**AGENDA ITEM NO.**
**8A**

**CITY OF SIMI VALLEY**
**MEMORANDUM**

August 27, 2018

**TO:** City Council

**FROM:** Office of the City Attorney / Office of the City Clerk

**SUBJECT:** DISCUSSION AND POSSIBLE ACTION, INCLUDING THE POTENTIAL AUTHORIZATION OF INITIATION OF THE DISTRICTING PROCESS OR OTHER ACTION, IN RESPONSE TO A DEMAND LETTER RECEIVED AUGUST 6, 2018, REGARDING THE IMPLEMENTATION OF ELECTORAL DISTRICTS IN SIMI VALLEY

## CITY MANAGER'S RECOMMENDATION

Due to the Demand Letter and potential future liability, the City Manager recommends that the City Council consider initiating the districting process. If the City Council determines it is best to initiate the districting process, the City Manager recommends choosing one of the two scheduling options to stay in compliance with AB 350.

If authorized to move forward with the districting process, we will schedule future agenda items in compliance with the preferred schedule.

The City Manager intends to move forward in hiring a demographer within his contracting authority, due to the need for a demographer with whichever approach the City Council prefers.

## CITY ATTORNEY'S RECOMMENDATION

The City Attorney recommends that the City Council discuss and potentially take action, including but not limited to the authorization of the districting process or other action.

## OVERVIEW

**On August 6, 2018, the City received a letter from attorney Kevin J. Shenkman, on behalf of his client, Southwest Voter Registration Education Project, requesting that the City move to district-based elections (Attachment A, page 11). Mr. Shenkman is well-known for threatening litigation against numerous cities if those cities refuse to change from an at-large voting system to a by-district voting system. Currently, Simi Valley has four Council Members and a Mayor, all elected at-large, for a total of five Council Members. On August 13, 2018, due to the threat of litigation as set forth in the letter, the matter was placed on the City Council closed session agenda, however by a unanimous vote, the City Council decided to not have discussion in closed session and to place the entire matter in open session for consideration at the next available City Council meeting, which is the present meeting (August 27, 2018).**

Due to this letter, the City is now subject to a statutory timeline if it wishes to limit the potential attorneys' fees that Mr. Shenkman can receive. In sum, if the City passes a resolution of intention to move to district elections within 45 days of the receipt of his letter (by September 22, 2018), and further thereafter passes an ordinance moving to district-based elections within 90 days of the resolution, then plaintiff's attorneys' fees are limited to $30,000.

The City is not required to transition to district-based elections because of Mr. Shenkman's letter. However, as detailed below, based on research no city has successfully fought Mr. Shenkman or the other attorneys who are engaged in sending such letters to cities, and any such legal battle would be quite costly and time consuming. Attachment B (page 15) provides an overview of the outcomes in other California cities. If the City wishes to consider district-based elections, there are several choices available to the Council to be determined in the process regarding the number and electoral timing of such districts, and including whether the Mayor shall remain a citywide elected position or rotated among members of the Council. Those choices are further outlined below.

## BACKGROUND AND LEGAL ANALYSIS (PROVIDED BY CITY ATTORNEY'S OFFICE)

A. History of California Voting Rights Act Challenge Letters

Over the past two years, over forty California cities that had conducted their city council elections by means of an "at-large" election system have received letters threatening to sue their city for alleged violations of the California Voting Rights Act (Cal. Election Code (EC) Sections 14025-14032) ("CVRA"), unless those cities voluntarily transitioned to a "district-based" election system. In addition to cities, many school, community college and health care districts have received these CVRA letters. Other groups or attorneys similarly have targeted public entities in the northern part of the State.

The CVRA only applies to jurisdictions (including the City of Simi Valley) that utilize an "at-large" election method, where voters of the entire jurisdiction elect the members of the City Council. The threshold to establish liability under the CVRA is extremely low, and prevailing CVRA plaintiffs are guaranteed to recover their attorneys' fees and costs. As a result, as far as we are aware, every government that has challenged the forced transition to district-based elections has either lost in court or agreed by way of settlement to implement district-based elections, and has been forced to pay at least some portion of the plaintiffs' attorneys' fees and costs. Several cities that had extensively litigated CVRA cases have been forced to pay multi-million-dollar fee awards. However, currently, we are aware of a few cities that are either in, or considering, litigation over this issue.

B. Federal Voting Rights Act and California Voting Rights Act

*FVRA*

Plaintiffs may challenge an “at large” voting system under the Federal Voting Rights Act 53 U.S.C. Section 10301 et seq. (“FVRA”). Plaintiffs must show that:

(1) a minority group be sufficiently large and geographically compact to form a majority of eligible voters in a single-member district;

(2) there is racially polarized voting; and

(3) there is majority-bloc voting sufficient usually to prevent minority voters from electing candidates of their choice.

If, and only if, all three of these preconditions are proven, the court then proceeds to (4) consider whether under the “totality of the circumstances” the votes of minority voters are diluted.

*CVRA*

Plaintiffs may also challenge an “at large” voting system under California law. The California Voting Rights Act (“CVRA”) was enacted in 2001 after several jurisdictions in California successfully defended claims under the FVRA. However, a case under the CVRA is less burdensome for a plaintiff. The CVRA removes two of the four factors necessary to prove liability under the FVRA: (1) the "geographically compact" FVRA precondition (i.e., can a majority-minority district be drawn?); and (2) the "totality of the circumstances" or "reasonableness" test. Despite its removal of key safeguards contained in the FVRA, California courts have held that the CVRA is constitutional. See, e.g., Sanchez v. City of Modesto (2006) 145 Cal.App.4th 660.

A CVRA violation may be established by showing “racially polarized” voting occurs in elections for the City Council (EC Section 14028). The Elections Code indicates that racially polarized voting may be determined by “the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body.” EC Section 14028. In addition, polarization can be shown by other factors such as the number of candidates who have run for office or the electoral choices made on particular issues which may be preferred by a minority group. EC 14026(e). Under the CVRA scheme, if a protected class consistently votes differently – as a group – than the rest of the electorate, then a violation of the CVRA may be triggered. Considering the definitions in the statutes and case law, the term “racially polarized voting” is still quite ambiguous and therefore difficult to defend against. A judge has broad authority to implement appropriate remedies that are tailored to address specific CVRA violations. *See* EC Section 14029. The most common remedy has been to order a municipality to change from at-large elections to district-based elections.

Thus, under the CVRA, the only "element" a plaintiff must establish is that racially polarized voting occurs in a jurisdiction with at-large elections.

C. What is the Likelihood of Success if a Jurisdiction Contests the Letter?

After investigation, the City Attorney's Office is not aware of any local agency that has successfully defended a CVRA lawsuit, although a few cities have chosen to litigate and at least one city is still in that process. The most high-profile battle underway is the City of Santa Monica, which is litigating a case brought by Mr. Shenkman and the same litigation team that tried a case against the City of Palmdale beginning in 2012. We understand that the City of Carson has also received a CVRA letter (on May 22, 2018) and is considering which actions to take.

The City of Huntington Beach received a similar CVRA letter from Mr. Shenkman, and declared in a response letter that it will not voluntarily transition to by-district voting. So far, no lawsuit has been filed against Huntington Beach, however if a lawsuit is filed the cap on attorneys' fees is not applicable.

Due to the combination of the CVRA's lower burden to allow a court to impose district-based elections and its mandatory attorneys' fees provision, all CVRA cases that have been filed have ended with the defendant governmental agency implementing a district-based election system and making some sort of attorneys' fee payment. Over the relatively short 15-year history of the CVRA, and only after an initial challenge to it was resolved in 2006, public agencies have paid a total of over $16 million to CVRA plaintiff attorneys. This is further delineated in the chart regarding other city outcomes in Attachment B. It is possible for a city to recover some costs, but only if successful, and further provided that a court finds the plaintiff's action to be frivolous, unreasonable or without foundation. *See* EC Sec. 14030.

To provide a few examples, the City of Modesto, which challenged the CVRA's constitutionality, ultimately paid $3 million in plaintiffs' attorneys' fees. *See Sanchez v. City of Modesto*, 145 Cal.App.4th 660 (2006). The City of Palmdale, which also aggressively litigated a CVRA claim, ultimately paid $4.5 million in attorneys' fees. The City of Santa Barbara agreed to pay approximately $600,000 to settle a CVRA lawsuit in 2015. Recently in Ventura County (October 2017), the City of Oxnard was served with a letter demanding districting and adopted an ordinance in March 2018 transitioning from at-large to district-based elections. Significantly, these figures do not include the sums spent by those cities paying for their own attorneys and associated staff and defense costs, which could exceed $1 million or more for a thorough defense.

Given the number and variety of cities that have unsuccessfully challenged a districting letter under the CVRA, a successful challenge by Simi Valley to a districting lawsuit, would be difficult and costly. It should be noted that, if the City chooses to implement districts, it is not any admission of a violation of the CVRA or the FVRA.

D. AB 350: A Legislative “Safe Harbor” Provision Passed in 2016

In 2016, responding to the substantial costs imposed upon cities and other public agencies in defending against CVRA suits, the California Legislature adopted AB 350, thereby amending the Elections Code (effective January 1, 2017) to simplify the process of transitioning to district-based elections and to provide a "safe harbor" process to protect agencies from expensive litigation. The safe harbor has two timeline steps: a city may pass a resolution of intention to transition to district based elections within 45 days of receipt of a demand letter; and a City must thereafter pass an ordinance within 90 days of the resolution of intention. If these steps are followed, the plaintiff’s attorneys’ fees are capped at $30,000.

In order to bring a CVRA lawsuit, a prospective plaintiff must first send by certified mail a notice to the local government agency or city alleging the agency’s at-large elections may violate the CVRA. The prospective plaintiff may not file the lawsuit until 45 days after the city receives the notice. EC Sec. 10010(e). (The first timeline).

If, within 45 days after receiving a notice from a prospective CVRA plaintiff, the city adopts a resolution declaring its intention to transition from at-large to district-based elections, outlining the specific steps it will undertake to facilitate the transition along with an estimated timeframe for doing so, then the prospective plaintiff may not bring a lawsuit until 90 days after the adoption of the resolution (Elections Code Sec. 10010(e)(3)). (The second timeline).

However, if the city does not adopt the resolution of intent within that 45-day period or does not adopt an ordinance changing to district-based elections within the prescribed 90-day period following adoption of the resolution of intent, and a lawsuit is actually filed, then there is no cap on attorney’s fees and costs.

## REVIEW OF OPTIONS IF CITY COUNCIL WISHES TO CONSIDER DISTRICT-BASED ELECTIONS

A. The Council May Select the Number of Council Members, and Whether the Mayor is Directly Elected

Pursuant to the Government Code, the City, by ordinance, may change from at-large elections for the City Council to district-based elections by either establishing four, six, or eight districts for members of the City Council, with the Mayor continuing to be elected at-large; or, establishing five, seven or nine districts for members of the City Council, with the Mayor chosen by the City Council. See GC 34871 (a) & (c) and 34886. Although the City of Simi Valley submitted the question of an elected mayor and four Council Members to the electorate in December 1981, the Government Code currently allows the City Council to include or not include a citywide elected mayor in a districting ordinance without submitting the question to the voters. The City Council would also have the discretion to determine whether the Mayor would have a two-year or four-year term. All Council Members are required to have a four-year term under state law.

Although the question of whether the Mayor should be elected was submitted previously to the voters as described above, because of the CRVA, if the Council wished to submit the question to the voters again, it would not meet the "safe harbor" timeline, and potentially subject the City to uncapped attorneys' fees.

B. To Create Districts, Five Public Hearings Are Required; Two For Public Input, Two For Mapping, and a Final Hearing Introducing an Ordinance

Elections Code Section 10010 sets forth several requirements the City would need to satisfy before adopting an ordinance establishing district-based elections. A total of five (5) public hearings must be held: four for community input, and a final hearing to introduce an ordinance. The first two public hearings are prior to drawing any district maps, over a period of no longer than 30 days, in order to receive public input and discuss the composition of the voting districts. Most cities have the council itself hold these hearings, although the City Council could designate another body or subcommittee to do so if it wished, except for the final hearing introducing the ordinance, which must be conducted by the Council.

The third and fourth public hearings, over a period of no more than 45 days, are held to receive public input on the draft maps. Before a hearing can be held on a particular draft map, the map must be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted. EC Sec. 10010 (a)(2). The draft district maps must also contain the proposed sequence of elections, if the district elections are to be implemented over the course of more than one election to account for staggered terms of office. After at least four public hearings are held, the City may introduce the ordinance establishing district-based elections at a final fifth hearing (this fifth hearing may be on the same day as the fourth provided the proposed draft district map is not changed). The ordinance then would take effect thirty days after the second reading and adoption of the ordinance. Some cities have passed the ordinance on the first reading after a finding of urgency with a 4/5ths vote.

C. Other Alternative Voting Systems or Districts May Be Considered, Such as Cumulative Voting, but there are Statutory and/or Constitutional Difficulties As Well As Potential CVRA Challenges

It should be noted that a number of alternative voting and/or district structures have been contemplated by various cities over time. "Cumulative voting," for example, in which voters can place more than one vote for a particular candidate (up to the total amount of candidates running), was recently considered by the City of Santa Clarita, but the California Secretary of State has indicated that this type of voting is not valid in California. Voting "from" districts, as opposed to "by" districts, allows all voters in the City to vote from candidates who reside in particular districts. (In voting "by" districts, both the candidates and the voters must reside in the same district). This option also is not clearly compliant with the Federal Voting Rights Act, and would also have to be submitted to a vote of the people, thus losing the safe harbor.

D. Under District-Based Elections, the Council Can Choose to "Stagger" the Terms of the Future Districts

The Council is empowered to set the timing of the elections if it creates new districts. The Council has wide discretion in deciding on this sequence. There are a few ground rules that apply:

(1) For each draft districting plan, a proposed election sequence must be specified for that plan at the time the plan is published. EC Sec. 10010(a);

(2) No term of office may be cut short. Gov. Code Sec. 34873.

(3) The City Council may consider the expiration of terms of office in setting the election rotation. Gov. Code Sec. 34878.

(4) In determining the final sequence of the district elections, the Council is required to give "special consideration" to the purposes of the CVRA. Although this provision is not completely clear, it could be read to suggest that any district with a majority or otherwise significant number of voters in a protected class be scheduled for an election earlier rather than later (EC Sec. 10010(b)); and

(5) The preferences of the voters in the districts "shall be taken into account". EC Sec. 10010(b).

E. Certain Rules Apply to the Drawing of Districts, and It is Advisable to Engage a Demographer to Assist the City

There are a number of factors that should be taken into consideration when creating new voting districts, including the following legally required criteria that apply to the creation of the districts:

--Each council district shall contain a nearly equal population (EC Sec. 21601).

--A districting plan shall be drawn in a manner that complies with the Federal Voting Rights Act (e.g. compactness, regularity, and other factors); and

--Each council district shall not be drawn with race as the "predominate factor" in accordance with the principles established by the U.S. Supreme Court in Shaw v. Reno, 509 U.S. 630 (1993).

Additional criteria have been used by various communities when defining districts including topographical and geographical boundaries or landmarks (major roads, freeways, creeks, railroad lines or other features) and communities of interest (school district boundaries, neighborhood boundaries, retail/commercial districts, voting precincts etc.).

In order to draw districts that comply with both the CVRA and FVRA, and provide assistance to the City in conducting the districting process, it is generally considered necessary to engage the services of an expert demographer on an expedited basis.

## PROPOSED SCHEDULING ALTERNATIVES FOR THE DISTRICTING PROCESS

Elections Code Section 10010 outlines the procedure for transitioning from an at-large voting system to a district election system, and provides a safe harbor timeline of 135 days in which to complete the process thereby limiting attorneys' fees to $30,000. E.C. 10010 defines specific timeframes in which public hearings must be held to receive public input on the composition of voting districts and the sequencing of elections to provide for staggered terms of office. As noted, the timeline requires a total of five (5) public hearings, four to receive input and one to introduce the ordinance for approval. The timeline does not specify or require additional community meetings beyond the public hearings prescribed in the Elections Code. Using the Elections Code timeframes, two proposed scheduling alternatives have been prepared for consideration by the City Council.

The scheduling options have been developed utilizing the 2018 City Council adopted meeting dates to the greatest degree possible. Because of the City's long-standing practice of conducting community outreach to solicit resident input, Option 1 incorporates a Community Meeting in addition to the required public hearings; however, this Option requires one of the public hearings be held on a Special Meeting date. Option 2 does not include this additional community meeting.

Options 1 and 2 are summarized below; a more detailed version of the schedules is included as Attachment C (page 22). It should be noted that, should the Council choose to adopt the Resolution of Intention at its September 17, 2018 meeting, the second reading of the Ordinance establishing district elections must be adopted by the Council's meeting on December 17, 2018. It is also critical to note that district maps must be published seven (7) days prior to a public hearing held to adopt a map.

| **Option 1** | | **Option 2** | |
|---|---|---|---|
| 9/17/18 | Public Hearing #1 and Resolution of Intention | 9/17/18 | Public Hearing #1 and Resolution of Intention |
| 9/25/18 | Community Meeting | 10/15/18 | Public Hearing #2 |
| 10/15/18 | Public Hearing #2 | 10/29/18 | Public Hearing #3 |
| 11/14/18* | Public Hearing #3 | 11/19/18 | Public Hearing #4 |
| 11/26/18 | Public Hearing #4 | 12/10/18 | Ordinance second reading |
| 12/10/18 | Ordinance second reading | | |

*denotes Special City Council meeting

Whether the City Council elects to defend against the alleged CVRA violation, or elects to move forward with transitioning to district elections, the City will require the services of a demographer to provide the resources and tools needed develop balanced district maps and establish election sequencing criteria for consideration. To that end, staff has contacted demographic firms to identify their ability to perform under the aggressive timeframes required by the Elections Code, and to obtain cost proposals for the services necessary to complete the transition. Staff anticipates that the cost will range from $45,000 to $75,000 depending on the specific services requested. The cost of the anticipated professional services required fall within the City Manager's contract purchasing authority. Therefore, in the event that the Council selects a Scheduling Option and directs staff to move forward with the district election transition process, the City Manager's Office will negotiate the final scope of work and cost with a qualified firm, and execute a contract to permit work to commence.

## FINDINGS AND ALTERNATIVES

It is recommended that the City Council discuss and provide direction regarding potential districting in the City of Simi Valley.

The following alternatives, among others, are available to the City Council:

1. Discuss the City's position with regard to the potential implementation of districts in Simi Valley and the demand letter.

2. Authorize City staff to begin the background work for districting, schedule hearings and bring back resolutions in accordance with this staff report and the Council's desired Scheduling Option.

3. Do not begin the process of districting and prepare for potential litigation if it should be filed against the City.

4. Provide staff with further direction.

5. Take no action.

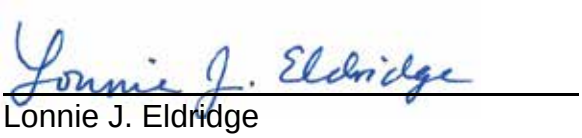
It is recommended that the City Council consider all alternatives. If the Council wishes to begin the process of implementing districts in the City, staff recommends Alternative Nos. 1 and 2.

## SUGGESTED CITY COUNCIL MOTION

No suggested City Council motion.

**SUMMARY**

On August 6, 2018, the City received a letter from attorney Kevin J. Shenkman, on behalf of his client, Southwest Voter Registration Education Project, requesting that the City move to district-based elections. No city in California, regardless of its particular situation, has been able to successfully fight such a districting demand letter, and if litigation is unsuccessful, the City would have to pay uncapped attorneys' fees. The City Council may wish to consider initiating the process of districting, or considering whether to potentially litigate this matter. If the City Council chooses to initiate the process of districting, there are tight scheduling requirements that must be met, as set forth in this staff report.



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VIA CERTIFIED MAIL

August 3, 2018

Ky Spangler
City Clerk
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*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

**ATTACHMENT B**

| City / Political Subdivision Defendant | Date of Settlement | Settlement Conditions | Attorney's Fees | Notes | Council Make Up |
|---|---|---|---|---|---|
| City of Palmdale | 2015 | Agreed to have voters choose elected officials by districts, including two with Latino majorities | $4,500,000 | City lost trial on the merits, held an election that plaintiffs argued was illegal, and unsuccessfully challenged an injunction stopping the City from certifying the results of that election; settlement subsequently reached | 4/1 |
| City of Modesto | 2007 | Moved to District elections; voters had already approved a move to districts before settlement | $3,000,000 | Settlement; Additional $1,700,000 to defense attorneys | 6/1 |
| Madera Unified School District; Madera County Board of Education | 2012 (Court of Appeal Ruling) | Moved to "by trustee area" elections via admission of liability | $162,500 | Court award | |
| City of Compton | 2012 | Moved to by-district elections via ballot measure; kept mayor at large | Undisclosed | Settlement | 4/1 |
| Tulare Local Healthcare District | 2010 | Agreed to hold an election re changing to district elections in 2012 and agreed to cancel 2010 elections | $500,000 | Settlement | |

| City / Political Subdivision Defendant | Date of Settlement | Settlement Conditions | Attorney's Fees | Notes | Council Make Up |
|---|---|---|---|---|---|
| City of Tulare | 2011 | City agreed to place a ballot measure before voters regarding a move to district elections | $225,000 | Settlement | 5 |
| Hanford Unified School District | 2004 | Agreed to move to by-trustee district elections | $110,000 | Settlement | |
| Compton Community College District | 2011 | Agreed to move to by-district elections | $40,000 | Settlement | |
| Ceres Unified School District | 2009 | Moved to by-trustee district elections before litigation was filed | $3,000 | Settlement | |
| Cerritos Community College District | | Moved to by-trustee district elections | $55,000 | Settlement | |
| San Mateo County | 2013 | County moved to by-District elections (through a ballot measure) and further agreed to redraw its previously-approved District boundaries by forming a nine-person redistricting committee | $650,000 | Settlement | |

| City / Political Subdivision Defendant | Date of Settlement | Settlement Conditions | Attorney's Fees | Notes | Council Make Up |
|---|---|---|---|---|---|
| City of Anaheim | 2014 | Agreed to place ballot measure on November 2016 ballot re moving to by district elections | $1,200,000 | Settlement after first litigating; expected costs include at least another $800,000 | 6/1 |
| City of Highland | 2014 | Placed issue on ballot, which was rejected by the voters; districts ultimately ordered by the Court, who chose Plaintiffs map | $1,300,000 | | |
| City of Whittier | 2014 | Case dismissed as moot when City changed voting system; unsuccessful post-election challenge re at large mayor | $1,000,000 | Court awarded fees under catalyst theory, even though case was dismissed | 4/1 |
| Santa Clarita Community College District | | Moved to by trustee voting | $850,000 | Settlement | |
| City of Garden Grove | 2015 | Moved to by district elections via stipulated judgment | $290,000 | Settlement | 6/1 |
| City of Escondido | 2013 | Settled via court order (consent decree) after vote of the people failed to adopt by district elections | $385,000 | Settlement | 4/1 |

| City / Political Subdivision Defendant | Date of Settlement | Settlement Conditions | Attorney's Fees | Notes | Council Make Up |
|---|---|---|---|---|---|
| City of Santa Clarita | 2017 | Attempted move to cumulative voting method, court overruled | $600,000 | Settlement | |
| City of Visalia | 2014 | Stipulated judgment, court ordered by districts | $125,000 | Settlement | 5 |
| City of Santa Barbara | 2015 | Agreed to move to by district; mayor remains elected at large | $599,500 | Settlement | 6/1 |
| City of Fullerton | 2015 | Agreed to pay attorney's fees - negotiate in good faith; required placing measure on November 2016 ballot to move to districts | Undisclosed | Settlement | 5 |
| City of Merced | 2014 | Settled before lawsuit tiled; agreed to ballot measure | $43,000 | Settlement | 6/1 |
| City of Bellflower | 2014 | Agreed to place ballot measure on November 2016 ballot; measure adopted | $250,000 | Settlement | 5 |
| Sulphur Springs School District | 2013 | Agreed to move to by district elections | $144,000 | Settlement | |

| City / Political Subdivision Defendant | Date of Settlement | Settlement Conditions | Attorney's Fees | Notes | Council Make Up |
|---|---|---|---|---|---|
| City of Costa Mesa | 2016 | Moved to districts before lawsuit was filed | $55,000 | Pre-litigation settlement | 6/1 |
| City of West Covina | 2017 | Waited until after lawsuit was filed to hire demographer and voluntarily move to by district elections via ordinance | $220,000 | Settlement | 5 |
| Newport Mesa School District | | Settled, moved to by trustee elections | $106,000 | Settlement | |
| City of Rancho Cucamonga | 2016 | Settled after litigation and voter approved move to by district elections | Not yet determined | Settlement | 4/1 |
| City of San Marcos | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 4/1 |
| City of Carlsbad | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 4/1 |
| City of Poway | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 4/1 |

| City / Political Subdivision Defendant | Date of Settlement | Settlement Conditions | Attorney's Fees | Notes | Council Make Up |
|---|---|---|---|---|---|
| City of Duarte | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 7 |
| City of Oxnard | 2018 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 6/1 |
| City of Ventura | 2018 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 7 |
| City of Atwater | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 4/1 |
| City of Encinitas | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 4/1 |
| City of Fremont | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 6/1 |
| City of Lake Forest | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 5 |
| City of Morgan Hill | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 4/1 |

| City / Political Subdivision Defendant | Date of Settlement | Settlement Conditions | Attorney's Fees | Notes | Council Make Up |
|---|---|---|---|---|---|
| City of Torrance | 2018 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 6/1 |
| City of Stanton | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 4/1 |
| City of Oceanside | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 4/1 |
| City of Vista | 2017 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 4/1 |
| City of Los Alamitos | 2018 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 5 |
| City of Dana Point | 2018 | Moved to districts within safe harbor, before lawsuit | <=$30,000 | Transitioned to districts before lawsuit | 5 |
| **TOTAL PAYMENTS TO PLAINTIFFS' ATTORNEYS** | | | **$16,413,000** | | |

**ATTACHMENT C**

**OPTION 1 - Includes Community Meeting in addition to Public Hearings**

| Meeting date | Action | Publication Date | Deadline to Newspaper |
|---|---|---|---|
| 08/27/2018 | **Regular Meeting**: Staff report outlining process to transition to District-based elections and request for Council direction | N/A | N/A |
| 09/17/2018 | **Regular Meeting**: Staff report for adoption of Resolution of Intention to transition to District elections<br>*Begins 90-day clock to complete Public Hearing process (if Resolution is adopted on 9/17, Ordinance adoption must occur by **12/17/2018**)* | N/A | N/A |
| 09/17/2018 | **Regular Meeting/Public Hearing #1**: Composition of Voting Districts | 09/07/2018 | 09/04/2018 |
| 09/25/2018 | **Community Meeting**<br>*To receive input from Neighborhood Councils, Council On Aging, Youth Council, and other interested community participants* | | |
| 10/15/2018 | **Regular Meeting/Public Hearing #2**: Composition of Voting Districts<br>*Must take place within 30 days of Public Hearing #1* | 10/05/2018 | 10/02/2018 |
| 11/14/2018 | **Special Meeting/Public Hearing #3**: Discussion of Maps and Sequence of Elections<br>*Must Publish Proposed Maps 7 days prior to Public Hearing #3 (11/7/2018)* | 11/04/2018 | 11/01/2018 |
| 11/26/2018 | **Regular Meeting/Public Hearing #4**: Adoption of Map, Ordinance introduced<br>*Note 1: If changes to District Map are made at this Public Hearing, the revised Map must be published 7 days prior to meeting where adoption is considered)*<br>*Note 2: The meeting would include two separate hearings; one to adopt the District Map, and a second to introduce the Ordinance. If District Map is changed, hearings to adopt Map and introduce Ordinance would need to be continued.* | 11/16/2018 | 11/13/2018 |
| 12/10/2018 | **Regular Meeting**: Second reading & adoption of Ordinance (effective 1/9/2019)<br>*Summary Ordinance must be published 5 days before second reading* | 12/05/2018 | 12/01/2018 |

Letter received: 8/6/18
45-day deadline: 9/20/18
90-day deadline: 12/19/2018*

Created: 08/14/2018

*Final date dependent on adoption of Resolution of Intent

**OPTION 2 - Does not include separate Community Meeting outside of required hearings**

| Meeting date | Action | Publication Date | Deadline to Newspaper |
|---|---|---|---|
| 08/27/2018 | **Regular Meeting**: Staff report outlining process to transition to District-based elections and request for Council direction | N/A | N/A |
| 09/17/2018 | **Regular Meeting/Public Hearing #1**: Composition of Voting Districts & adoption of Resolution of Intention to transition to District elections<br>*Begins 90-day clock to complete Public Hearing process (if Resolution is adopted on 9/17, Ordinance adoption must occur by **12/17/2018**)* | 09/07/2018 | 09/04/2018 |
| 10/15/2018 | **Regular Meeting/Public Hearing #2**: Composition of Voting Districts<br>*Must take place within 30 days of Public Hearing #1* | 10/05/2018 | 10/02/2018 |
| 10/29/2018 | **Regular Meeting/Public Hearing #3**: Discussion of Maps and Sequence of Elections<br>*Must Publish Proposed Maps 7 days prior to Public Hearing #3 (10/22/18)* | 10/19/2018 | 10/16/2018 |
| 11/19/2018 | **Regular Meeting/Public Hearing #4**: Adoption of Map, Ordinance introduced<br>*Note 1: If changes to District Map are made at this Public Hearing, the revised Map must be published 7 days prior to meeting where adoption is considered)*<br>*Note 2: The meeting would include two separate hearings; one to adopt the District Map, and a second to introduce the Ordinance. If District Map is changed, hearings to adopt Map and introduce Ordinance would need to be continued.* | 11/09/2018 | 11/06/2018 |
| 12/10/2018 | **Regular Meeting**: Second reading & adoption of Ordinance (effective 1/9/2019)<br>*Summary Ordinance must be published 5 days before second reading* | 12/05/2018 | 12/01/2018 |

Letter received: 8/6/18
45-day deadline: 9/20/18
90-day deadline: 12/19/2018*

Created: 08/14/2018

*Final date dependent on adoption of Resolution of Intent