



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Southern California

March 15, 2022

*Via Email*

Bakersfield City Council  
c/o Julie Drimakis, City Clerk  
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**Re: Compliance with State and Federal Redistricting Laws  
March 16 City Council meeting, Item No. 9.a.**

Dear Members of the Bakersfield City Council:

The City Council must adopt a map with districts that follow mandatory state map-drawing criteria that were only discretionary during the last redistricting cycle, including the requirement that wards be contiguous, maintain communities of interest, and be compact. You must also ensure that the final City Council map complies with the federal Voting Rights Act of 1965 (“VRA”) and does not impermissibly dilute the voting strength of the Latino community. The only map under consideration that complies with federal and state law, Map 5B, has wide community support and is based on a map created by community members. We urge you to adopt Map 5B and to reject map 2C, a map that flouts new state redistricting criteria and potentially violates the VRA.

## **I. The Fair Maps Act**

The Fair and Inclusive Redistricting for Municipalities and Political Subdivisions Act (“Fair Maps Act”), adopted in 2019 and amended in 2020, outlines detailed substantive and procedural requirements that all cities must follow this redistricting cycle. *See, e.g.*, Cal. Elec. Code §§ 21621, 21627.1, 21628. Section 21621(a) of the Elections Code provides that, following each decennial census, the City must adopt a new ward map that balances the population. *Id.* § 21621(a). The map must also comply with the VRA and contain wards that, in order of priority and where practicable: are contiguous, maintain communities of interest, have boundaries that are easily identifiable and understandable, and are compact. *Id.* §§ 21621(b) & (c). Importantly, the Act prohibits partisan gerrymandering, *id.* § 21621(d), and prohibits you from considering relationships with political parties, incumbents, or political candidates as part of the communities of interest assessment, *id.* § 21621(c)(2).

In 2011 the City Council had discretion to consider or ignore traditional redistricting criteria like compactness and maintaining communities of interest, making the existing map’s noncompact wards permissible at the time.<sup>1</sup> This cycle, however, the City must adopt a map that follows the mandatory line-drawing criteria in the Fair Maps Act. This means that the final map must unite the large community of

<sup>1</sup> *See* Current Ward Districts, City of Bakersfield, <https://bit.ly/3sZi0ht>.

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interest that includes residents who are Punjabi and/or Sikh (“Punjabi/Sikh community of interest”) and fix the compactness issues with the existing map. The only map under consideration that complies with the Fair Maps Act is Map 5B.<sup>2</sup> Map 5B addresses the compactness issues with current wards 4 and 5 by uniting the communities in north Bakersfield into ward 4 and keeping ward 3 largely on the eastside. This makes it possible to unite the Punjabi/Sikh community of interest in wards 5 and 7. In response to community feedback, Map 5B also keeps the downtown community of interest together in ward 2 while maintaining wards 1 and 7 as Latino-majority wards. Importantly, Map 5B does not place any emphasis on impermissible factors like incumbency and political candidates when assessing communities of interest and does not favor or discriminate against a political party.

Map 2C is a status quo map that ignores Fair Maps Act criteria.<sup>3</sup> Like the existing map, Map 2C breaks up the Punjabi/Sikh community of interest among wards 1, 5, 6 and 7. *See* Cal. Elec. Code § 21621(c)(2) (requiring that communities of interest that “share [ ] common social or economic interests” be included “within a single district for the purposes of [ ] effective and fair representation”). Map 2C also includes wards that are not compact. The Act defines compact districts as those that do not bypass “nearby areas of population . . . in favor of more distant populations.” *Id.* § 21621(c)(4). Wards 3 and 4 violate this requirement because they bypass nearby areas of population in favor of more distant areas in the northwest part of the City. Map 2C does this even though it is possible to comply with higher ranked criteria while keeping wards fairly compact, as shown by Map 5B. These wards, and particularly Ward 3, extend over large strips of land that have roads and industrial areas in them instead of residents. *See Shaw v. Hunt*, 517 U.S. 899, 903, 916-918 (1996) (rejecting a district as noncompact where the district extended over areas that were “no wider than [a freeway] corridor”).

Although the City of Bakersfield contains many islands, it is practicable to create a map with relatively compact wards while still complying with higher ranked criteria. It would be completely unnecessary, and therefore violate the Fair Maps Act, to adopt a map with noncompact wards. In addition, to the extent Map 2C was drawn to protect incumbents or to advance the interests of a political party, those are also impermissible bases on which to draw lines under the Fair Maps Act. For these reasons, the Council must reject Map 2C.

## II. The Federal Voting Rights Act

The City must ensure that the final ward map does not dilute the voting power of any protected communities. 52 U.S.C. § 10301. Under certain circumstances, Section 2 requires the City to draw wards that provide minority voters with an effective opportunity to elect candidates of choice. To determine whether the Council must create such wards, the Council must first examine the three *Gingles* preconditions: (1) whether the Latino community in Bakersfield is sufficiently large and geographically compact to constitute a majority in one or more single-member districts; (2) whether Latino voters are politically cohesive; and (3) whether bloc voting by the majority of voters usually prevents Latino voters from electing their preferred candidates. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). Together, the second and third factors describe racially polarized voting (“RPV”). Once these preconditions are established, you must “consider[ ] whether ‘on the totality of circumstances,’ minorities have been denied an ‘equal opportunity’ to ‘participate in the political process and to elect representatives of their choice.’” *Abrams v. Johnson*, 521 U.S. 74, 91 (1997) (quoting 52 U.S.C. § 10301(b)).

The first *Gingles* precondition requires the City to look at CVAP. *Cano v. Davis*, 211 F. Supp. 2d 1208, 1233 (C.D. Cal. 2002). The Latino population makes up 40.4% of the City’s CVAP,<sup>4</sup> and Map 5B confirms that it is possible to draw three compact wards with Latino CVAP over 50%, meeting *Gingles* factor I. A federal district court also found in 2018 that there is RPV in Kern County, *Luna v. Cnty. of*

<sup>2</sup> *See* City of Bakersfield: Draft Plan 5B, Redistricting Partners, <https://bit.ly/3MRsl8q>.

<sup>3</sup> *See* City of Bakersfield: Draft Plan 2C, Redistricting Partners, <https://bit.ly/3KQC3WR>.

<sup>4</sup> 2019 American Community Survey CVAP Tabulation.

*Kern*, 291 F. Supp. 3d 1088, 1127, 1131 (E.D. Cal. 2018), indicating that there is likely RPV in Bakersfield. Community testimony, socioeconomic data, and past and current discrimination against the Latino community in Bakersfield support a finding that, under the totality of the circumstances, the Latino community has less of an opportunity to participate in the political process. *See Clark v. Calhoun Cnty.*, 21 F.3d 92, 97 (5th Cir. 1994) (“it will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances”). Accordingly, Map 2C not only violates the Fair Maps Act but there is also a significant possibility that it violates the VRA because it does not include a third Latino-majority district where Latino voters have a real opportunity to elect candidates of choice.

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We urge the City Council to reject Map 2C because it does not follow state law and it likely violates the VRA. Instead, the City should adopt Map 5B, a map with wide community support and based on a plan created by Bakersfield residents. If you have any questions, please feel free to contact us at [jgomez@aclusocal.org](mailto:jgomez@aclusocal.org) and [cvalencia@aclusocal.org](mailto:cvalencia@aclusocal.org).

Sincerely,

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