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VIA CERTIFIED MAIL

September 15, 2017

Ms. Rachelle D. Klassen
City Hall – City Clerk
City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, CA 92260

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project and its members residing in Palm Desert. The City of Palm Desert ("Palm Desert") relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within Palm Desert is racially polarized, resulting in minority vote dilution, and therefore Palm Desert's at-large elections violate the California Voting Rights Act of 2001 ("CVRA").

The CVRA disfavors the use of so-called "at-large" voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 667 ("*Sanchez*"). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control *every* seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted "at-large" election schemes for decades, because they often result in "vote dilution," or the impairment of minority groups' ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles,* 478 U.S. 30, 46 (1986) ("*Gingles*"). The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to "ignore [minority] interests without fear of political consequences"), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412

U.S. 755, 769 (1973). "[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act ("FVRA"), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; *see also* Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, "[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965." *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered "restrictive interpretations given to the federal act." Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a "majority-minority district." *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. *See* Cal. Elec. Code § 14028 ("A violation of Section 14027 ***is established*** if it is shown that racially polarized voting occurs ...") (emphasis added); *also see* Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 ("Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).")

To establish a violation of the CVRA, a plaintiff must generally show that "racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision." Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: "elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class." Elec. Code § 14028(a). The CVRA also makes clear that "[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action." *Id.*

Factors other than "racially polarized voting" that are required to make out a claim under the FVRA – under the "totality of the circumstances" test – "are probative, but not necessary factors to establish a violation of" the CVRA. Elec. Code § 14028(e). These "other factors" include "the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns." *Id.*

Palm Desert's at-large system dilutes the ability of Latinos (a "protected class") – to elect candidates of their choice or otherwise influence the outcome of Palm Desert's council elections.

The last nine elections are illustrative: not a single Latino candidate competed in any one of the respective Council contests. From 2000 through to 2016, twenty-four (24) members were elected to the Palm Desert city council from a pool of fifty-two (52) candidates, yet not one of those candidates was Latino. Opponents of fair, district-based elections may attribute the lack of Latinos vying for City Council positions to a lack of Latino interest in local government. On the contrary, the alarming absence of Latino candidates seeking election to the Palm Desert City Council reveals vote dilution. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989). Moreover, an analysis of exogenous elections reveals what Latinos in Palm Desert already know – Latino-preferred candidates, particularly when they are Latino themselves, have little chance to prevail in citywide elections in Palm Desert.

According to recent data, Latinos comprise approximately 26% of the population of Palm Desert. However, there are currently no Latino representatives on the Palm Desert City Council. Therefore, not only is the contrast between the significant Latino proportion of the electorate and the total absence of Latinos to be elected to the City Council outwardly disturbing, it is also fundamentally hostile towards Latino participation.

The history of the Coachella Valley, including Palm Desert, is wrought with instances of overt discrimination. One of the most blatant examples of this sanctioned discrimination was the demolition and mass eviction of the low-income residents in Section 14. Thousands of working-class people, including a large number of Latinos, were forced from their homes near downtown Palm Springs in the 1950's and 1960's in what was described by the California Department of Justice as "a city engineered holocaust" noting that, by way of these evictions and house-burnings, local leaders "disregarded the residents of Section 14 as property-owners, taxpayers, and voters…(they) ignored that the

residents of Section 14 were human beings." With nowhere else to go, Latinos scattered to outlying areas including Palm Desert, and, despite this glaringly discriminatory past, Palm Desert continues to utilize an electoral system that perpetuates the underrepresentation of its Latino residents.

Located in the western portion of the Coachella Valley, Palm Desert is one of the wealthier cities in the area. Even still, an article published by KCET in 2012 stated that "the wealthier cities in the West Valley are almost as segregated as they were when such discrimination was legal."

During the 1990's, Palm Desert's population grew 40% from approximately 23,000 to over 41,000 and, by 2010, the City's population reached 48,445. Part of that growth was attributable to the steady rise in the City's Latino population which increased from 17% in 2000 to an estimated 25.8% in 2015. Latinos currently comprise over 1/4th of the City's population, yet, not one Latino resident has ever become a candidate for, let alone be elected to serve on, the Palm Desert City Council.

This deficit of Latino representation is not without consequence, as on the critical issue of healthcare, Latinos in the Coachella Valley have not been afforded much-needed health services. The 70 year-old service boundaries for the Desert Healthcare District, which is governed by five non-Latino board members and governs healthcare for Palm Desert, have deepened the divide for Latinos in Coachella Valley. In analyzing the impact of the District's boundaries on service provision, a research associate at the Center for Healthy Communities at UC Riverside recently commented that "structural racism explains a lot about what happens in the Coachella Valley," citing a "deep legacy of racism that has created poverty".

More recently, in 2001, a group of 16 high school students, in the nearby City of Palm Springs, participated in a hate motivated crime when they used white shoe polish to write "Nigger" on a school window, while strapping a dead, black cat from the clock tower and painting a swastika on the school's front door. Although officials labeled this incident as a "senior prank gone awry", this type of incident vividly reflects the deep-seeded racial animus still rampant throughout the Coachella Valley and in Palm Desert.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale city council, with districts that combine all incumbents into one of the four districts.

Given the historical lack of Latino representation on the city council in the context of racially polarized elections, we urge Palm Desert to voluntarily change its at-large system of electing council members. Otherwise, on behalf of residents within the jurisdiction, we

will be forced to seek judicial relief. Please advise us no later than November 3, 2017 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,

Kevin I. Shenkman

COPY TO City Mgr.
City Atty. OPIO
DATE 9-18-17

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