



March 21, 2022

**Via Email:** [shenkman@sbcglobal.net](mailto:shenkman@sbcglobal.net)

Kevin I. Shenkman  
28905 Wight Road  
Malibu, CA 90265

**Re: Response to September 17, 2021 Demand Letter Under California Voting Rights Act**

Dear Mr. Shenkman:

As City Attorney of the City of Cypress (“City”), I write in response to your September 17, 2021, letter accusing the City of violating the California Voting Rights Act (“CVRA”). Since the bulk of your letter follows the same form letter you have sent many jurisdictions in California, your office and your client Southwest Voter Registration Education Project (“SVREP”) fail to acknowledge certain key attributes about Cypress’ demographics and its elections that lead to the opposite conclusion; the City’s at-large election system does not violate the CVRA. An analysis of these attributes would lead SVREP to admit that your allegations about the City violating the CVRA are unwarranted. Indeed, the City’s demographics and the diversity of candidates historically elected to the City Council of the City demonstrates that the City is not a candidate for your boilerplate allegations.

First, the City has enjoyed a strong track record of having those persons who receive the most votes behind successful Council candidates getting elected at subsequent Council elections. This example can be seen by viewing even the most recent election when Council Member Marquez, a minority candidate, won the election after her second run for a City Council seat. In her first run for Council, she received the second-highest number of votes behind the three successful candidates. As such, there is ample evidence that there is no racially-polarized voting pattern in the City to warrant switching to by-district elections.

Second, we have asked you to share any evidence SVREP has to support the allegations that racially-polarized voting exists in Cypress. You refused, notwithstanding the obligations of a CVRA plaintiff to demonstrate more than simply pointing to one minority candidate who lost an at-large election. I explained to you that the City’s demographer found no evidence of racially-polarized voting. As such, it would not only be appropriate for SVREP to provide this basic information it purports to have in support of its letter, the information would need to be demonstrated in any action against the City in any event. A plaintiff alleging violations of the CVRA must prove “racially polarized voting” (Elec. Code, subsection 14028(a)) by establishing that a minority group tends to vote in a similar manner, that is are “politically cohesive,” and that “the white majority votes sufficiently as a bloc to enable it - in the absence of special circumstances... - usually to defeat the minority’s preferred candidate.” (*Thornburg v. Gingles* (1986) 478 U.S. 30, 51.) A CVRA plaintiff must also demonstrate that the at-large voting system

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has diluted minority voting strength, such that an alternative voting scheme would enhance the ability of voters of a protected class to elect candidates of their choice or influence the outcome of elections. (Elec. Code, § 14027.)

The only specifics in your letter identifies one Asian Council candidate's unsuccessful bid for a seat on the Council. This ignores the above trend, but more importantly, overlooks the fact that the City has had a history of Asian American candidates being elected to the City Council. In 1998 and again 2002, Lydia Sondhi was elected to the City Council. Also, in 2006 and again 2010, Dr. Prakash Narain was elected to the City Council. These elections victories occurred in the aforementioned candidates' respective first and second bids for Council seats. Certainly, these undeniable trends of Asian Americans succeeding in the City's at-large elections confirm that Cypress is not the appropriate target for your cookie cutter CVRA letters.

Your allegations further ignore that a CVRA plaintiff must demonstrate that the at-large voting system has diluted minority voting strength, such that an alternative voting scheme would enhance the ability of voters of a protected class to elect candidates of their choice or influence the outcome of elections. (Elec. Code, § 14027.) None of these basic requirements for a claim are established by your letter and the refusal to provide this support leaves the City to wonder about the merits of SVREP's allegations.

Third, the evidence from the at-large elections at the Cypress Elementary School District ("CESD"), which substantially shares voting borders with those of the City's jurisdiction, confirms that Asian Americans have enjoyed tremendous success in their bid for seats on the CESD Board of Trustees. In both of the 2012 and 2014 at-large elections conducted by CESD, Asian Americans who ran for Board seats were elected. Certainly, this provides valuable evidence that racially-polarized voting within the City's boarders simply does not exist.

Fourth, the holding in the Court of Appeal's recent decision in the *City of Santa Monica v. Pico Neighborhood Association* case on review by the California Supreme Court (No. S263972) rejected a vote-dilution theory similar to the one you advance here, and referred to your other arguments as "unprecedented and unwise." The court explained that "dilution" requires a plaintiff to show that district-based elections would actually change electoral results by providing the relevant protected group with enough voting power to do so. Additionally, contrary to the suggestions in your letter, district-based elections are not inherently better for minority voters. The Court in *Santa Monica* highlighted the potential for district-based elections to deprive minorities of fair representation. Other cases have similarly found that district-based elections could diminish minority voting strength. (*See, e.g., Gill v. Whitford* (2018) 138 S.Ct. 1916, 1924 [district boundaries may be established so as to yield "cracking", or the division of "a party's supporters among multiple districts so they fall short of a majority in each one" and "packing", or "concentrating one party's backers in a few districts" whereas spreading them across multiple districts would increase their electoral success].)

Fifth, the City performed a broad outreach program in response to your letter and the majority of residents confirmed their concerns about the risks of removing their ability to vote for all 5 seats

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on the City Council. In fact, the survey conducted by the City as part of its outreach program confirmed that the majority of the residents that participated opposed any action to switch to by-district elections. The legal concern raised by the residents is a persuasive one; namely, there are no areas within the City that benefit from a high concentration of any protected class. As such, it would be impossible to show that districts would enhance the ability of any protected class to elect candidates of its choice or influence election outcomes. To the contrary, splitting up the votes of those protected classes would have the effect of preventing them from voting as a larger class to elect a candidate of their choice.

Your letter also incorrectly assumes that minority voters prefer only minority candidates. Courts have repeatedly rejected that argument. (*See, e.g., Ruiz v. City of Santa Maria* (9th Cir. 1988) 160 F.3d 543, 551 [“We join our [nine] sister circuits in rejecting the position that the ‘minority’s preferred candidate’ must be a member of the racial minority. To hold otherwise would ... provide judicial approval to ‘electoral apartheid.’”].) Again, you refused to provide any evidence to support your arguments and instead said that we would not have an opportunity to see any of the evidence you purport to have until after you initiate a lawsuit forcing taxpayers to pay large sums of money to secure this basic information. It is hard to imagine how such a tactic advances anyone’s interests other than those of the lawyers. In fact, we are mindful that most public entities that have voluntarily adopted district-based elections in response to your demand letters have done so for no other reason than that they lack the resources to refute the claim.

For the reasons stated herein, we believe pursuing any legal action against the City would not only be unwarranted, but would also expose your office and CVREP to the City’s legal expenses pursuant to Elections Code section 14030. We would therefore respectfully request that you provide us any evidence you purport to have in support of your allegations so that we can understand the nature of your client’s demand. Your refusal to do so leaves the City without evidence of a CVRA violation and no rationale for disenfranchising its residents by abandoning at-large elections.

Feel free to contact me if you wish to discuss further.

Sincerely,

Fred Galante,  
City Attorney

cc: Hon. Mayor and Members of the Cypress City Council  
Pete Grant, City Manager  
Alisha Farnell, City Clerk