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VIA CERTIFIED MAIL

August 3, 2018

Ky Spangler
City Clerk
City of Simi Valley
2929 Tapo Canyon Road
Simi Valley, CA 93063

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project. The City of Simi Valley ("Simi Valley") relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within Simi Valley is racially polarized, resulting in minority vote dilution. Therefore, Simi Valley's at-large elections violate the California Voting Rights Act of 2001 ("CVRA").

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.4th 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. 4th 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.*

Simi Valley's at-large system dilutes the ability of Latinos (a "protected class") – to elect candidates of their choice or otherwise influence the outcome of Simi Valley's Council elections.

Simi Valley's election history is illustrative. In the last twenty years, Glen Becerra and Paul Luna Delgado were the only Latino candidates to run for City Council; further, Paul Luna Delgado lost in 2002. The fact that only two Latino candidates have sought election to the Simi Valley City Council does not indicate a lack of Latino interest in local government. On the contrary, the paucity of Latino candidates to seek election to the City Council exemplifies the powerful consequences of vote dilution. When a minority group feels disenfranchised by their city's local government and its election system, their participation in either understandably decreases. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

According to recent data, Latinos comprise approximately 23.29% of the population of Simi Valley. The contrast between the significant Latino proportion of the electorate and the near absence of Latinos to be elected to the City Council is telling.

As the Latino population of a city continues to grow, its city government must become increasingly more receptive and representative of Latino interests. Such is not the case in Simi Valley. In fact, the Simi Valley City Council just voted for a *second* time to overturn California's sanctuary law, Senate Bill 54. At the most recent City Council meeting, residents opposed to the sanctuary law expressed their misguided, xenophobic beliefs, and demanded that the Council make Simi Valley "safe" again. While 78 attendees spoke in favor of the sanctuary law, only 43 spoke against it; additionally, via cards, nearly three times as many attendees expressed their support of the law than attendees who expressed their opposition to the law.

Disregarding the overwhelming pleas of those urging acceptance of SB54, the City Council voted unanimously against the California law.

Simi Valley shamefully leads the way in Ventura County, being the first and, so far, only city in Ventura to oppose the sanctuary law. As such, perhaps no city in Ventura needs district-based elections as desperately as Simi Valley. The divisive atmosphere among residents, reciprocated at the governmental level, needs a counter in City Council. The current City Council has neglected the Latino minority, and has utterly failed to deal with the city's problematic social climate. The action of the Simi Valley City Council only serves to perpetuate fear amongst Latinos who feel unwanted, unsafe, and unrepresented in Simi Valley.

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.

Given the historical lack of Latino representation on the City Council in the context of racially polarized elections, we urge Simi Valley to voluntarily change its at-large system of electing council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than September 22, 2018 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,

Kevin I. Shenkman