City of Carpinteria

COUNCIL AGENDA STAFF REPORT
July 31, 2017

ITEM FOR COUNCIL CONSIDERATION

Informational briefing on notice of violation of California Voting Rights Act

STAFF RECOMMENDATION

Action Item __ ; Non-Action Item _X__

Receive a report on allegations of violation of the California Voting Rights Act and consider public input.

BACKGROUND

Election Systems

Most public agencies in California conduct elections for their governing board in one of two formats: at-large or district-based. In the at-large election system, the governing board members are elected by vote of the entire populace of the jurisdiction and each voter may cast one vote for each open seat. In the district-based system, the jurisdiction is divided into separate districts and each voter may cast a vote only for a candidate seeking election to the seat that represents the district he or she resides within. Since its incorporation in 1965, the City of Carpinteria ("City") has utilized an at-large elections system for City Council elections.

The Notice of Violation

On July 3, 2017, the City received a Notice of Violation of California Voting Rights Act (the "Notice") from attorney Robert Goodman on behalf of residents Jatzibe Sandoval and Frank Gonzalez ("Prospective Plaintiffs"). The Notice asserts that City elections are characterized by racially polarized voting and demands that the City commence the process to transition to district-based elections. The Notice further states that if the City declines to do so, the Prospective Plaintiffs will commence a lawsuit to compel district based elections.

The Notice was accompanied by a report prepared by the California Voting Rights Project dated June 2017 and entitled "Abridgement of Latino Voting Rights and Racially Polarized Voting in in the City of Carpinteria" (Attachment A) (the "Report"). The Report asserts that the at-large voting method in the City disenfranchises Latino members of the community by impairing their ability to elect candidates of their choice or to influence the outcome of elections. The report contends that Latino voters are disenfranchised due to "racially polarized voting" in the City. "Racially polarized voting" is defined in law as voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. (Elec. Code §14026(e).)

The Report alleges that voting statistics related to City Council elections since 1994 and past ballot measures, when compared to the size of the Latino population, provide evidence of racially polarized voting in the City. The Report also alleges that a history of racial discrimination in the City supports the claim of racially polarized voting. (See Report, pp. 7-11.)

Subsequent to receiving the Notice, legal counsel for the City contacted Mr. Goodman to discuss various issues related to the Notice. In response, on July 18, Mr. Goodman provided an Addendum to the Notice and Report providing further voting statistics, offering to consider a settlement involving a gradual change to district elections, and clarifying that the Prospective Plaintiffs would require at least four districts in a district-based elections system (Attachment B).

The California Voting Rights Act

The California Voting Rights Act ("CVRA") was signed into law in 2002 with an effective date of January 1, 2003. It made fundamental changes to minority voting rights in California, making it easier for plaintiffs in California to challenge the at-large voting system employed by many local jurisdictions as resulting in dilution of voting power for minority groups. In 2016, the CVRA was amended to provide a safe harbor against suit if a local jurisdiction follows the outlined procedures to switch to district elections, as described below.

The CVRA provides that "[a]n at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class...." (Elec. Code §14027.) A protected class generally includes racial minority groups.

In order to prevail in a suit brought for a violation of the CVRA, the plaintiff must show evidence of "racially polarized voting" within the jurisdiction. Proof of racially polarized voting patterns are established by examining voting results of: elections where at least one candidate is a member of a protected class; elections involving ballot measures; or

other "electoral choices that affect the rights and privileges" of protected class members. (Elec. Code §14028, subd. (b).) Courts have used a variety of factors in considering whether the plaintiff has established a violation of the CVRA, including: voting patterns correlate with the race of the voter, minority-preferred candidates are not elected, and 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. Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required. (Elec. Code §14028(d).)

It is important to note that an allegation of a CVRA violation does not imply that the City Council is acting in a discriminatory manner, but rather is an allegation that the overall electoral system within the City is resulting in the disenfranchisement of minority voters.

Under the law, if a plaintiff prevails in a CVRA lawsuit, he or she is entitled to recovery of attorney fees. A defendant public agency is not entitled to attorney fees if it prevails.

Legal counsel has surveyed the reported case law concerning litigation based on a violation of the CVRA and determined that there is no reported case where the defendant public agency prevailed on the merits. According to research conducted by other cities, attorney fee awards to plaintiffs have ranged from $400,000 to $3.5 million. In the last several years, Santa Barbara, Santa Maria, and Goleta have all been served with notices of violation of the CVRA and in each case the city ultimately elected to switch to district elections. Statewide approximately 66 cities and 150 school districts have switched to district elections since 2006, with the overwhelming majority occurring in the last two years. The majority of the switches by cities were prompted by a notice of violation of the CVRA.

DISCUSSION

Purpose of Meeting

The Council has requested this special meeting in order to provide information to the public on the allegations made in the Notice and to receive public input on the allegations and the City's election system. Legal counsel is investigating the allegations, but is not able to provide an assessment of their validity at this time. The Council is not being requested to make a determination of how to respond to the Notice at this meeting.

Pros and Cons of District-Based Elections

Advocates of district-based elections argue that officials elected by districts are more responsive to the constituents in the district. Also, as is being asserted by the Notice, advocates argue that district-based voting makes it easier for members of protected classes to elect candidates of their choice. Additionally, some argue that non-

incumbents fare better in district-based elections. District elections are typically utilized in large cities with distinct neighborhoods that have distinct needs and concerns.

Advocates of at-large elections argue that governance is improved when elected officials answer to the entire community and not the interests of their district alone. They further contend that officials elected by districts tend to have too much influence over decisions affecting their district and that the district election system encourages deal-making between council members to benefit their individual districts rather the community as a whole. Some argue that districts are unnecessary in small cities, where it is relatively easy and inexpensive to reach out to the entire electorate, such as by door-to-door campaigning.

Procedural Issues

The CVRA provides a process that a public agency may follow in order to avoid a lawsuit and cap attorney fees.

Within 45 days of receiving the notice alleging a violation, the agency must adopt a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so. (Elec. Code §10010(e).) The City's deadline for adopting the resolution is August 17.

Within 90 days of adopting the resolution, the agency must adopt an ordinance officially making the switch to district-based elections and outlining certain procedures for such elections. If an agency follows these steps, plaintiffs may not file suit against the agency for violation of the CVRA based on utilization of an at-large election system and prospective plaintiffs are limited to recovering a maximum of $30,000 for reimbursement of costs to prepare the notice. (Id.)

If an agency chooses to switch to district-based elections, it must hold a total of five public hearings during the 90-day after adoption of the resolution. The purpose of the first two public hearings is to give the public an opportunity to provide input regarding the composition of districts. These two hearing must be held within a span of no more than 30 days. Subsequently, draft district maps will be drawn and two additional public hearings must be held to allow the public an opportunity to provide input regarding the content of the draft maps and the proposed sequence of elections. These two additional hearings must be held within a span of no more than 45 days. The final public hearing will be held when the Council votes to consider an ordinance establishing district-based elections. (Elec. Code §10010(a).)

An alternative to following the procedures set forth in the Elections Code is to negotiate a pre-litigation settlement with the plaintiffs. As explained in the Report, the City of Goleta reached an agreement through which it will not be required to switch to district elections until 2022, after the 2020 census. The Prospective Plaintiffs have offered to

consider a similar settlement in this case. A pre-litigation settlement also allows the City to maintain some level of control over the timing and structure of district elections, such as when the initial elections will be held, how boundaries will be drawn, whether elections will be staggered and in what manner, and whether the City will have an elected mayor. If the City were to litigate and lose, these are issues that a court might decide in its judgment.

FINANCIAL CONSIDERATIONS

The informational item before the Council at this meeting does not involve any costs. However, the decision to move to district elections or litigate under the CVRA both involve substantial costs. If the Council were to elect to switch to district elections, costs would include fees for a consultant to assist the City in drawing appropriate district boundaries and legal fees associated with complying with required procedures. If the City were to litigate the CVRA claim, it would be necessary to pay consultant and legal fees to defend the City in the action, which fees would not be recoverable even if the City prevails. If the City were to lose in the litigation, the City would also be liable for paying the plaintiffs' attorney fees and costs. As stated above, plaintiff attorney fees alone in these cases have ranged from hundreds of thousands to millions of dollars.

PRINCIPAL PARTIES IN ATTENDANCE

Prospective plaintiffs Jatzibe Sandoval and Frank Gonzalez

ATTACHMENTS

A. Notice dated, July 3, 2017, and Report titled "Abridgement of Latino Voting Rights and Racially Polarized Voting in in the City of Carpinteria", California Voting Rights Project, June 2017
B. Addendum to Notice and Report dated, July 18, 2017

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Brian C. Barrett for
Signature

Staff Report reviewed by: Dave Durflinger
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Signature

ATTACHMENT A

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June 30, 2017

Ms. Fidela Garcia, City Clerk
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

By certified mail

Re: Notice of Violation of California Voting Rights Act

Dear Ms. Garcia:

On behalf of Jatzibe Sandoval and Frank Gonzalez, registered voters and members of a protected class residing in the City of Carpinteria, this letter and the enclosed report are to assert that the City of Carpinteria's method of conducting elections may violate the California Voting Rights Act.

Pursuant to California law, the Carpinteria City Council has 45 days from receipt of this letter to adopt a resolution outlining its intention to transition from at-large to district elections, specifying specific steps it will take to facilitate this transition, and estimating the time-frame for this transition. If the Carpinteria City Council does not adopt a resolution to this effect within 45 days, then a legal action will be commenced in Santa Barbara Superior Court to require the City of Carpinteria to institute district elections pursuant to the California Voting Rights Act.

Thank you for your consideration.

Yours sincerely,

Robert Goodman

Robert Goodman

cc: Jatzibe Sandoval, Prospective Plaintiff
Frank Gonzalez, Prospective Plaintiff
Jacqueline Inda, Santa Barbara County District Elections Committee
Frank Ochoa, Retired Santa Barbara County Superior Court Judge

Abridgment of Latino Voting Rights

and

Racially Polarized Voting

in the

City of Carpinteria

California Voting Rights Project

June 2017

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Abridgment of Latino Voting Rights and Racially Polarized Voting in the City of Carpinteria

Introduction

According to the 2015 United States Census Bureau survey estimate of the City of Carpinteria's population, the city is currently 43.8 percent Hispanic or Latino. No Hispanic or Latino serves on the Carpinteria City Council at this time or has been elected since 2008, and few have served on the City Council since Carpinteria incorporated as a city in 1965. Also, in 2016, the Carpinteria Unified School District had a student enrollment that was approximately 72 percent Latino.

Abridgment of Latino voting rights and racially polarized voting characterize candidate elections and other electoral choices in the City of Carpinteria. This is reflected both in the paucity of Latino candidates who have sought election or been elected to the Carpinteria City Council and in other electoral choices in Carpinteria, both within the city and of government jurisdictions including the City of Carpinteria.

The United States Voting Rights Act and, especially, the California Voting Rights Act provide strong protections for members of protected classes to challenge at-large forms of election to government bodies in court and to replace them with district elections. Pursuant to the California Voting Rights Act: "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class" (Sec. 14027).

To date, no political subdivision in California has prevailed in a challenge to its electoral system on the basis of the California Voting Rights Act. The current, at-large method of city council elections in the City of Carpinteria impairs the ability of a protected class to elect candidates of its choice and its ability to influence the outcome of elections. Therefore, district elections must be instituted in the City of Carpinteria.

1. United States Voting Rights Act

Passed in 1965, the United States Voting Rights Act was landmark legislation prohibiting racial discrimination in voting. According to the U.S. Voting Rights Act: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color ... A violation ... is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens ... in that its members have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. The extent to which members of a protected class have been elected to office in the ... political subdivision is one circumstance which may be considered" (52 U.S. Code Sec. 10301).

Although legal actions against political subdivisions in California to require district elections have, since 2002, been brought pursuant to the California Voting Rights Act, rather than the federal Voting Rights Act, the United States Voting Rights Act also provides strong protection for the voting rights of members of protected classes.

2. California Voting Rights Act

Expanding upon the United States Voting Rights Act, the California Voting Rights Act was passed by the California legislature in 2001 and signed into law in 2002 to allow legal challenges to government jurisdictions in California with at-large methods of election to require them to implement district elections. According to the Rose Institute of State and Local Government at Claremont McKenna College, the statewide educational leader in gathering information on the transition from at-large to district elections in the state: "The California Voting Rights Act was written to promote the use of by-district elections to encourage the election of candidates preferred by previously 'underrepresented' voters such as Latinos."[1] A copy of the California Voting Rights Act is included here as Attachment B and incorporated herein by this reference.

As previously cited, the core provision of the California Voting Rights Act (CVRA) is:

> 14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or abridgment of the rights of voters who are members of a protected class.

The CVRA could not be more clear: An at-large method of election is **illegal** in California when it impairs the ability of a protected class to elect candidates of its choice or to influence the outcome of elections as a result of dilution of the vote or abridgment of the rights of voters who are members of the protected class. Upon showing dilution or abridgment of a protected class' voting rights, **at-large methods of election must be discontinued**.

According to Section 14028 of the CVRA: "A violation of Section 14027 is established if it is shown 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." In addition: "Other factors such as the history of discrimination" and "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, ... are probative ... factors to establish a violation" of the CVRA (Sec. 14028(e)).

The CVRA is clear with respect to what the remedy for illegal at-large elections is: "Upon a finding of a violation ..., the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation" (Sec. 14029). Though the CVRA may here contemplate remedies for a violation of voting rights other than district elections, in fact, no remedy has been ordered by a California court for violation of the CVRA other than district elections.

When, as in the City of Carpinteria, a political subdivision utilizes an illegal, at-large method of election, district elections must be instituted.

To date, dozens of legal actions have been brought against cities and other political subdivisions in California for violation of the California Voting Rights Act, and all have been successful. The imposition of district elections in place of at-large elections is sweeping California as a result of the CVRA. According to the Rose Institute, 21 cities in California held their first district elections just in 2016. These cities, together with their Latino citizen voting age populations, are:[2]

California Cities Holding First District Elections in 2016

City	Latino CVAP
King City	79%
Los Banos	55%
Chino	48%
Palmdale	46%
Patterson	45%
Riverbank	44%
Visalia	37%
Merced	37%
Highland	36%
Eastvale	36%
Anaheim	35%
Woodland	35%
Buena Park	29%
Wildomar	29%
Turlock	27%
Hemet	27%
Dixon	27%
Banning	26%
Garden Grove	24%
Yucaipa	23%
San Juan Capistrano	19%

Many cities with Latino populations smaller as a proportion of the city population than in Carpinteria have implemented district elections in recent years. In addition, according to the Rose Institute, more than 135 California public school districts have changed to district elections in recent years.[3] The Rose Institute also states: "Another significant effect of the California Voting Rights Act is the financial cost it has imposed on cities--many challenges so far have resulted in settlements or legal awards over one million dollars."[4] In 2017, more California cities have decided to implement district elections, including Carlsbad, Goleta, Oceanside, Santa Maria, Vista, and West Covina.

The California Voting Rights Act was ruled constitutional by a California Court of Appeal in *Sanchez v. City of Modesto* in 2007. The decision held: "The CVRA is race neutral. It does not favor any race over others or allocate burdens or benefits to any groups on the basis of race. It simply gives a cause of action to members of any racial or ethnic group that can establish that its members' votes

are diluted;" and: "To prove a violation, plaintiffs ... do not need to show that members of a protected class live in a geographically compact area."[5] The court also stated: "Curing vote dilution is a legitimate government interest."[6]

The CVRA also states: "Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required" (Section 14028(d)) to sustain a legal action brought pursuant to the California Voting Rights Act.

3. Abridgment of Latino Voting Rights and Racially Polarized Voting in the City of Carpinteria

Since incorporation of Carpinteria as a city, abridgment of Latino voting rights and racially polarized voting have characterized elections. Only a handful of individuals of Latino descent have been elected to the Carpinteria City Council in the more than 50 years that Carpinteria has been a city. No Latino or Hispanic has been elected to the Carpinteria City Council since 2008.

The following chart shows the number of total candidates in each Carpinteria City Council election since 1994, the number of candidates elected, the number of Latino candidates, and the number of successful Latino candidates:

Carpinteria City Council Elections Since 1994

Year	Total Cand.s	Success Cand.s	Lat. Cand.s	Success Lat. Cand.s
1994	8	3	0	0
1996	6	2	2	0
1998	6	3	2	0
2000	4	2	1	0
2002	5	3	0	0
2004	4	2	1	1
2006	5	3	0	0
2008	4	2	1	1
2010	5	3	0	0
2012	5	2	0	0
2014	3	3	0	0
2016	3	2	0	0
Total:	**58**	**30**	**7**	**2**

The current form of at-large elections in the City of Carpinteria abridges Latino voting rights. Merely 12.1% of all candidates for the Carpinteria City Council since 1994 have been Latinos, and merely 6.7% of successful candidates since 1994 have been Latinos. With respect to votes, a total of 106,867 votes have been cast for candidates for the Carpinteria City Council since 1994. Of this amount, only 11,341--or 10.6%--have been cast for Latino candidates for the Carpinteria City Council.

Racially polarized voting characterizes elections in the City of Carpinteria. Of the 4 Latino candidates who ran for City Council in 1996 and 1998, there is evidence of racially polarized voting in the case of two--that is, they would have been elected from precincts with high percentages of Latinos, but were defeated in the city-at-large. Furthermore, according to legal specialists in districting, electoral issues, and voting rights Marguerite Mary Leoni and Christopher E. Skinnell, in "The California Voting Rights Act," published by the *Public Law Journal* (vol. 32, no. 2, Spring 2009), an official publication of the State Bar of California Public Law Section and distributed by the League of California Cities:

> The fact that no members of the minority group have ever run for membership on the legislative body will not insulate a jurisdiction from CVRA challenge. The CVRA expressly provides that a violation can be shown if racially-polarized voting occurs in elections incorporating *other* electoral choices that affect the rights and privileges of members of a protected class, such as ballot measures. (Elec. Code Sec.s 14028(a) & (b).) Some particularly obvious examples ... might include Proposition 187 (denying services to undocumented immigrants), [and] Proposition 209 (preventing state agencies from adopting affirmative action programs) ... But other local measures may also serve the same purpose.[7]

A copy of this article is included here as Attachment E and incorporated herein by this reference. Also see the February 21, 2017, Council Agenda Report on district elections in the City of Santa Maria, which is included here as Attachment F and incorporated herein by this reference.

In addition to racially polarized voting with respect to races for the Carpinteria City Council, there is evidence of racially polarized voting in elections incorporating other electoral choices that affect the rights and privileges of members of a protected class, including ballot measures. Among state ballot measures, both Propositions 187 and 209 exhibited racially polarized voting in

the City of Carpinteria. At the local level, Measure S in 2014 in the Santa Barbara Community College District, a bond measure for educational facilities in the community college district and a ballot measure affecting the rights and privileges of members of a protected class, exhibited racially polarized voting in the City of Carpinteria. There is also evidence of racially polarized voting in other government jurisdictions encompassing the City of Carpinteria, including the Carpinteria Valley Water District, Carpinteria Unified School District, and Carpinteria Sanitary District.

Pursuant to the CVRA: "'Racially polarized voting' means voting in which there is a difference ... in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate" (Sec. 14026(e)). Also: "One circumstance that may be considered in determining a violation ... is 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 of a political subdivision" (Sec. 14028(a)).

Moreover: "Other factors such as ... 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, ... are probative, but not necessary factors to establish a violation" (Sec. 14028(e)). As well as the examples of abridgment of Latino voting rights and racially polarized voting previously outlined, there is ample evidence of the extent to which Latinos in Carpinteria bear the effects of past discrimination in areas such as education, employment, and health. These include poverty status, percentage of the population who speak English at home, home ownership, percentage of the population who have graduated from high school or college, health insurance coverage, and average income, among others. For example, in the 2015 United States Census Bureau survey estimate of the proportion of residents of the City of Carpinteria 25 years of age and older who have college degrees, this figure is estimated to be 51.6% for the white population, but merely 7.6% for the Latino population.

In the event this matter became the subject of litigation through a lawsuit being filed, it would be possible to establish many examples of abridgment of Latino voting rights and racially polarized voting in the City of Carpinteria. There

is clear and compelling evidence that the City of Carpinteria's current, at-large method of election to its city council is illegal. If this matter goes to court, it is inescapable that the City of Carpinteria would be ordered to institute district elections.

4. History of Discrimination in Carpinteria

Regrettably, segregation of Latino residents was historically practiced in Carpinteria. This makes the case for establishing district elections in the City of Carpinteria even stronger than it would otherwise be, and--pursuant to the California Voting Rights Act--more probable of being established. According to the CVRA, a "history of discrimination" is "probative" in establishing a violation (Sec. 14028 (e)).

As amply documented in John D. McCafferty, *Aliso School: 'For the Mexican Children'* (2003), explicit, *de jure* segregation was formally practiced in Carpinteria public schools through 8th grade from about 1920 to 1947: "Mexican-American elementary school pupils were required to attend a school 'for the Mexican children,' as school board minutes called them."[8] McCafferty provides this description of a petition from non-Latino residents to the Carpinteria school board: "With the clearest possible bias and intention of segregation, it simply cited 'the necessity of removing the Mexican children from the Junior High School and to provide instruction for them in Aliso school.'"[9] Consistent with the practice in racially segregated communities in the southern United States, the area in which most Latinos lived was called derogatory names, including "Mexican Town" and "the Mexican Colony," and segregation extended to various civic and community organizations: "St. Joseph's Catholic Church on Seventh Street was often referred to as 'the Mexican church.'"[10]

McCafferty writes as well: "Historically, Aliso school was seen mostly as a feeder school for the lemon industry. Those Aliso students who continued into high school were not encouraged equally with the whites ... With occasional exceptions, the Mexican children were viewed as people destined to be uneducated workers. Margaret Sanchez Burkey recalled that as late as the 1950s, she was actively discouraged from taking college-preparatory classes, solely because of her Mexican heritage."[11]

Jim Campos, Dave Moore, Tom Moore, Lou Panizzon, and the Carpinteria Valley Museum of History write in *Carpinteria: Images of America* (2007):

> The Mexican presence in Carpinteria began to be felt by the 1920s. Labor was needed to repair the railroads, build roads, remove brush and rubble, and most significantly help farmers with the tending of their crops. The lemon industry in particular was a year-round business and benefited from a non-migratory labor pool.
>
> Mexican families settling in Carpinteria were sometimes excluded from equal participation in the community. For example, 'Whites Only' policies were enforced in the seating arrangement at the local movie theater. Mexicans were prevented from buying real estate in certain areas of the community.[12]

Carpinteria's discriminatory past is, unfortunately, not merely of historical interest or relegated to the history books. As a result of its history of discrimination and segregation, school attendance, housing patterns, and community involvement have been affected to the present. Latinos did not become as involved in Carpinteria from the start of its municipal incorporation in 1965 as they otherwise would have. They were not part of the civic power structure, and therefore did not participate as much in city council elections or other municipal affairs. Latinos did not run for city council because they did not think they could win.

In the event this matter were to become the subject of litigation, longstanding members of the Carpinteria Latino community are prepared to provide testimony as to Carpinteria's history of discrimination and its lasting effects on Latino residents and their involvement in Carpinteria municipal affairs.

5. Attorney's Fees

Pursuant to the CVRA: "In any action to enforce [the California Voting Rights Act] the court shall allow the prevailing plaintiff party ... a reasonable attorney's fee ... and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs" (Sec. 14030). In addition: "Prevailing defendant parties shall not recover any costs" (id.).

In recent years, many jurisdictions have had to pay hundreds of thousands and even millions of dollars in attorney's fees to prevailing plaintiff parties. For example, in the City of Santa Barbara, the city was required to pay $599,500 in

attorney's fees and costs to plaintiffs for a settlement reached in the pretrial phase of litigation. Other examples of attorney's fees settlements under the CVRA include the City of Modesto, which was required to pay $3 million; and the City of Palmdale, which was required to pay $4.5 million. It is estimated by the League of California Cities that attorney's fees settlements in recent years to enforce the CVRA exceed $20 million.

For this reason, the **California Voting Rights Project strongly recommends that settlement be reached in the pre-litigation stage**. In this case, pursuant to Assembly Bill 350 passed into legislation and signed by Governor Brown in 2016, costs to cities are capped at $30,000. It should be emphasized that Assembly Bill 350 applies only to the pre-litigation phase of cases brought under the CVRA. If a CVRA complaint becomes the subject of litigation through a suit being filed, then there is no cap on attorney's fees and costs other than as stated in the CVRA and can be hundreds of thousands or more dollars.

In addition, because Assembly Bill 350 "would impose additional duties on local agencies, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.... This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for these costs shall be made pursuant to ... statutory provisions" (Legislative Counsel's Digest of Assembly Bill 350). A copy of Assembly Bill 350 is included here as Attachment C and incorporated herein by this reference.

6. Methods of Instituting District Elections In the City of Carpinteria

There are two methods by which district elections may be instituted in the City of Carpinteria: a) litigation, or b) a pre-litigation settlement by the Carpinteria City Council outlining its intention to transition from at-large to district elections, specifying specific steps it will take to facilitate this transition, and estimating the time-frame for this transition.

If litigation is the path followed, potential plaintiffs may at any time after 45 days from the City's receipt of the certified letter notifying the City of Carpinteria of a violation of the CVRA bring an action in Santa Barbara Superior Court

against the City of Carpinteria for violation of the California Voting Rights Act. A draft complaint against the City of Carpinteria is included here as Attachment A and incorporated herein by this reference.

If the City of Carpinteria chooses a pre-litigation settlement, then, pursuant to Section 10010 of the California Elections Code, the process the City of Carpinteria must follow, as modified by the settlement, is:

1) Within 45 days of receipt of the certified letter notifying the City of Carpinteria that its method of conducting elections may violate the CVRA, the Carpinteria City Council must adopt a resolution outlining its intention to transition from at-large to district elections, specifying specific steps it will take to facilitate this transition, and estimating the time-frame for this transition.

2) If the Carpinteria City Council passes a resolution to this effect, a legal action may not be brought for another 90 days after the resolution's passage.

3) The Carpinteria City Council must then, within the 90 days, over a period of no more than 30 days hold two public hearings (before maps of districts are drawn) at which the public is invited to provide input concerning the composition of districts. Before these hearings, the City of Carpinteria should conduct outreach to the public, including to non-English-speaking communities, explaining the districting process and encouraging participation.

4) Following these two public hearings, the City of Carpinteria must publish and make available for release at least one draft map and the proposed sequence of elections to the new districts. The Carpinteria City Council must then, also within the 90 days, over a period of no more than 45 days hold two more public hearings at which the public is invited to provide input on the draft map or maps and proposed sequence of elections. The first version of a draft 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 must be published and made available to the public at least seven days before being adopted.

5) In determining the sequence of elections, the Carpinteria City Council must give special consideration to the purposes of the California Voting Rights Act. For this reason, it is very likely that among the first districts in which district elections will be held will be districts including high proportions of individuals from a protected class.

6) After adopting the resolution of intention to transition from at-large to district elections and then holding the four public hearings, the Carpinteria City Council adopts a map of districts and a sequence of elections.

If the City of Carpinteria establishes district elections pursuant to this process and schedule, no litigation is required.

7. Advantages of a Pre-Litigation Settlement

There are many advantages of a pre-litigation settlement rather than a court action to enforce the California Voting Rights Act to institute district elections. Most importantly, the City of Carpinteria and the Carpinteria City Council retain greater control over and a greater role in the transition to district elections.

This greater control and role could manifest itself in a number of ways, including:

1) Pursuant to Assembly Bill 2220, passed into legislation and signed by Governor Brown in 2016, cities of any size may adopt a resolution to implement district elections, with or without an elective mayor. As a result of a court action, the City of Carpinteria would lose the authority to determine the number of districts in the city (four or five) and whether or not there would be an elective mayor.

2) Participation in timing of the first district elections, whether in 2018, 2020, or 2022. If this matter goes to court, a court likely would require that the first district elections be held in 2018; as a result of a pre-litigation settlement, the first district elections could be held in 2020 or 2022. Recently, in the City of Goleta, as a result of a pre-litigation settlement between prospective plaintiffs and the city, the agreement was reached to hold its first district elections in 2022, following the 2020 census. Also in Goleta, as a result of the pre-litigation settlement, a Public Engagement Commission was established to determine whether Goleta should become a charter city, whether city councilmembers should receive greater compensation, how to increase resident participation in city government, and to advise on drawing district lines.

3) Retention of existing city council, no chance of a special election. Occasionally in actions brought pursuant to the CVRA, courts have ordered past

at-large elections nullified and new, special elections called to elect councilmembers from districts.

4) Ability of the Carpinteria City Council to draw the lines of districts both now and in the future rather than by the court or through a court-directed process.

5) Saving of plaintiffs' attorney fees and its own legal expenses by the City of Carpinteria, potentially saving hundreds of thousands or more than a million dollars to the City of Carpinteria.

These are only some of the advantages of a pre-litigation settlement. It should be noted that pursuant to Assembly Bill 2220 passed in 2016, no vote of the people is required to institute district elections in the City of Carpinteria, with or without an elective mayor. A copy of Assembly Bill 2220 is included here as Attachment D and incorporated herein by this reference.

8. Other Benefits of District Elections

Even if the City of Carpinteria were not required to institute district elections pursuant to the California Voting Rights Act, there are many benefits of district elections which have been experienced in other communities. These include greater voter turn-out and participation. In some cities, including the City of Santa Barbara, turn-out in some precincts increased by one-quarter to one-third after district elections were instituted.

District elections bring government closer to the people. They result in representatives who are more knowledgable of local problems and issues. Local voters have a member of the city council to whom they can turn on neighborhood issues, and councilmembers are able to focus on neighborhood issues more. There is a wider spectrum of views on the council and more representation from all geographic areas of the city. District elections lead to greater neighborhood identity.

District elections also result in less expensive political campaigns. It is easier for younger and lower socioeconomic candidates to run for office if they do not have to raise as much money. This results in less influence by special interests. By walking door to door and other inexpensive means, candidates can be elected who would not be elected in at-large elections.

Carpinteria will be a better city with district elections--more representative of the people and in compliance with the law. District elections will make elections to the city council more fair and increase participation and representation from the entire community.

Conclusion

Abridgment of Latino voting rights and racially polarized voting have no place in the City of Carpinteria or anywhere else. The history of discrimination, evidence in support of racially polarized voting, and abridgment of Latino voting rights in Carpinteria would sustain a legal action brought against the City of Carpinteria to institute district elections. A pre-litigation resolution by the Carpinteria City Council provides the best opportunity to institute district elections in a manner that retains participation by the City Council in the transition process to district elections and is cost-effective.

Endnotes

[1] Justin Levitt et al., "Quiet Revolution in California Local Government Gains Momentum" (Claremont McKenna College: Rose Institute of State and Local Government, November 3, 2016), p. 1.

[2] Id., p. 3. The Rose Institute remarks on the switch from at-large to district elections in California: "This quiet tectonic shift in local government is accelerating" (p. 1).

[3] Id., p. 1.

[4] Id., p. 2.

[5] *Sanchez v. City of Modesto*, Court of Appeal, Fifth District, California, No. F048277 (December 6, 2006).

[6] Id.

[7] Marguerite Mary Leoni and Christopher E. Skinnell, "The California Voting Rights Act," *Public Law Journal* (Vol. 32, No. 2, Spring 2009; Official Publication of the State Bar of California Public Law Section) (included here as Attachment E), p. A-26 in this report.

[8] John D. McCafferty, *Aliso School: 'For the Mexican Children'* (Santa Barbara, CA: McSeas Books, 2003), p. 6.

[9] Id., p. 45.

[10] Id., pp. 9-11.

[11] Id., p. 119.

[12] Jim Campos, Dave Moore, Tom Moore, Lou Panizzon, and the Carpinteria Valley Museum of History, *Carpinteria: Images of America* (Charleston, SC: Arcadia Publishing, 2007), p. 37.

Attachments

A. Draft Complaint Against the City of Carpinteria for Violation of the California Voting Rights Act A-1

B. California Voting Rights Act A-9

C. Assembly Bill 350 . . . . . A-13

D. Assembly Bill 2220 . . . . . A-16

E. Marguerite Mary Leoni and Christopher E. Skinnell, "The California Voting Rights Act," *Public Law Journal* (Spring 2009); Distributed by League of California Cities A-18

F. City of Santa Maria Council Agenda Report (2/21/2017) with Respect to Implementing District Elections A-28

DRAFT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

Complaint for Violation of the

California Voting Rights Act of 2001

Against the City of Carpinteria

Plaintiffs allege as follows:

1. All allegations made in this complaint are based upon information and belief, except those allegations which pertain to the named Plaintiffs, which are based on personal knowledge. The allegations of this complaint stated on information and belief are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

NATURE OF THE ACTION

2. This action is brought by Plaintiffs for injunctive relief against the City of Carpinteria, California, for its violation of the California Voting Rights Act of 2001 (hereinafter the "CVRA"), California Elections Code Sec.s 14025, *et seq*. The imposition of the City of Carpinteria's at-large method of election has resulted in vote dilution for Latino residents and has denied them effective political participation in elections to the Carpinteria City Council. The City of Carpinteria's at-large method of election for electing members to its city council prevents Latino residents from electing candidates of their choice in Carpinteria's city council elections.

3. The effects of the City of Carpinteria's at-large method of election are apparent and compelling. Despite a Latino population of approximately 43.8 percent (43.8%) in the City of Carpinteria, no Latino currently serves on the Carpinteria City Council or has been elected to it since 2008. This deficiency of successful Latino candidates reveals the lack of access to the political process.

4. The City of Carpinteria's at-large method of election violates the CVRA. Plaintiffs bring this action to enjoin the City of Carpinteria's continued abridgment of Latino voting rights. Plaintiffs seek a declaration from this Court that the at-large method of

election currently used by the City of Carpinteria violates the CVRA. Plaintiffs seek injunctive relief enjoining the City of Carpinteria from further imposing or applying its current at-large method of election. Further, Plaintiffs seek injunctive relief requiring the City of Carpinteria to design and implement district-based elections to remedy Carpinteria's violation of the CVRA.

PARTIES

5. At all times herein mentioned, Plaintiffs, and each of them, are and have been registered voters residing in the City of Carpinteria and are eligible to vote in the City of Carpinteria's elections.

6. At all times herein mentioned, Defendant City of Carpinteria, California ("Carpinteria"), is and has been a political subdivision of the State of California subject to the provisions of the CVRA.

7. Plaintiffs are unaware of the true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as Does 1 through 100, inclusive, and therefore sue said defendants by fictitious names and will ask leave of court to amend this complaint to show their true names and capacities when the same have been ascertained. Plaintiffs are informed and believe and thereon allege that defendants Does 1 through 100, inclusive, are responsible on the facts and theories herein alleged.

8. Does 1 through 100, inclusive, are Defendants which have caused Carpinteria to violate the CVRA, failed to prevent Carpinteria's violation of the CVRA, or are otherwise responsible for the acts and omissions alleged herein.

9. Plaintiffs are informed and believe and thereon allege that Defendants and each of them are in some manner legally responsible for the acts and omissions alleged herein, and

actually and proximately caused and contributed to the various injuries and damages referred to herein.

10. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned each of the Defendants was the agent, partner, predecessor in interest, successor in interest, and/or employee of one or more of the other Defendants, and were at all times herein mentioned acting within the course and scope of such agency and/or employment.

JURISDICTION AND VENUE

11. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful acts complained of occurred in Santa Barbara County. Venue in this Court is proper.

GENERAL ALLEGATIONS

12. Based on figures from the 2015 United States Census Bureau survey estimate, the City of Carpinteria contains approximately 13,449 persons, of which 43.8 percent (43.8%) are Hispanic or Latino.

13. The Latino population in the City of Carpinteria is geographically compact.

14. The City of Carpinteria is governed by a city council. The Carpinteria City Council serves as the governmental body responsible for the operations of the City of Carpinteria. The city council is comprised of five members.

15. The council members of the City of Carpinteria are elected pursuant to an at-large method of election. Under this method of election, all of the eligible voters of the entire City of Carpinteria elect the members of the city council.

16. Vacancies to the city council are elected on a staggered basis. Every two years, the city electorate elects two or three city council members who each serve a four-year term.

17. Upon information and belief, no Latino currently serves on the Carpinteria City Council, nor has any Latino been elected to it since 2008. Few Latinos have been elected to the Carpinteria City Council since Carpinteria incorporated as a city in 1965.

18. Elections held within the City of Carpinteria are characterized by racially polarized voting. Racially polarized voting occurs when members of a protected class as defined by the CVRA, Cal. Elec. Code Sec. 14025(d), vote for candidates or electoral choices that are different from the rest of the electorate. Racially polarized voting exists within the City of Carpinteria as there is a difference between the choice of candidates and other electoral choices that are preferred by Latino voters and the choice of candidates and other electoral choices that are preferred by voters in the rest of the electorate.

19. Racially polarized voting consists both of voter cohesion on the part of Latino voters and voter cohesion by the non-Latino electorate against the choices of Latino voters.

20. Patterns of racially polarized voting and vote dilution have the effects of impeding opportunities for Latino voters to elect candidates of their choice to the at-large city council positions in the City of Carpinteria, where the non-Latino population dominates elections. Since establishment of Carpinteria as a city, Latino voters have been harmed by racially polarized voting.

21. For example, in 1996 and 1998, Latino candidates ran for Carpinteria City Council who were defeated in at-large elections, even though they would have been elected from Latino areas. This included one Latino candidate who was an incumbent.

22. In 1994 and 1996 respectively, California state Propositions 187 (denying state services to undocumented immigrants) and 209 (preventing affirmative action), ballot

measures affecting the rights and privileges of members of a protected class, were opposed by Latino voters but supported by voters in other precincts in the City of Carpinteria.

23. In 2014, Measure S, a bond in the Santa Barbara Community College District and a ballot measure affecting the rights and privileges of members of a protected class, received the necessary 55% vote required to pass in Latino voting areas but was defeated elsewhere in the City of Carpinteria.

24. Between 1994 and 2016, 58 candidates ran for the Carpinteria City Council, of whom 30 were successful. Only 7 Latino candidates ran for the Carpinteria City Council, of whom only 2 were successful.

25. Carpinteria has a history of discrimination. Explicit *de jure* segregation was practiced in Carpinteria public schools from about 1920 to 1947. Discrimination and segregation extended to other civic institutions and private enterprises, and have affected school attendance patterns and housing. Latinos bear the effects of past discrimination in areas such as education, employment, and health.

26. The at-large method of election voting has caused Latino vote dilution within the City of Carpinteria. Latino voters and the rest of the electorate regularly express different preferences on candidates and other electoral choices, to the detriment of Latino voters.

27. The obstacles posed by the City of Carpinteria's at-large method of election impairs the ability of Latino voters to elect candidates of their choice in elections held in the City of Carpinteria.

28. An alternative method of election exists, district-based elections, that will provide an opportunity for the members of a protected class as defined by the CVRA to elect candidates of their choice in Carpinteria City Council elections.

FIRST CAUSE OF ACTION

(Violation of California Voting Rights Act of 2001)

(Against All Defendants)

29. Plaintiffs incorporate by this reference paragraphs 1 through 28 as though fully set forth herein.

30. Plaintiffs, and each of them, are registered voters and reside within the City of Carpinteriaa, California. Plaintiffs are members of a protected class of voters under the CVRA. Plaintiffs are over the age of 18 and are eligible to vote in the City of Carpinteria's elections.

31. Defendant City of Carpinteria is a political subdivision within the State of California.

32. Defendant City of Carpinteria employs an at-large method of election, where voters of its entire jurisdiction elect members to its city council.

33. Racially polarized voting has occurred, and continues to occur, in elections for members to the City Council for the City of Carpinteria and in elections incorporating other electoral choices by voters of Carpinteria. As a result, the City of Carpinteria's at-large method of election is imposed in a manner that impairs the ability of a protected class as defined by the CVRA to elect candidates of its choice in Carpinteria elections.

34. An alternative method, district-based elections, exists that will provide an opportunity for the members of a protected class as defined by the CVRA to elect candidates of their choice in Carpinteria City Council elections.

35. An actual controversy has arisen and now exists between the parties relating to the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a declaration of rights.

36. Defendants' wrongful conduct has caused and, unless enjoined by this Court, will continue to cause, immediate and irreparable injury to Plaintiffs, and those similarly situated.

37. Plaintiffs, and those similarly situated, have no adequate remedy at law for the injuries they currently suffer and will otherwise continue to suffer.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. For a decree that the City of Carpinteria's current at-large method of election for the City Council violates the California Voting Rights Act of 2001;

2. For preliminary and permanent injunctive relief enjoining the City of Carpinteria from imposing or applying its current at-large method of election;

3. For injunctive relief mandating the City of Carpinteria to design and implement district-based elections, as defined by the California Voting Rights of 2001, to remedy the City of Carpinteria's violation of the California Voting Rights Act of 2001;

4. For an award of Plaintiffs' attorney fees, costs, and prejudgment interest pursuant to the CVRA, Cal. Elec. Code Sec. 14030, and other applicable law; and

5. For such further relief as the Court deems just and proper.

Dated: August 18, 2017

ELECTIONS CODE SECTION 14025-14032

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.
(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.
(3) One that combines at-large elections with district-based elections.

(b) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county, charter city and county, school district, community college district, or other district organized pursuant to state law.

(d) "Protected class" means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(e) "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

14028. (a) A violation of Section 14027 is established if it is shown 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. Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of 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. One circumstance that may be considered

in determining a violation of Section 14027 and this section is 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 of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as 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 are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate

remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in Serrano v. Priest (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.

AB-350 District-based municipal elections: preapproval hearings. (2015-2016)

Assembly Bill No. 350

CHAPTER 737

An act to amend Section 10010 of the Elections Code, relating to elections.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 350, Alejo. District-based municipal elections: preapproval hearings.

Existing law provides for political subdivisions that encompass areas of representation within the state. With respect to these areas, public officials are generally elected by all of the voters of the political subdivision (at-large) or by districts formed within the political subdivision (district-based). Existing law requires a political subdivision, as defined, that changes from an at-large method of election to a district-based election to hold at least 2 public hearings on a proposal to establish the district boundaries of the political subdivision before a public hearing at which the governing body of the political subdivision votes to approve or defeat the proposal.

This bill would instead require a political subdivision that changes to, or establishes, district-based elections to hold public hearings before and after drawing a preliminary map or maps of the proposed district boundaries, as specified.

Existing law, the California Voting Rights Act of 2001 (CVRA), prohibits the use of an at-large method of election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The CVRA provides that a voter who is a member of a protected class may bring an action in superior court to enforce its provisions.

This bill would require a prospective plaintiff under the CVRA to first send a written notice to the political subdivision against which the action would be brought indicating that the method of election used by the political subdivision may violate the CVRA. The bill would permit the political subdivision to take ameliorative steps to correct the alleged violation before the prospective plaintiff commences litigation, and it would stay the prospective plaintiff's ability to file suit for a prescribed amount of time. This bill would also permit a prospective plaintiff who sent a written notice, as described, to recover from the political subdivision reasonable costs incurred in supporting the written notice.

Because the bill would impose additional duties on local agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10010 of the Elections Code is amended to read:

10010. (a) A political subdivision that changes from an at-large method of election to a district-based election, or that establishes district-based elections, shall do all of the following before a public hearing at which the governing body of the political subdivision votes to approve or defeat an ordinance establishing district-based elections:

(1) Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation.

(2) After all draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable. The first version of a draft map shall 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.

(b) In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of this code), and it shall take into account the preferences expressed by members of the districts.

(c) This section applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election.

(d) For purposes of this section, the following terms have the following meanings:

(1) "At-large method of election" has the same meaning as set forth in subdivision (a) of Section 14026.

(2) "District-based election" has the same meaning as set forth in subdivision (b) of Section 14026.

(3) "Political subdivision" has the same meaning as set forth in subdivision (c) of Section 14026.

(e) (1) Before commencing an action to enforce Sections 14027 and 14028, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision against which the action would be brought asserting that the political subdivision's method of conducting elections may violate the California Voting Rights Act.

(2) A prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 45 days of the political subdivision's receipt of the written notice described in paragraph (1).

(3) (A) Before receiving a written notice described in paragraph (1), or within 45 days of receipt of a notice, a

political subdivision may pass a resolution outlining its intention to transition from at-large to district-based elections, specific steps it will undertake to facilitate this transition, and an estimated time frame for doing so.

(B) If a political subdivision passes a resolution pursuant to subparagraph (A), a prospective plaintiff shall not commence an action to enforce Sections 14027 and 14028 within 90 days of the resolution's passage.

(f) (1) If a political subdivision adopts an ordinance establishing district-based elections pursuant to subdivision (a), a prospective plaintiff who sent a written notice pursuant to subdivision (e) before the political subdivision passed its resolution of intention may, within 30 days of the ordinance's adoption, demand reimbursement for the cost of the work product generated to support the notice. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree, within 45 days of receiving the written demand, except as provided in paragraph (2). In all cases, the amount of the reimbursement shall not exceed the cap described in paragraph (3).

(2) If more than one prospective plaintiff is entitled to reimbursement, the political subdivision shall reimburse the prospective plaintiffs in the order in which they sent a written notice pursuant to paragraph (1) of subdivision (e), and the 45-day time period described in paragraph (1) shall apply only to reimbursement of the first prospective plaintiff who sent a written notice. The cumulative amount of reimbursements to all prospective plaintiffs shall not exceed the cap described in paragraph (3).

(3) The amount of reimbursement required by this section is capped at $30,000, as adjusted annually to the Consumer Price Index for All Urban Consumers, U.S. city average, as published by the United States Department of Labor.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

AB-2220 Elections in cities: by or from district. (2015-2016)

Assembly Bill No. 2220

CHAPTER 751

An act to amend Section 34886 of the Government Code, relating to elections.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2220, Cooper. Elections in cities: by or from district.

Existing law generally requires all elective city offices, including the members of a city council, to be filled at large by the city electorate at a general municipal election. Existing law, at any municipal election or special election held for this purpose, authorizes the legislative body of a city to submit to the registered voters an ordinance providing for the election of members of the legislative body by district or from district, as defined, and with or without an elective mayor. Existing law also authorizes the legislative body of a city with a population of fewer than 100,000 people to adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor without being required to submit the ordinance to the voters for approval.

This bill would delete the population limitation in that provision, thereby authorizing the legislative body of a city to adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor without being required to submit the ordinance to the voters for approval.

The bill also would make a conforming change to these provisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 34886 of the Government Code is amended to read:

34886. Notwithstanding Section 34871 or any other law, the legislative body of a city may adopt an ordinance that requires the members of the legislative body to be elected by district or by district with an elective mayor, as described in subdivisions (a) and (c) of Section 34871, without being required to submit the ordinance to the voters for approval. An ordinance adopted pursuant to this section shall include a declaration

that the change in the method of electing members of the legislative body is being made in furtherance of the purposes of the California Voting Rights Act of 2001 (Chapter 1.5 (commencing with Section 14025) of Division 14 of the Elections Code).

THE CALIFORNIA VOTING RIGHTS ACT

Marguerite Mary Leoni*
Christopher E. Skinnell**

In 2002, the California Voting Rights Act, S.B. 976, was signed into law. (Elec. Code §§ 14027-14032.) The Act makes fundamental changes to minority voting rights law in California. As of January 1, 2003, the California Voting Rights Act ("CVRA") alters established paradigms of proof and defenses under the federal Voting Rights Act, thus making it easier for plaintiffs in California to challenge allegedly discriminatory voting practices.[1] The potential consequences of this legislation are significant: it could force a city or special district to abandon an electoral system that may be perfectly legal under

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Ms. Leoni has represented and currently represents numerous state agencies, municipalities, counties, school districts and other special districts on districting, redistricting and electoral matters. She has assisted in all phases of such cases including design of plans, the public hearing process, analysis of proposed alternatives, enactment procedures, referenda, districting and redistricting, preparing and advocating preclearance submissions to the U. S. Department of Justice, and defending federal court litigation concerning the legality of electoral systems under the federal constitution and Voting Rights Act. She represented the Administrative Office of the Courts on federal Voting Rights Act issues and electoral questions pertaining to trial court unification in California. She also represented the Florida Senate in designing that state's Senate and Congressional districts, Voting Rights Act preclearance, and in defending against ensuing state and federal court challenges. She also represented the consultant to Arizona's Independent Redistricting Commission in designing redistricting plans for Arizona's state legislative and congressional districts.

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Prior to attending law school, he was a political consultant to several California legislative and initiative campaigns, a research associate at the Rose Institute of State and Local Government, and chairman of a successful initiative campaign in Southern California.

Mr. Skinnell has extensive experience with voting rights matters, both from the legal and technical perspectives. In addition to working on various voting rights lawsuits, he has published numerous articles and studies on voting rights and redistricting, has served as the technical/GIS consultant on several municipal redistrictings, and has prepared a successful preclearance submission to the U.S. Department of Justice under Section 5 of the Voting Rights Act.

[1] As noted in a celebratory press statement by the Mexican American Legal Defense and Education Fund (MALDEF) following the passage of S.B. 976, which along with the ACLU and voting rights attorney Joaquin Avila, was a primary supporter of the CVRA, the "[b]ill makes it easier for California minorities to challenge 'at-large' elections."

federal law, in the process exposing the jurisdiction to the possibility of paying very high awards of attorneys fees to plaintiffs.[2]

California's cities, counties, and special districts have had almost four decades of experience in complying with the federal Voting Rights Act ("federal VRA"), especially Section 2, the landmark legislation outlawing both intentional discrimination in voting practices and those practices that have unintentional but discriminatory effects when viewed in the totality of the circumstances. (Voting Rights Act of 1965, Pub. L. No. 89-110, Stat. 437 (1965), codified as amended at 42 U.S.C. §§ 1971, 1973-1973ff-6 (1994).) Indeed, California has adopted compliance with Section 2 as one of its statutory redistricting criteria for cities, counties, and special districts. (*See, e.g.,* Elec. Code §§ 21601 [general law cities], 21620 [charter cities], & 22000 [special districts].) After decades of litigation under the federal VRA, the courts have provided a wealth of guidance for cities and special districts in identifying practices that may have discriminatory effects. Most notable in California is the prevalence of the "at-large" electoral system (see description below). Jurisdictions have learned to consider changing to a district-based electoral system when they have minority group residents who are sufficiently numerous and geographically concentrated to form a majority in a single-member district, especially when that minority group, despite running candidates for election, consistently fails to elect.

But now the voting rights legal environment with which cities and special districts have grown familiar has changed significantly. Here are some of the highlights.

CVRA Highlights.

- **Focus of the CVRA: "At-large" and "From-district" Elections.**

If your city or special district elects its governing board members "by-district," (*i.e.*, only by the voters of the district, sometimes called "division" or "area," in which the candidate resides), you can stop reading now. The CVRA does not apply to a by-district electoral system. However, if you have an "at-large" or "from-district" system, read on!

The CVRA applies only to at-large and from-district electoral systems, or combination systems. (Elec. Code §§ 14026(a), 14027.) At-large systems are those in which each member of the governing board is elected by all the voters in the jurisdiction. Most

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[2] In federal voting rights cases, the litigation bill can run to hundreds of thousands of dollars even for a small jurisdiction of a few thousand people. *See* Florence Adams, *Latinos and Local Representation: Changing Realities, Emerging Theories* 73 (Garland 2000) (noting that in the City of Dinuba, California, the costs of federal voting rights litigation added up to nearly $60 per person, more than the annual cost of Dinuba's Fire Department). In a voting rights case filed against the City of Santa Paula in 2000 and recently settled, the City reportedly spent $700,000 for attorneys fees. *See* T.J. Sullivan, "Santa Paula Quiet on Measure D," *Ventura County Star* B-01 (Oct. 20, 2002).

jurisdictions in California, especially smaller jurisdictions, have at-large electoral systems. "From-district" elections differ from at-large systems only in that they require each member of the governing board to live within a particular district. Election, however, is still by all the voters in the jurisdiction, rather than being limited to the voters within a district. There are also combination systems in which, for example, a primary election may be conducted "by-district", but the general election is conducted "from" those same districts, *e.g.*, the top two vote winners in the primary in each district run for election "at-large" in the general election.

Each of these variations is equally vulnerable to challenge if the minority plaintiffs can show that racially-polarized voting undercuts their ability to elect or influence the election of minority-preferred candidates. Features that might cause plaintiffs to scrutinize a city or special district as a potential target for a CVRA challenge include a history of electoral losses by minority candidates or a history of unresolved issues disproportionately affecting the minority community (*e.g.*, affordable housing, street and sidewalk maintenance, juvenile crime, etc.), coupled with a significant proportion of the population that are ethnic or racial minorities.

- **Protection For Minority Electoral "Influence."**

The federal VRA prohibits the use of electoral systems that abridge the ability of minority voters to *elect* candidates of their choice. Thus, if the minority plaintiffs would have still been unable to elect their chosen candidates in the absence of the challenged at-large system, the plaintiff would have very little chance of stating a federal claim (see below). Not so under the CVRA. The CVRA invalidates not only at-large elections that prevent minority voters from electing their chosen candidates, but also those that impair the ability of minority voters to *influence* elections.

To date, such influence claims have enjoyed *very* limited recognition or success in federal litigation, and California jurisdictions have no real experience with them. The U.S. Supreme Court has repeatedly declined to address influence claims in recent years. *See Johnson v. De Grandy*, 512 U.S. 997, 1008-09 (1994); *Holder v. Hall*, 512 U.S. 874, 900 n.8 (1994) (Thomas, J., concurring in judgment); *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993); *Growe v. Emison*, 507 U.S. 25, 41 n.5 (1993). The federal courts in California have refused to sanction such influence suits as well. *See Aldasoro v. Kennerson*, 922 F.Supp. 339, 376 (S.D. Cal. 1995); *DeBaca v. County of San Diego*, 794 F.Supp. 990, 996-97 (S.D. Cal. 1992); *Skorepa v. City of Chula Vista*, 723 F. Supp. 1384, 1391-92 (S.D. Cal. 1989); *Romero v. City of Pomona*, 665 F. Supp. 853, 864 (C.D. Cal. 1987), *aff'd* 883 F.2d 1418, 1424 (9th Cir. 1989).

Indeed, only two federal courts have ever held[3] that the federal VRA requires, rather than merely permits, the creation of influence districts in the absence of a showing of intentional discrimination, and both are of questionable precedential value. *See Armour v. Ohio*, 895 F.2d 1078 (6th Cir. 1990); *East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson*, 691 F.Supp. 991 (E.D. La. 1988). One of the opinions, *Armour v. Ohio*, was subsequently vacated when rehearing en banc was granted, 925 F.2d 987 (6th Cir. 1991). On remand the district court implicitly sanctioned such claims again, 775 F.Supp. 1044, 1059 n.19 (N.D. Ohio 1991),[4] but later opinions from the Sixth Circuit have not treated *Armour* as binding on this issue, and have, in fact, expressly rejected influence suits. *See Cousin v. Sundquist,* 145 F.3d 818, 828 (6th Cir. 1998) ("We do not feel that an 'influence' claim is permitted under the Voting Rights Act."); *Parker v. Ohio*, 2003 U.S. Dist. LEXIS 8745, *11 (S.D. Ohio). The holding of the second case, *East Jefferson Coalition for Leadership*, was effectively undermined when the court subsequently amended the finding that necessitated the influence claim: that the minority community was too widely dispersed in the jurisdiction to constitute a majority in a single-member district. *See East Jefferson Coalition for Leadership & Dev. v. Parish of Jefferson,* 926 F.2d 487, 491 (5th Cir. 1991) (noting the amended finding that the minority group could indeed constitute a majority in a single-member district).

Given the reluctance of federal courts to enter the political thicket of influence suits, by opening the door to such claims the CVRA greatly expands protection for minority voting rights and, consequently, the potential for liability of cities and special districts.

The next question, of course, is obvious: what constitutes "influence"? The answer, unfortunately, is not so obvious. The CVRA does not define "influence" and there is very little federal precedent on which to rely for guidance. As the federal district court for Rhode Island put it in *Metts v. Almond*:

> "Ability to influence" itself, is a nebulous term that defies precise definition. If it means only the potential to alter the outcome of an election, it provides no standard at all because a single voter can be said to have that ability. On the other hand, if it means something more, there does not appear to be any workable definition of how much more is required and/or any meaningful way to determine whether the requirement has been satisfied.

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[3] Several other courts have assumed as much, without so deciding, instead ruling on other grounds. *See, e.g., Voinovich*, 507 U.S. at 154; *West v. Clinton*, 786 F.Supp. 803, 806 (W.D. Ark. 1992).

[4] The district court in *Armour* purported to avoid the question of influence claims. *See* 775 F.Supp. at 1059 n.19 ("We need not reach the question of whether [an influence claim] may be viable under the Voting Rights Act because we find that the plaintiffs have met their burden of demonstrating an ability to elect a candidate of their choice."). But as Judge Batchelder noted in dissent, the Court only avoided the issue by first holding that the plaintiffs need not constitute a majority in the reconfigured district. 775 F.Supp. at 1079 (Batchelder, J., dissenting). In so ruling, "the majority opinion effectively h[eld] that there is a cause of action under Section 2 when political boundaries are drawn so that they fail to maximize a minority group's ability to influence the outcome of elections." *Id.*

217 F.Supp.2d 252, 258 (D.R.I. 2002).

Nevertheless, defining "influence" is the task that a California court may soon face. The definition may well be case-specific to the demographic and political circumstances in each defendant jurisdiction, leaving local jurisdictions without clear guidelines.

- **Streamlined Proof for Plaintiffs.**

Federal voting rights cases under Section 2 require that a successful plaintiff show that (1) the minority group be sufficiently large and geographically compact to form a majority of the eligible voters in a single-member district, (2) there is racially-polarized voting, and (3) there is white bloc voting sufficient usually to prevent minority voters from electing candidates of their choice. *Thornburg v. Gingles,* 478 U.S. 30, 50-51 (1986). If (and only if) all three of these "preconditions" are proven, the court then proceeds to consider whether, under the "totality of circumstances" the votes of minority voters are diluted. (42 U.S.C. § 1973(b) [prescribing the totality of the circumstances standard].)

The CVRA, by contrast, purports to prescribe an extremely light burden on the plaintiff to establish a violation. Under the CVRA, plaintiffs apparently can prove a violation based *solely* on evidence of racially-polarized voting. (Elec. Code §§ 14027 & 14028(e).) Racially-polarized voting is defined as "voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. Sec. 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and the electoral choices that are preferred by voters in the rest of the electorate." (Elec. Code § 14026(e).) *See Ruiz v. City of Santa Maria*, 160 F.3d 543, 552 (9th Cir. 1998) (adopting relatively lenient "separate electorates" test for determining whether a candidate was a minority-preferred candidate who was defeated by white bloc voting), *cert. denied*, 527 U.S. 1022 (1999).

The CVRA appears to eliminate the first precondition that plaintiffs must prove at the liability stage in federal litigation, that is, that the minority group is sufficiently large and geographically compact to form a majority in a single member district. (Elec. Code § 14028(c).) Assuming that racially-polarized voting can be proven, the CVRA defers inquiry into the size and geographical compactness of the minority group and the impact of those factors on the minority voters' ability to elect or ability to influence elections, to the remedial phase of the litigation. (See discussion below.)

The CVRA also eliminates the requirement that plaintiffs prove discrimination under the totality of the circumstances test. (Elec. Code § 14028(e).) This departure from the federal standards may prove to be the most significant. Some federal courts have been very lenient in finding racially-polarized voting. They could afford to be so lenient,

because, under federal law, establishing racially-polarized voting is not sufficient to prove a violation. The other *Thornburg v. Gingles* preconditions must be established and a violation must be proven in the "totality of the circumstances" phase of the lawsuit. The totality analysis then permits a federal judge to take into account such matters as the *degree* of the racially-polarized voting and perhaps find that it was not severe enough to warrant judicial intervention into the electoral processes of a city.

The CVRA does not require any comparable "totality of the circumstances" analyses as part of the plaintiff's proof. Under what would seem to be a draconian application of the CVRA, plaintiffs could argue that a jurisdiction is subject to liability if 51% of minority voters vote one way, 51% of non-minority voters vote the other way, and the minority-preferred candidate loses. Whether a court would sanction such an extreme application of the CVRA, without the subsequent safety valve of the totality analysis, cannot be known at this time. Another plausible reading of the CVRA is that the Legislature meant to ease the burden on plaintiffs but still permit the totality analysis to come in by way of defense. (Elec. Code § 14028(e) [stating that many of the traditional totality factors are "probative," but not necessary to establish a violation].)

Despite the fact that Section 14028(a) provides that a violation is established if racially-polarized voting is shown, the legislation does identify at least one other factor that bears on the question of liability. Specifically the CVRA provides that the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class have been elected to the governing body of a jurisdiction is "one circumstance that may be considered *in determining a violation.*" (Elec. Code § 14028(b) [emphasis added].) Thus phrased, the relevance of such evidence would not appear to be limited to the remedial stage, but would affect the question of liability as well. Moreover, the phraseology suggests that other, unspecified circumstances may be considered on the question of liability as well. Under the federal scheme, minority plaintiffs whose preferred candidates have a winning record would find it difficult, if not impossible, to establish a violation of the federal VRA. Presumably this would be the result under the CVRA, but the new law is not explicit on that point. Also, the CVRA specifies that the successful candidate must also be a member of the minority group in order to be taken into consideration as "one circumstance" that may be considered at the liability phase of the litigation. The CVRA is silent on whether the election of non-minority persons who are proven to be the preferred candidates of minority voters can also be considered. Plaintiffs may well argue that such successful minority-preferred candidates do not count.

- **New Remedies.**

The most likely remedy in a successful CVRA action would be to order cities and special districts with at-large, from-district, or mixed electoral systems to change to by-district systems in which a minority group will be empowered either to elect its preferred candidates, or influence the election outcome. But judicial remedies under the Act may

not be limited to the imposition of a by-district system. In cases where the minority group may be too small to form a majority in a single member district (*i.e.*, a district from which one member of the governing board is elected), the CVRA mandates that a court impose remedies "appropriate" to the violation. Indeed, the advocates of limited or cumulative voting systems may see the CVRA as an opportunity to attempt to impose such experimental remedies in California.

In a limited voting system, voters either cast fewer votes than the number of seats, or political parties nominate fewer candidates than there are seats. Theoretically, the greater the difference between the number of seats and the number of votes, the greater the opportunities for minorities to elect their chosen candidates. Versions of limited voting are used in Washington, D.C., Philadelphia (PA), Hartford (CT) and many smaller jurisdictions.

In a cumulative voting system, voters cast as many votes as there are seats. But unlike winner-take-all systems, voters are not limited to giving only one vote to a candidate. Instead voters can cast some or all of their votes for one or more candidates. Chilton County (AL), Alamogordo (NM), and Peoria (IL) all use a version of cumulative voting, as do a number of smaller jurisdictions. The State of Illinois used cumulative voting for state legislative elections from 1870 to 1980.

- **No-Risk Litigation For Plaintiffs.**

The CVRA mandates the award of costs, attorneys fees, and expert expenses to prevailing plaintiffs. (Elec. Code § 14030.) Prevailing defendants, however, are not treated so kindly. The CVRA denies not only attorneys fees but also the costs of litigation to prevailing defendants, unless the court finds a suit to be "frivolous, unreasonable, or without foundation," an extremely high standard. (*Id.*)

Furthermore, California law interprets "prevailing party" more broadly than does the analogous federal law governing attorneys fees awards for actions brought under Section 2 of the Voting Rights Act. The United States Supreme Court has, as a matter of statutory interpretation, recently rejected the "catalyst" theory of prevailing parties. *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Servs.*, 532 U.S. 598, 603-05 (2001). The catalyst theory, which the California Supreme Court has previously approved, permits recovery of attorneys fees if there is any "causal connection" between the plaintiffs' lawsuit and a change in behavior by the defendant. *Maria P. v. Riles,* 43 Cal.3d 1281, 1291 (1987). The *Maria P.* court continued:

> "'The appropriate benchmarks in determining which party prevailed are (a) the situation immediately prior to the commencement of suit, and (b) the situation today, and the role, if any, played by the litigation in effecting any changes between the two.'" . . . An award of attorney fees under section 1021.5 is

> appropriate when a plaintiff's lawsuit "'was a *catalyst* motivating defendants to provide the primary relief sought,'" or when plaintiff vindicates an important right "'by activating defendants to modify their behavior.'"

Id. at 1291-92 (quoting *Folsom v. Butte County Assn. of Governments,* 32 Cal.3d 668, 685 n.31 (1982); *Westside Community for Independent Living, Inc. v. Obledo,* 33 Cal.3d 348, 353 (1983)) (internal citations omitted).

Federal law, by contrast, requires some "change [in] the legal relationship between [the plaintiff] and the defendant." *Buckhannon,* 532 U.S. at 604 (quoting *Texas State Teachers Assn. v. Garland Independent School Dist.,* 489 U.S. 782, 792 (1987)). In other words, it is not enough under federal law that the defendant changed its conduct voluntarily—there must be some legally compelled impediment to the defendant falling back into the old ways, like a judgment or a settlement.

The California Supreme Court has traditionally treated federal precedent interpreting 42 U.S.C. § 1988 as persuasive authority, but it has also held that such federal precedent is not binding with regards to interpretation of state attorneys fee law. *See Serrano v. Unruh,* 32 Cal.3d 621, 639 n.29 (1982). Thus, the *Buckhannon* holding will not inevitably lead California to reject the catalyst theory in CVRA litigation as well.

Charter Cities.

Charter cities should not be complacent in a belief that they are immune from successful challenge under the new CVRA. The CVRA, after all, purports to apply to "cities" without making any explicit distinction between general law or charter cities. (Elec. Code § 14026(c).) It is true that a charter can provide for a form of government or electoral process for a city that is different from the general law. A charter city, however, remains subject to the California Constitution and would be prohibited from adopting or maintaining a discriminatory electoral system or electoral practices that violate the equal protection clause or the right to vote. *See Canaan v. Abdelnour,* 40 Cal.3d 703 (1985), *overruled on other grounds by Edelstein v. City & County of San Francisco,* 29 Cal.4th 164, 183 (2002); *Rees v. Layton,* 6 Cal.App.3d 815 (1970). Furthermore, California courts have recognized that state statutes can override city charters if they are narrowly-tailored to address an issue of statewide concern, even in the core areas of charter city control like election administration. *Edelstein,* 29 Cal.4th at 172-174; *Johnson v. Bradley,* 4 Cal.4th 389, 398-400 (1992). The CVRA expressly provides that it is intended to implement the guarantees of Section 7 of Article I (Equal Protection) and Section 2 of Article II (Right to Vote) of the California Constitution, which are themselves regarded as matters of statewide concern. *See Cawdrey v. City of Redondo Beach,* 15 Cal.App.4th 1212, 1226 (1993).

It is always possible that the California Supreme Court would decide that, even if preserving the right to vote is a matter of statewide concern, the CVRA sweeps too broadly and cuts too deeply into municipal affairs in violation of the principle of home rule. As the Supreme Court has noted, "[T]he sweep of the state's protective measures may be no broader than its interest." *Johnson,* 4 Cal.4th at 400. *Cf. Bd. of Trustees. of the Univ. of Ala. v. Garrett,* 531 U.S. 356, 365 (2000) (when Congress seeks to enforce constitutional protections with legislation, the statutory scheme must be congruent and proportional to the injury to be prevented or remedied); *City of Boerne v. Flores*, 521 U.S. 507 (1997). For example, charter cities could argue that, assuming eradicating the adverse effects of racially-polarized voting in at-large electoral systems is a matter of statewide concern, the CVRA is not narrowly-tailored because the federal VRA presents a scheme more carefully-crafted to weed out those at-large systems in which, under the totality of circumstances, minority voting rights are abridged, and leave in place those at-large systems in which a minority candidate may have simply lost an election.

Vote of the People.

The sole fact that the voters of a city or special district have enacted an at-large electoral system by ballot measure, or rejected a by-district electoral system by ballot measure, will not protect a jurisdiction. Indeed, the latter may increase the risk to the jurisdiction by serving as persuasive proof of a violation of the CVRA if the by-district system was rejected in an election characterized by a racially-polarized vote.

No Minority Candidates.

The fact that no members of the minority group have ever run for membership on the legislative body will not insulate a jurisdiction from CVRA challenge. The CVRA expressly provides that a violation can be shown if racially-polarized voting occurs in elections incorporating *other* electoral choices that affect the rights and privileges of members of a protected class, such as ballot measures. (Elec. Code §§ 14028(a) & (b).) Some particularly obvious examples from the last decade might include Proposition 187 (denying state services to undocumented immigrants), Proposition 209 (preventing state agencies from adopting affirmative action programs), and Proposition 227 (barring the use of bilingual education in California public schools). *See Cano v. Davis*, 211 F.Supp.2d 1208, 1241 n.37 (C.D. Cal. 2002) (assuming these initiatives may be used to demonstrate racially-polarized voting). But other local measures may also serve the same purpose.

CONCLUSION

California's cities and special districts are entering a new and uncertain era in voting rights law. Much about the CVRA is unclear and federal precedent on key issues appears to have been legislatively overruled. It may require years of litigation to sort it all out. It

is impossible to know now whether California courts will uphold the constitutionality of the CVRA, how they will interpret the new law, or what defenses will be available. Perhaps the "totality of the circumstances" test will be reinvigorated by way of defense. In the meantime, there is a safe harbor under the CVRA (though still not necessarily under the federal Voting Rights Act): a by-district electoral system.

Jurisdictions with a history of electoral losses by candidates who are members of a minority group should consider analyzing those elections for racially-polarized voting. If polarized voting is detected, these jurisdictions may want to consider whether a change to a by-district electoral system is warranted. Demands by minority group representatives for a change to by-district elections must be taken seriously, even if the minority group is not numerous enough to form a majority in a new single member district. Changing voluntarily permits the elected representatives and the voters, rather than adverse plaintiffs or a court, to control the districting process and the considerations that will guide the districting. Once the single member districts are in place, the city or special district is in the CVRA safe harbor, even if the districts are not exactly those that plaintiffs would have preferred.

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COUNCIL AGENDA REPORT

TO: City Council

FROM: City Manager and City Attorney

SUBJECT: **RESOLUTION DECLARING THE CITY OF SANTA MARIA'S INTENTION TO TRANSITION FROM AN AT-LARGE CITY COUNCIL ELECTED PROCESS TO A DISTRICT-BASED ELECTION PROCESS PURSUANT TO ELECTIONS CODE SECTION 10010**

RECOMMENDATION:

That the City Council adopt a resolution declaring its intention to transition from an at-large City Council election process to a district-based elections process, outlining specific steps it will take and providing an estimated timeline for doing so pursuant to Elections Code Section 10010.

BACKGROUND:

The City received a certified letter on December 16, 2016, from Jason Dominguez, Esq., on behalf of his client Hector Sanchez, an unsuccessful candidate for City Council in the November 2016 election, asserting that the City's at-large electoral system violates the California Voting Rights Act, codified at California Elections Code sections 14025–14032 ("CVRA"). Mr. Dominguez claims "polarized voting" may be occurring and threatens litigation if the City declines to adopt district-based elections.

The CVRA was signed into law in 2002. The law was motivated, in part, by the lack of success by plaintiffs in California in lawsuits challenging at-large electoral systems brought under the Federal Voting Rights Act ("FVRA"). In fact, the City of Santa Maria had successfully defended a FVRA lawsuit in the early 1990's brought by the Mexican American Legal Defense and Education Fund. This litigation cost over $1 million to defend and took ten years to resolve in the City's favor.

The passage of the CVRA made it much easier for plaintiffs to prevail in lawsuits against public entities that elected their members to its governing body through "at-large" elections with the ultimate goal to transition to "district-based" elections. By way of background, in a district-based election system, a candidate must live in the district he or she wishes to represent.

It is staff's understanding that no such FVRA lawsuits have been filed in California since 2000. Accordingly, all voting rights lawsuits in California have been filed under the CVRA since its passage. Under the CVRA, to prove a violation, plaintiffs must only demonstrate that there is "racially polarized voting." This occurs when there is a

difference between the choice of candidates preferred by voters in a protected class and the choice of candidates preferred by voters in the rest of the electorate. Plaintiffs in other litigation have taken the position that the CVRA does not require a showing of discriminatory intent or an actual electoral injury. They have further argued that the CVRA does not require proof that racially polarized voting actually resulted in the defeat of a group's preferred candidate. No appellate court has yet ruled on these issues.

Cities throughout the State have increasingly been facing legal challenges to their "at-large" systems of electing City Council members. Almost all have settled claims out of court by essentially agreeing to voluntarily shift to district-based elections, while others have defended CVRA challenges through the courts. Ultimately, these cities have either voluntarily adopted, or have been forced to adopt, district-based elections. The exception is the City of Santa Clarita that resolved the CVRA action filed against it by agreeing to change the date of its general municipal election to November of even-numbered years.

Cities that have attempted to defend their existing "at-large" system of City Council elections in court have incurred significant legal costs, including attorneys' fees incurred by plaintiffs. Awards in these cases have reportedly ranged from about $400,000 to over $3,500,000. When sued, the settlements entered into by cities typically have included paying the plaintiff's attorney fees. For example, in February 2015, the City of Santa Barbara reportedly paid $800,000 in attorneys' fees and expert costs to settle their CVRA lawsuit. Another example is the City of Palmdale that incurred expenses in excess of $4.5 million in its unsuccessful attempt to defend against a lawsuit brought under the CVRA. Moreover, what is most concerning is that staff is unaware of any city that has prevailed in defending its "at-large" system of election under a claim filed by any individual or group under the CVRA. Accordingly, staff has concluded that the public's best interest is in preserving and protecting vital general fund revenues from being unnecessarily expended (given the low probability of defending against a CVRA lawsuit) and that this interest outweighs the public's interest in maintaining the current at-large voting system.

DISCUSSION:

Accordingly, after much analysis and in-depth conservations with those most familiar with these types of litigation matters, staff is recommending that the City Council adopt a resolution declaring its intention to transition from at-large to district-based elections following the procedures required by Elections Code section 10010, as amended by AB 350, to establish voting districts. Staff makes this recommendation due to the extraordinary costs to successfully defend against a CVRA lawsuit and the fact that no apparent city has successfully prevailed against a CVRA lawsuit, and that the public interest would best be served by transitioning to a district-based electoral system.

While the City has a sustained history of electing Latinos/as to the City Council, the outcome of litigation is always uncertain. Unlike other cities where at-large elections have prevented Latinos from electing candidates of their choice, the election history for the Santa Maria City Council has demonstrated that Latino candidates have been

regularly elected. Since 1996, at least one Latino/a has been elected to the City Council in each election except the November 2012 election where a Latina candidate (Waterfield) lost by only two votes. In all, ten Latinos/as have been elected to the City Council in the last twenty years. In addition, partly because of appointments made by the City Council to fill unexpired terms, the City Council has been represented by a Latino majority from 2002 until 2010 and the current City Council is a Latino elected majority. Not withstanding the aforementioned history of being able to elect Latinos to the City Council, the CVRA essentially makes any at-large election vulnerable to challenge with a low probability of successfully defending against such a challenge.

Staff estimates that the cost to defend this lawsuit would exceed $1,000,000 even if it were successful, and would likely exceed $2,000,000 if the plaintiff prevailed and the City was ordered to pay plaintiff's attorneys' fees. These attorney fees and costs would be a General Fund liability which would be a significant unexpected expense that could not come at a worse time since the City already has a multi-million dollar structural budget deficit AND pension-related expenses continue to escalate.

It should be noted that Government Code section 34886 permits the legislative body of any city to adopt an ordinance establishing election of members of the legislative body by district. AB 350 was recently adopted by the State Legislature and became effective on January 1, 2017, and amended Elections Code section 10010 to place a cap of a maximum of $30,000 on attorneys' fees that a plaintiff would be entitled to recover if the target city voluntarily adopted an ordinance to establish voting districts either before or after receiving notice of a CVRA violation. In addition, AB350 prohibits a plaintiff from filing a CVRA lawsuit within 90 days of a city's adoption of a resolution declaring its intention to transition to district-based elections. Accordingly, should the City Council adopt the proposed resolution, the maximum the City will have to reimburse Mr. Dominguez in attorneys' fees and costs is $30,000, and plaintiff would be prohibited from filing a CVRA lawsuit until May 22, 2017.

Alternatives:

1. The City Council may elect to place this issue on the ballot and let the electorate decide if they prefer district-based elections. However, even if the voters rejected district-based elections, the City would be vulnerable to a CVRA lawsuit if racially polarized voting is occurring in the City.
2. The City Council may direct staff to defend against any CVRA lawsuits that may be filed. This option will be very expensive to defend, and even if successful, would expose the City to an award of costly attorneys' fees.

Fiscal Considerations:

There will be significant staff time needed to transition to district-based elections because of the staff time that will be incurred for the five (5) public hearings that will be required in addition to the cost for a demographics and elections consultant and special legal counsel. Should the City Council concur with staff's recommendation, the City will only be required to reimburse plaintiff for its attorney's fees and costs up to $30,000. In addition, staff expects roughly a $10,000 increase in election costs for district-based

elections during each of the upcoming election cycles. These fiscal impacts are necessary and unavoidable if the Council transitions to district-based elections.

Impact to the Community:
The decision to change from at-large to district-based voting may have a substantial impact on the community since the City Council has been elected at-large since the City's incorporation in 1905. There may be a profound and noticeable impact to the community if the City adopts district-based elections and confusion until district-based elections are fully implemented in 2020. As proposed, two council seats will be elected by-district in the 2018 election and two or three council seats (pending the outcome of the five public hearings) in the 2020 election after the current incumbents have served their full terms. In some situations, the Mayor may be elected at-large, but all other members of the City Council must reside in the district they represent. The decision whether to establish four voting districts with the Mayor elected at-large, or five voting districts is one of the topics that will be decided upon by the City Council as a result of the minimum of five (5) public hearings that will be held as required by California Elections Code section 10010 should it adopt the proposed resolution.

RICHARD J. HAYDON
City Manager

GILBERT A. TRUJILLO
City Attorney

ATTACHMENT B

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Robert Goodman

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July 18, 2017

Dylan Johnson, Esq.
Brownstein Hyatt Farber Schreck
1020 State Street
Santa Barbara, CA 93101

By hand-delivery

Re: City of Carpinteria, Violation of California Voting Rights Act

Dear Mr. Johnson,

Thank you for your telephone call. This letter and the enclosures are to provide more information with respect to the City of Carpinteria's violation of the California Voting Rights Act.

As you will see from the enclosed "Addendum to: Abridgment of Latino Voting Rights and Racially Polarized Voting in the City of Carpinteria," there is much evidence of racially polarized voting and abridgment of Latino voting rights in the City of Carpinteria. In addition, there is much evidence of the extent to which members of a protected class bear the effects of past discrimination and of a history of discrimination in Carpinteria. For all of these reasons, we believe that if litigation is pursued in this matter, the City of Carpinteria would not likely prevail and also be responsible for extensive legal and expert fees and costs.

If your client desires a more gradual transition to district elections in which they retain some control and participation, a pre-litigation settlement would be the best course. As previously indicated, my clients are open on such issues as when district elections would commence (in 2018, 2020, or 2022, but no later than 2022), whether Carpinteria would also implement an at-large elected mayor with four districts or retain a Council-selected mayor with five districts, and whether also to establish a city commission, as in the City of Goleta, to consider other ways to increase civic participation in local government. I also enclose a copy of the resolution in Goleta establishing its Public Engagement Commission.

However, one issue my clients would require in any settlement is that there would be at least four districts in the City of Carpinteria of the current five seats on its city council.

With respect to the size of the City of Carpinteria, please note that a number of California cities of comparable size to, or even smaller than, Carpinteria have district elections, including the cities of Bradbury, Dixon, King City, Parlier, and Patterson. What is essential in establishing a violation of the California Voting Rights is not the size of a city, but whether the voting rights of a protected class have been abridged, instances of racially polarized voting, and past discrimination and its continuing effects--all of which are the case in Carpinteria.

Also enclosed is a copy of John D. McCafferty's work, *Aliso School: 'For the Mexican Children'* (2003), for your consideration. I look forward to being in further contact with you.

Very truly yours,

Robert Goodman

Robert Goodman

cc: Jatzibe Sandoval, Prospective Plaintiff
Frank Gonzalez, Prospective Plaintiff
Jacqueline Inda, Santa Barbara County District Elections Committee
Frank Ochoa, Retired Santa Barbara County Superior Court Judge

Addendum to:

Abridgment of Latino Voting Rights and Racially Polarized Voting in the City of Carpinteria

California Voting Rights Project
July 18, 2017

Addendum to: Abridgment of Latino Voting Rights And Racially Polarized Voting in the City of Carpinteria

In addition to the incidences of abridgment of Latino voting rights and racially polarized voting outlined in the report "Abridgment of Latino Voting Rights and Racially Polarized Voting in the City of Carpinteria" (June 2017), there is the following further evidence of abridgment of Latino voting rights and racially polarized voting in the City of Carpinteria. The first chart presents total votes for all candidates for Carpinteria City Council since 1994, votes for Latino candidates, and votes for Latino candidates as a percentage of all votes:

A. Carpinteria City Council Elections Since 1994, Votes

Year	Total Votes	Latino Cand.s	Percentage
1994	12,705	0	0
1996	9,429	2,201	23.3
1998	11,545	2,992	25.9
2000	8,821	1,706	19.3
2002	9,803	0	0
2004	8,951	2,392	26.7
2006	10,262	0	0
2008	9,261	2,484	26.8
2010	11,113	0	0
2012	8,883	0	0
2014	(no election--candidates appointed)		
2016	8,491	0	0
Total:	**109,264**	**11,775**	**10.8**

The next chart is of California state ballot measures affecting the rights and privileges of members of a protected class since 1994 in the City of Carpinteria in which there is evidence of racially polarized voting:

B. Racially Polarized Voting on California State Ballot Measures in City of Carpinteria Since 1994

Year	Ballot Measure	Purpose
1994	187	No services for undocumented aliens
1994	1B	State school bonds
1996	209	No affirmative action
2000	14	Bonds for libraries and literacy
2000	26	Majority vote for school bonds
2000	39	55% vote for local school bonds
2004	55	State school bonds
2006	82	Tax increase for preschools

According to the California Voting Rights Act: "A violation of Section 14027 is established if it is shown 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" (Sec. 14028(a)). Pursuant to the California Voting Rights Act, district elections must be implemented in the City of Carpinteria.

In addition to the above cases of racially polarized voting in Carpinteria since 1994 on California state ballot measures, there is evidence of racially polarized voting in other jurisdictions including the City of Carpinteria, including the Carpinteria Valley Water District, Carpinteria Unified School District, and Carpinteria Sanitary District. Moreover, the above chart only goes back to the early 1990s. Preliminary research indicates that if this analysis is extended to the 1970s, it would be possible to demonstrate approximately 25 or more examples of racially polarized voting in the City of Carpinteria in recent decades concerning candidate elections in the City of Carpinteria and other local and state jurisdictions and voting on state and local ballot measures, together with

underrepresentation of Latino candidates and votes for Latino candidates in the City of Carpinteria.

As well as electoral deficiencies that necessitate district elections in the City of Carpinteria, there are other factors pursuant to the California Voting Rights Act that merit further consideration, including 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 a "history of discrimination" (Sec. 14028(e)).

The following chart presents comparisons between the white and Latino populations in Carpinteria in socioeconomic characteristics pertaining to education, employment, and health in the 2015 United States Census Bureau Community Survey estimate:

C. Comparison Between White and Latino Populations In Socioeconomic Characteristics in Carpinteria, 2015

	White Population	Latino Population
Education		
Adults with high school degree	97.5%	50.1%
Adults with bachelor's degree	51.6%	7.6%
Employment		
Per capita income	$37,349	$24,397
Home ownership	58.6%	43.3%
Health		
No health insurance	9.1%	20.7%

In addition, the California Voting Rights Act provides that "denial of access to those processes determining which groups of candidates will receive financial or other support in a given election" (Sec. 14028(e)) is probative of a violation of the CVRA. Preliminary research indicates that financial contributions to Latino candidates in Carpinteria City Council races is about in proportion to the number of votes Latino candidates have received, far below the proportion of Latinos who reside in Carpinteria.

With respect to the history of discrimination, the following quotes from John D. McCafferty, *Aliso School: 'For the Mexican Children'* (2003), demonstrate this discrimination, which is again probative of a violation of the California Civil Rights Act:

> One non-war item that made front page news in 1942 Carpinteria was the April opening of the Del Mar Theater .... The newspaper did not carry any news about the racial segregation that took place in the Del Mar Theater, and in a whites-only pool hall on the second floor of the building. For about 10 years, Mexican moviegoers were ordered to sit on the right bank of seats; the larger center section and the left second section were reserved for whites. [p. 92]
>
> In 2003, when he was 77, Zip Gonzalez ... said that prejudice in the town was widespread in the 1940s, and ran deep. He told of a relative being severely beaten ... He also said a local Mexican man was beaten when he tried to integrate the upstairs pool hall... 'And we couldn't go to the main beach,' he said. The 'World's Safest Beach' ... was off-limits to Mexicans. [p. 95]
>
> Ed Rubio ... says the prejudice that he felt directed at him bothered him a great deal when he was an Aliso pupil. 'Sometimes I would wake up at night, feeling really bad, and wonder, why did I have to be born a Mexican?' [p. 96]
>
> 'The segregated experience at Aliso School did not measure up to the criteria expected from an integrated school.' [p. 105]

RESOLUTION NO. 17-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GOLETA, CALIFORNIA ESTABLISHING A PUBLIC ENGAGEMENT COMMISSION

WHEREAS, the City Council has agreed to establish a public engagement commission by way of a settlement agreement with Lindsay Rojas and Hector Mendez pursuant to a notice of violation of the California Voting Rights Act dated February 27, 2017; and

WHEREAS, the purpose of the commission will be to advise the City Council pertaining to increasing public engagement in the governance of the City; and

WHEREAS, this resolution serves to establish the Public Engagement Commission, organize and define its duties, delineate the appointment and removal of its members, and provide for its dissolution after all its goals have been achieved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLETA AS FOLLOWS:

SECTION 1. CREATED

The Public Engagement Commission for the City is hereby created.

SECTION 2. PURPOSE OF PUBLIC ENGAGEMENT COMMISSION

The purpose of the Public Engagement Commission shall be to advise the City Council on issues related to public engagement in the governance of the City. The Commission will provide City residents a venue to address opportunities and ways to increase public engagement in City government.

SECTION 3. DUTIES AND RESPONSIBILITIES

The Public Engagement Commission shall have the power and duty to make recommendations to the City Council on matters pertaining to:

A. Whether the City should become a charter city;
B. Whether councilmembers should be paid greater compensation, and, if so, how much;
C. Whether regular City Council meetings should be scheduled after 5:00 p.m.;
D. Whether the directly elected mayor's term should be four (4) years;

E. How to increase resident participation in government;
F. The district mapping process in determining district lines for future district elections; and
G. Any other matters as directed by the City Council.

SECTION 4. MEETINGS

Every year the Commission shall establish dates for six regular meetings and may hold such additional adjourned or special meetings as it or the City Council deems necessary or expedient. The City Clerk shall publicly notice the dates and times of the regularly scheduled meetings. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975.

SECTION 5. ORGANIZATION

Each year, at its first regular televised meeting of the calendar year, the Commission shall elect from its membership a Chair and Vice-Chair.

The City shall maintain a public record of the Commission's resolutions, transactions, findings and determinations.

SECTION 6. STAFFING

The Public Engagement Commission shall be supported by the City Manager's Office.

SECTION 7. PUBLIC OUTREACH

The Public Engagement Commission shall encourage residents and organizations which have an interest and purpose in increasing civic engagement within the City of Goleta to participate in the meetings of the Public Engagement Commission.

SECTION 8. MEMBERS

The Public Engagement Commission shall be composed of five (5) members.

SECTION 9. QUALIFICATIONS OF MEMBERS

(a) Members of the Public Engagement Commission shall be residents of the City.

(b) No member of the Public Engagement Commission may be an employee or officer of the City.

SECTION 10. APPOINTMENT

Following the procedures of California Government Code Section 54970, each Public Engagement Commissioner shall be appointed by the City Council at large. Appointment requires at least three affirmative votes.

SECTION 11. COMPENSATION

The Public Engagement Commission members shall be compensated at the rate of $50.00 per meeting. No additional compensation shall be provided to the commissioners.

SECTION 12. REMOVAL FROM OFFICE

A member of the Public Engagement Commission is automatically removed from office if the member is absent without excuse from three consecutive regular meetings of the Commission. Excuse shall be determined by the Commission. A member of the Public Engagement Commission may be removed by a majority vote of the City Council.

SECTION 13. VACANCY IN OFFICE

A vacancy on the Public Engagement Commission caused by death, resignation, removal of a commissioner, or any other cause before the expiration of a commissioner's term shall be filled by an appointment by the Council for the unexpired term.

SECTION 14. DISSOLUTION

The City Council may dissolve the Public Engagement Commission at any time upon its determination that the Commission has completed its Duties and Responsibilities as described in Section 3.

SECTION 15. CERTIFICATION

The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.