



VIA CERTIFIED MAIL

July 10, 2019

Office of the City Clerk  
City of Elk Grove  
8401 Laguna Palms Way  
Elk Grove, CA 95758

*Re: Violation of California Voting Rights Act*

I write to follow up on my letter of February 16, 2018, on behalf of our clients, Southwest Voter Registration Education Project and its members, including Andres Ramos. In that previous letter, I explained that: the City of Elk Grove (“Elk Grove”) relies upon an at-large election system for electing candidates to its City Council; voting within Elk Grove is racially polarized, resulting in minority vote dilution; and, therefore, Elk Grove’s at-large elections violate the California Voting Rights Act of 2001 (“CVRA”). I am writing this follow up letter out of an abundance of caution, updating my previous letter now that the November 2018 election has been conducted and analyzed.

The CVRA disfavors the use of so-called “at-large” voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4<sup>th</sup> 660, 667 (“*Sanchez*”). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control *every* seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted “at-large” election schemes for decades, because they often result in “vote dilution,” or the impairment of minority groups’ ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) (“*Gingles*”). The U.S. Supreme Court “has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength” of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to “ignore [minority] interests without fear of political

consequences”), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). “[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group’s ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act (“FVRA”), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; see also Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, “[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965.” *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4<sup>th</sup> 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.” Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a “majority-minority district.” *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. See Cal. Elec. Code § 14028 (“A violation of Section 14027 **is established** if it is shown that racially polarized voting occurs ...”) (emphasis added); also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”)

To establish a violation of the CVRA, a plaintiff must generally show that “racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of the circumstances” test – “are probative, but not necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(e). These “other factors” include “the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.” *Id.*

Elk Grove’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of the City’s Council elections. Elk Grove has four council residency districts, council members are elected citywide (at-large), and each council member must reside within the district of the city that they oversee. It is well known that numbered post elections (a/k/a designated seat elections), as employed by Elk Grove, enhance the dilutive effects of at-large elections. This was explained by Justice Marshall in *City of Rome v. United States*, 446 U.S. 156, 183-85, fn. 19 (1980) (finding that City of Rome’s proposed change from plurality at-large elections to at-large elections with numbered posts would eliminate the potential for “single shot” voting by the minority community, and thus further dilute the minority vote).

In the 2018 election, Andres Ramos and Orlando Fuentes each sought a seat on the City Council. Each had significant support from the Latino community, but lost. This election, like those discussed in my previous correspondence, are demonstrative of the Latino vote dilution in Elk Grove and the inability of Latinos to elect their preferred candidates or influence the outcome of elections.

As of the 2010 Census, the City of Elk Grove had a population of 153,015. According to recent data, Latinos comprise approximately 18% of the City’s population. However, there are currently no Latinos on the Elk Grove City Council, nor have there been for several years.

The City of Elk Grove has a real and active problem with racism. Recent racist incidents include the discovery of a racist and threatening note at a black-owned business and “KKK” graffiti at a local apartment complex. Following these high-profile incidents of racism in Elk Grove, the American Leadership Forum – Mountain Valley Chapter released its report with recommendations on how to combat the racism rampant in the City. The City Council received those recommendations in January 2018, but has, thus far, failed to address the hostile and violent racism in the City. The lack of diversity on

the City Council, as perpetuated by the City's at-large election system, exacerbates the racial tensions in the City.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale city council, with districts that combine all incumbents into one of the four districts.

More recently, after a 6-week trial, we also prevailed against the City of Santa Monica, after that city needlessly spent millions of dollars defending its illegal election system – far in excess of what was spent in the Palmdale litigation - taxpayer dollars which could have been more appropriately spent on indispensable municipal services and critical infrastructure improvements. Just prior to the trial in that case, counsel for the City of Santa Monica – Kahn Scolnick, a partner at Gibson Dunn & Crutcher LLP proclaimed that, “the reality is that if Santa Monica fails the CVRA test, then no city could pass, because Santa Monica is doing really well in terms of full representation and success of minority candidates.” (“In Rare California Voting Rights Trial, Gibson Dunn Steps Up for Santa Monica”, Law.com, August 1, 2018). Notwithstanding Mr. Scolnick's prediction, Plaintiffs succeeded in proving that Santa Monica's election system was in violation of the CVRA and the Equal Protection Clause of the California Constitution.

Given the historical lack of Latino representation on the Elk Grove City Council in the context of racially polarized elections, we urge Elk Grove to voluntarily change its at-large system of electing City Council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief.

We look forward to your response.

Very truly yours,



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