</sup> Cal. Elec. Code § 21508(f) (counties); *id.* § 21608(f) (general law cities); *id.* § 21628(f) (charter cities).

\* For a complete set of legal requirements, please review the relevant code section.