



Received
City Clerk's Office

JUL 01 2019

City of Davis

VIA CERTIFIED MAIL

**Re: Notice of Violation of California Voting Rights Act per
Cal. Elections Code Section 10010(e)**

TO:

City Council c/o City Clerk
City of Davis
23 Russell Blvd., Suite 1
Davis, CA 95616

DATE:

July 1, 2019

Dear City Council:

This letter, sent by certified mail, constitutes the written notice of violation specified in the California Elections Code Section 10010(e)(1).

I represent a prospective plaintiff in a potential lawsuit under the California Voting Rights Act ("CVRA"). As you know, the City of Davis ("Davis") utilizes an at-large election system for electing candidates to its city council. Davis' demographics are racially diverse, with about 22.0% percent of its residents being Asian-American and about 14.2% percent of its residents being Latino. Voting within Davis is racially-polarized, which has resulted in minority vote dilution. Davis' minority voters have not had proper representation on the city council because of the at-large election system. Thus, Davis' at-large elections violate the California Voting Rights Act ("CVRA").

Courts have regularly found that at-large election systems violate voting rights laws. The U.S. Supreme Court observed that "at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). "[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." *Id.* In recognition of this fact, the federal Voting Rights Act ("FVRA"), 42 U.S.C. Section 1973, specifically targets at-large election schemes. *Gingles*, 478 U.S. at 37.

California has enacted even stronger protections for minority voting rights than exist in federal law. Unlike the FVRA, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish a violation. Cal. Elections Code Section 14028 ("A violation of Section 14027 is established if it is shown that racially polarized voting occurs..."). A city's at-large method of election is in conflict with the CVRA when it impairs the ability of a protected class to influence the outcome of an election because of vote dilution of members of a protected class. *Jauregui v. City of Palmdale*, 225 Cal App. 4th 781, 793 (2014) (citing Cal. Elections C. Section 14027). There is no requirement to prove intent on the part of the voters of elected officials to discriminate against a protected class. Cal. Elections Code Section 14028(d).

Moreover, other factors besides racially polarized voting can be probative of a CVRA violation, including but not limited to "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," and "the use of overt or subtle racial appeals in political campaigns." Elec. C. Section 14028(e).

Davis' at-large election system dilutes the ability of racial minorities a "protected class" under the CVRA, to elect candidates of their choice in city council elections and to influence the outcome of the election.

Davis' current city council composition is telling. Of the five sitting members of the City Council, four are predominately white and one is Latino.

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Furthermore, the election history in Davis demonstrates the insidious effects of racially polarized voting and vote dilution. Gloria Partida, elected in 2018, has been the only Latino elected to the council in at least the last twenty years. In addition, there has not been an Asian city council member since 2010 when Ruth Asmundson left office other than current Mayor Bret Lee.

Davis' demographics and current city council composition further support the CVRA claim. According to recent data, Latinos comprise 14.2% percent of the city population. Yet there has only been one election in which a Latino candidate emerged victorious in at least 20 years.

Based on the foregoing demographic analysis and factual records, our demographer expert would have no problem demonstrating at trial that Davis is in violation of the CVRA.

Please note the recent efforts by the Davis Unified School District to take important steps to correcting their CVRA issues by voluntarily going to district elections.

At least one city has fought a CVRA claim all the way through trial and appeal – at great expense to the taxpayer – only to wind up having a court impose district-based elections. See *Jauregui v. City of Palmdale*, 225 Cal.App. 4th 781 (2014). After an expensive trial, the trial court ruled for the plaintiffs and imposed a district-based election system upon the Palmdale City Council. This was affirmed on appeal. *Id.* Plaintiffs were awarded millions of dollars of attorney's fees and costs.

The Elections Code was amended in 2016 to set forth procedures by which your council may voluntarily move to a district-based election system and thus bring Davis into compliance with the law. See generally Cal. Elections Code Section 10010. Pursuant to that Section 10010, you have 45 days from today's date, or August 15, 2019, to take certain actions that demonstrate Davis' intention and specific plan to transition to district-based elections. If we do not receive a response by that date, we will be forced to seek judicial relief on behalf of the residents of Davis.

Please call Shauna Cunningham at (805) 369-2399 on or before August 1, 2019, we welcome a discussion about a voluntary change to the current unlawful election system utilized by Davis.

Thank you in advance for your prompt attention to this matter.

Sincerely,



Matt Rexroad
Attorney at Law