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**CITY OF MURRIETA  
CITY CLERK'S OFFICE**

VIA CERTIFIED MAIL

March 22, 2017

Jane Halstead  
City Clerk  
City of Murrieta  
1 Town Square  
Murrieta, CA 92562

*Re: Violation of California Voting Rights Act*

In 2014, we wrote to the City of Murrieta, and specifically the members of its city council, notifying the City of its ongoing violation of the California Voting Rights Act, and requesting that the City convert its election system to comply with the law. Since that time, new legislation (AB 350) has gone into effect, requiring certain action on our part prior to filing suit under the California Voting Rights Act. It is for that reason that I write to you now – if the City of Murrieta does not bring its elections into compliance with the law promptly, we will have no choice but to file a lawsuit to protect the voting rights of the Latino residents of Murrieta.

The City of Murrieta (“Murrieta”) relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within Murrieta is racially polarized, resulting in minority vote dilution, and therefore Murrieta’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.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.*

Murrieta’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of Murrieta’s council elections.

The most recent council election (2016) is illustrative. In that election, a Latino candidate – Harry Ramos – ran and lost. Mr. Ramos received significant support from Latino voters, but fell short of securing a seat in Murrieta’s at-large election due to the bloc voting of Murrieta’s majority non-Latino electorate. In fact, as a result of this racially polarized voting, Murrieta appears to have had only a single Latino council member in recent history – Mr. Ramos, who served only one term.

According to recent data, Latinos comprise approximately 26% of the population of Murrieta. The contrast between the significant Latino population and the very limited success of Latinos to be elected to the City Council is telling.

Though not necessary to establish a violation of the CVRA, a history of

discrimination is also relevant. *Id.* § 14208(e). The City of Murrieta's deep racial divide, and disgusting history of discrimination, were on full display when a group of racist Murrieta residents, sought to terrorize migrant children and families by attacking their bus, and the Murrieta police stood by and allowed these racist vigilantes to block a public thoroughfare and assail children, after Mayor Long publicized the time the bus would arrive and the route that it would take. After this disgusting incident, Mayor Long even had the audacity to claim that terrorizing children and blocking a public thoroughfare represented a legitimate exercise of free-speech rights.

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 Murrieta 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 May 5, 2017 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