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August 2, 2024

Eric Volta, Superintendent
Mountain View Los Altos Union High School District
1299 Bryant Ave.
Mountain View, CA 94040

Re: Notice of Violation of California Voting Rights Act

Dear Superintendent Volta:

First, we would like to acknowledge and thank you for your work--and the work of the Board of Education, faculty, and staff--serving the Mountain View Los Altos Union High School District.

On behalf of Gerardo Alvarez, a member of a protected class and registered voter in the Mountain View Los Altos Union High School District, this letter and the enclosed report assert that the Mountain View Los Altos Union High School District's method of conducting elections violates the California Voting Rights Act (the "CVRA").

Pursuant to California law, the Mountain View Los Altos Union High School District Board of Education now has 45 days from receipt of this letter to adopt a resolution outlining its intent to transition from at-large to district elections, detailing specific steps it will take to facilitate this transition, and estimating the time-frame for this transition. If the Board of Education does not adopt a resolution to this effect within 45 days from receipt of this letter, a legal action will be commenced in California Superior Court (Santa Clara County) to require the Mountain View Los Altos Union High School District to institute district elections pursuant to the CVRA.

District elections are sweeping California. No government jurisdiction in California of which this office is aware has successfully defended a complaint alleging a violation of the CVRA.

Accordingly, we hope to negotiate a collaborative settlement agreement with the Mountain View Los Altos Union High School District that would cap costs and enable more participation by the Board of Education in the transition to district elections than would be the case through litigation.

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District elections have led elsewhere to greater representation on and more candidates seeking election to elective bodies and to greater participation in and interest by the community in local government agencies and elections. There are many benefits that school districts receive through district elections, including higher voter turn-out and more community participation, as described in the enclosed report.

As a result of the diversity in the Mountain View Los Altos Union High School District, the desirability of and need for district elections will only grow in the coming years. Hundreds of government agencies in California have established district elections in recent years, including in Santa Clara County. The terms of existing Board members would not be affected by the transition to district elections, nor would the upcoming election in November 2024.

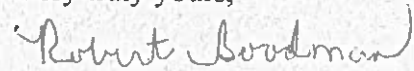
If the Mountain View Los Altos Union High School District Board of Education votes to establish district elections within the 45-day statutory period, legal and demographic costs are capped. If this matter were to proceed to litigation, then, pursuant to the CVRA, there would not be a cap on costs.

We look forward to hearing from you and resolving the issues presented. We are amenable to a start date of district elections in November 2026, which would mean the drawing of district lines could be deferred until late 2025 or early 2026.

Please advise us by August 30, 2024, whether you would like to discuss a voluntary change to your current at-large electoral system.

Thank you for your attention to this matter. We are confident the Mountain View Los Altos Union High School District will be an even better school district with district elections--more representative and in compliance with state law.

Very truly yours,



Robert Goodman, Esq.

RG/iw
Encl.
Cc: California Voting Rights Project

**Establishing District
Elections in the
Mountain View
Los Altos Union
High School District**

**In compliance with the
California Voting
Rights Act**

**California Voting Rights Project
August 2024**

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Establishing District Elections in the Mountain View Los Altos Union High School District in Compliance With the California Voting Rights Act

Introduction

There is a strong case for establishing district elections in the Mountain View Los Altos Union High School District. Hundreds of California school districts, cities, and special districts have instituted district elections in recent years in compliance with the California Voting Rights Act. District elections bring government closer to the people, increase representation, result in higher turnout in local elections, and lead more candidates to run for local office.

Notwithstanding that close to 70 percent of the enrollment in the Mountain View Los Altos Union High School District is comprised of students from protected classes, this diversity has not been represented on the Board of Education.

There are many examples of abridgment of voting rights and polarized voting in the Mountain View Los Altos Union High School District in elections to the Board of Education and on state and local ballot measures. There are also significant differences between members of different groups in socioeconomic characteristics pertaining to education and employment, and in academic performance in the Mountain View Los Altos Union High School District.

Abridgment of voting rights of members of protected classes is proscribed by the California Voting Rights Act. The United States Voting Rights Act and, especially, the California Voting Rights Act provide strong and explicit protections for members of protected classes to challenge at-large forms of election to government bodies and replace them with district elections. Violations

of the California Voting Rights Act do not require any form of intentional or purposeful discriminatory activity, and none is alleged here.

To date, no government jurisdiction in California has prevailed in a challenge to its electoral system on the basis of the California Voting Rights Act.¹ The current, at-large method of election to the Mountain View Los Altos Union High School District Board of Education impairs the ability of members of protected classes to elect candidates of their choice and their ability to influence the outcomes of elections. Therefore, district elections must be established in the Mountain View Los Altos Union High School District.

1. Benefits of District Elections

There are many benefits of district elections which have been experienced in jurisdictions throughout California. These include greater voter turn-out and participation, and more candidates running for office. In some places, turn-out in some voting precincts has increased by as much as one-quarter after district elections were implemented, and the number of candidates seeking election has more than doubled.

District elections bring government closer to the people. They result in representatives who are more knowledgeable of neighborhood problems and concerns. Candidates learn about their electoral district when running for office. Voters have a member of the Board of Education to whom they can turn on issues, and Board members become more knowledgeable about area-specific concerns. There is a wider spectrum of views on the Board of Education and more representation from all neighborhoods and the entire community. District elections empower neighborhoods. District elections have been accompanied by greater diversity of all sorts on elective boards.

District elections result in less expensive political campaigns. It is easier for 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.

The Mountain View Los Altos Union High School District will be an even better school district with district elections--more representative of the people and in compliance with state law. District elections will make elections to the Board of Education fairer and more inclusive, and will increase representation and participation. The universal experience with district elections in California is that school districts and other government jurisdictions which have implemented them have found them to be a superior form of representation.

Benefits of district elections are described in "The Politics of Latino Education: The Biases of At-Large Elections," by David Leal, Valerie Martinez-Ebers, and Kenneth Meier, published in the *Journal of Politics*, a publication of the Southern Political Science Association, included here as Exhibit E and incorporated herein. This article contains much important information:

Representation is an integral part of the political system.

Boards are involved in all aspects of school policy. They hire and fire superintendents, set the curricula, decide spending priorities, and adopt reform plans. Although many decisions are in practice left to superintendents and other administrators, school boards are tasked to oversee these experts. Boards, therefore, shoulder much responsibility for the quality of public education in America.

The question of Latino representation in school policymaking might be less urgent if Latino educational achievement were high, but this is far from the case. While education may be the best way to escape poverty and realize the American dream, many Latinos find their hopes prematurely dashed through low educational achievement.

Latino representation on school boards was associated with better educational conditions. In school districts with more Latino representation, Latino students experienced greater access to equal education ... There also appeared to be a ripple effect, whereby more Latino school board members led to more Latino school administrators, which in turn led to more Latino teachers.

Multiple studies suggest greater minority representation in the educational policy process translates into more positive outcomes for minority students.

Our study supports the findings of earlier research showing minority population translating into minority school board seats at a substantially higher rate with district elections than with at-large elections. Our findings show that at-large election systems usually disadvantage Latinos; the obvious recommendation is that at-large systems should be replaced by single-member systems.²

As members of protected classes are elected to governing boards, there tends to be more members of protected classes who become employed by government agencies. In addition, because candidates for higher elective office are very often elected first to local office, district elections lead in time to greater representation at all levels of elective office.

2. United States Voting Rights Act

The United States Voting Rights Act is landmark federal legislation that prohibits discrimination in voting. Passed in 1965 in the wake of the suppression of civil and voting rights, the United States Voting Rights Act is intended to enforce the voting rights guaranteed by the 14th and 15th Amendments to the United States Constitution, in particular the provisions of the 15th Amendment: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race ... [or] color".

According to the federal 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).

The United States 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 protected classes (*Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)). Although legal actions against government jurisdictions in California to require district elections have since 2002 been brought pursuant to the California Voting Rights Act (rather than the U.S. Voting Rights Act), the federal Voting Rights Act also provides strong and explicit protection for the voting rights of members of protected classes.

3. California Voting Rights Act

Building on 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 institute district elections. According to the Rose Institute of State and Local Government at Claremont McKenna College (the state leader in gathering information on the transition from at-large to district elections): "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."³ A copy of the California Voting Rights Act is included here as Exhibit B and incorporated herein.

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 is clear: **at-large methods of election are against California law when they impair the ability of protected classes to elect candidates of their choice or to influence the outcomes of elections** as a result of dilution of the vote or abridgment of the rights of voters who are members of a protected class. On showing vote dilution or abridgment of the rights of voters of protected classes, at-large methods of election must be discontinued in favor of district elections.

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 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 also 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, emphasis added). Though a remedy for a violation of the CVRA other than district elections might be here contemplated, in fact no remedy has been ordered by a California court for violation of the California Voting Rights Act other than district elections.

When, as in the Mountain View Los Altos Union High School District, a government jurisdiction utilizes an illegal, at-large method of election, district elections must be implemented.

To date, scores of legal actions have been brought against school districts, cities, special districts, and other government agencies in California for violation of the California Voting Rights Act. Every action has been successful. The replacement of at-large elections by district elections is sweeping the state as a result of the CVRA. The Rose Institute also states: “Another significant effect of the California Voting Rights Act is the financial cost it has imposed ...--many challenges so far have resulted in settlements or legal awards over one million dollars.”⁴

The California Voting Rights Act was ruled constitutional by a California Court of Appeal in 2007. This 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."⁵ This court further held: "Curing vote dilution is a legitimate government interest"; and: "To prove a violation, plaintiffs ... do not need to show that members of a protected class live in a geographically compact area."⁶

The California State Supreme Court strongly reaffirmed the importance and applicability of the California Voting Rights Act in *Pico Neighborhood Association v. City of Santa Monica* in August 2023. According to the State Supreme Court: "Voting rules may effectively decide whether a group of voters can have a voice in the myriad decisions made by local representatives. With a seat at the table, the voters' representatives can have a say in the topics and terms of the debate on the many crucial decisions that local governments make. Without a seat, though, the voters' choice may be effectively muted or silenced and their needs and preferences may be ignored or given less weight."⁷

Significantly, the California Supreme Court specifically ruled in its unanimous opinion that it is not required, in order to sustain a CVRA action, that an electoral district comprised of a majority of protected class members be able to be established: "We also reject the ... contention that a majority-minority requirement--or something close to it in the form of a near-majority requirement--is necessary to avoid difficult constitutional issues under the equal protection clause."⁸

The CVRA further states: "Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required" (Sec. 14028(d)) to establish a violation of the California Voting Rights Act. There is not any intention here to assert that either the Board of Education or staff of the Mountain View Los Altos Union High School District has engaged in any form of intentional or purposeful discriminatory activity. The issue is strictly concerning the District's current, at-large form of election to its Board of Education, which is illegal because it violates the California Voting Rights Act.

4. Abridgment of Voting Rights in the Mountain View Los Altos Union High School District

The Mountain View Los Altos Union High School District is very diverse. The first table presents student enrollment by ethnicity in the Mountain View Los Altos Union High School District in the 2023-24 school year (source: California Department of Education):⁹

A. Mountain View Los Altos Union High School District, 2023-24 Enrollment by Ethnicity

<u>Group</u>	<u>Percent</u>
African Am	1.1
Asian	30.4
Latino	25.6
White	32.8
Multi/Other	<u>10.1</u>
Total:	100.0

Moreover, enrollment in the District is becoming more diverse. The next table presents just white student enrollment in the Mountain View Los Altos Union High School District in 2016-17 and 2023-24:

B. Mountain View Los Altos High Union School District, White Enrollment in 2016-17 and 2023-24

<u>Year</u>	<u>White Enroll Percent</u>
2016-17	41.8
2023-24	32.8

Diversity in the Mountain View Los Altos Union High School District is also reflected by total population in the District in the 2020 census:

**C. Mountain View Los Altos Union High School District,
Total Population by Ethnicity, 2020 Census**

<u>Group</u>	<u>Percent</u>
African Am	1.3
Asian	36.7
Latino	15.5
White	40.7
Multi/Other	<u>5.8</u>
Total:	100.0

The diversity in the Mountain View Los Altos Union High School District has not been represented on its Board of Education. The next table shows the candidates in Board of Education elections in the Mountain View Los Altos Union High School District between 2008 and 2022 and the number of votes they received (source: Santa Clara County Registrar of Voters).¹⁰ It should be noted that elections were not held in all years as a result of insufficient candidates seeking office. Among the benefits of district elections is they encourage more candidates to run in smaller districts who would not run in the larger, entire, at-large jurisdiction. An asterisk (*) is placed next to candidates from protected classes (it should be noted that, for purposes of the California Voting Rights Act, individuals with ancestry from the Indian subcontinent are not considered members of a protected class):

**D. Board of Education Candidates and the Votes They Received in
Mountain View Los Altos Union High School District Elections, 2008 to 2022**

<u>Year</u>	<u>Candidate</u>	<u>Votes</u>
2008	Sweeley	25,245
	Faillace	18,515
	Randolph	14,076
2014	Walter	12,346
	Torok	10,888
	Mitchner	10,678
	Dave	8,227
	Bennett	7,883
	Moore	5,013
	Kramer	3,911
2018	Walter	25,792
	Torok	23,360
	Vonnegut	20,918
	Nelson	14,288
2020	Dave	25,650
	Faillace	24,562
	Teksler	23,168
2022	Vonnegut	20,519
	Ortiz*	20,194
	Cornes*	14,012
	Mark	13,144
	Titus-Zambre	7,558
	Tanner	6,358

Candidates from protected classes have not sought election or been elected to the Board of Education in the Mountain View Los Altos Union High School District in proportion with their enrollment or the total population in the District. The next table shows the total number of candidates for the Board of Education in each Mountain View Los Altos Union High School District election since 2008, the number of candidates elected, the number of candidates from protected classes who ran, and the number of candidates from protected classes who were elected:

**E. Mountain View Los Altos Union High School District,
Board of Education Elections 2008 to 2022, Candidates**

<u>Year</u>	<u>Total Candidates</u>	<u>Elected Candidates</u>	<u>Protect. Class Candidates</u>	<u>Elected Protect. Class Cand.s</u>
2008	3	2	0	0
2014	7	3	0	0
2018	4	3	0	0
2020	3	2	0	0
2022	6	3	2	2
Total:	23	13	2 (8.7%)	2 (15.4%)

Candidates from protected classes have not run or been elected to the Board of Education in the Mountain View Los Altos Union High School District in proportion with their enrollment or total population in the District.

The next table presents the number of total votes cast in each Mountain View Los Altos Union High School District election since 2008, the number of votes cast for candidates from protected classes, and the percentage of total votes that were cast for candidates from protected classes:

**F. Mountain View Los Altos Union High School District,
Board of Education Elections 2008 to 2022, Votes**

<u>Year</u>	<u>Total Votes</u>	<u>Protect. Class</u>	<u>Percentage</u>
2008	57,836	0	0
2014	58,946	0	0
2018	84,358	0	0
2020	73,380	0	0
2022	<u>79,085</u>	<u>34,206</u>	<u>43.3</u>
Total:	353,605	34,206	9.7%

As can be seen, only 9.7% of all votes cast in elections for the Board of Education in the Mountain View Los Altos Union High School District since 2008 have been for candidates from protected classes. In addition, the 2010, 2012, and 2016 Board of Education races were uncontested. As noted previously, among the advantages of district elections is they lead to more contested races in neighborhood seats as candidates run for office in districts who would not run at large in the entire government agency, resulting in the election of more candidates from protected classes.

That the Mountain View Los Altos Union High School District is more diverse than those who have sought election and been elected to the Board of Education and in the votes that the candidates for the Board have received is not intended to detract in any way from the service that existing and past trustees provide and have provided. The concern is with respect to the at-large method of election utilized by the Mountain View Los Altos Union High School District.

In addition, pursuant to the California Voting Rights Act, it is not necessary that abridgment of voting rights be demonstrated only in elections to the political agency's governing board. Rather, voting issues with respect to

which the CVRA becomes applicable “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))--irrespective of whether the difference in voting occurs for the governing board of the government jurisdiction in which district elections is sought or in other electoral choices.

This is made clear by legal specialists in districting, electoral issues, and voting rights Marguerite Leoni and Christopher Skinnell. They write in “The California Voting Rights Act,” published by the *Public Law Journal*, an official publication of the State Bar of California Public Law Section:

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 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.¹¹

This article also states that the California Voting Rights Act “makes fundamental changes to minority voting rights law in California”; the CVRA “alters established paradigms of proof and defenses ..., thus making it easier for plaintiffs in California to challenge allegedly discriminatory voting practices”; the CVRA “prescribe[s] an extremely light burden ... to establish a violation”; the

CVRA “eliminate[s] 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”; the CVRA “eliminates the requirement that plaintiffs prove discrimination”; the CVRA “mandates the award of costs, attorneys fees, and expert expenses to prevailing plaintiffs”; the CVRA “denies not only attorneys fees but also the costs of litigation to prevailing defendants”; 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”; and “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 ... to control the districting process and the considerations that will guide the districting. Once the single member districts are in place, the [government jurisdiction] is in the CVRA safe harbor.”¹² A copy of this article is included here as Exhibit D and incorporated by this reference.

There is evidence of many examples of racially polarized voting, vote dilution, or differential voting in the Mountain View Los Altos Union High School District on state ballot measures, where electoral precincts within the District with different proportions of members of protected classes have expressed different preferences on measures, including:

**G. Polarized Voting on State Ballot Measures in
Mountain View Los Altos Union High School District Since 2002**

<u>Year</u>	<u>Ballot Measure</u>	<u>Purpose</u>
2002	49	After school programs
2004	62	Primary elections
2004	66	“Three Strikes”

<u>Year</u>	<u>Ballot Measure</u>	<u>Purpose</u>
2004	72	Health care coverage
2006	87	Alternative energy
2008	9	Crime victims
2010	19	Cannabis
2010	26	Tax limitations
2012	31	State budget
2012	34	Death penalty
2012	37	Genetically engineered food
2014	45	Health insurance
2016	53	Revenue bonds
2016	61	Prescription drugs
2016	66	Death penalty
2018	3	Water quality
2018	10	Rent control
2020	16	Water quality
2020	18	Voting rights
2022	30	Air pollution

In addition, there is evidence of a number of examples of racially polarized voting, vote dilution, or differential voting in the Mountain View Los Altos Union High School District on local ballot measures and for candidates for local elective office, where electoral precincts within the District with different proportions of members of protected classes have expressed different preferences on measures and candidates, including:

H. Polarized Voting on Local Ballot Measures and for Candidates in Mountain View Los Altos Union High School District Since 2004

<u>Year</u>	<u>Ballot Measure or Office</u>
2004	Sta. Clara Co. Measure A, Prevailing wage
2006	Sta. Clara Co. Measure A, Land use
2010	Sta. Clara Co. Measure B, Parcel tax
2012	Sta. Clara Co. Measure A, Sales tax
2016	City of Mountain View, Just cause evictions
2016	City of Mountain View, Rent control
2020	City of Mountain View, Alex Nunez for City Council

The analysis here presents examples of polarization since 2002 on state ballot measures and since 2004 on local ballot measures and for candidates for local office. If this presentation were continued to the year 1992, incorporating all state and local ballot measures and state and local candidates for office, it would be possible to demonstrate as many as 40 or more instances of polarized voting, vote dilution, or differential voting in the Mountain View Los Altos Union High School District since this time.

Pursuant to the CVRA, as previously cited: “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 established in the Mountain View Los Altos Union High School District.

The California Voting Rights Act also states: “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 voting rights and polarized voting previously presented, there is significant evidence of the extent to which members of protected classes in the Mountain View Los Altos Union High School District bear effects of past conditions in areas such as education and employment.

The next table presents comparisons between the white and Latino populations in the Mountain View Los Altos Union High School District on various socioeconomic characteristics pertaining to education and employment in the 2022 United States Census Bureau estimates:

I. Comparison Between White and Latino Populations in Mountain View Los Altos Union High School District on Socioeconomic Characteristics, 2022

	<u>White</u>	<u>Latino</u>
<i>Education</i>		
Adults with high school degree	98.1%	79.2%
Adults with bachelor’s degree	80.2%	38.6%
<i>Employment</i>		
Average per capita income	\$130,590	\$43,019
Poverty in past 12 months	4.1%	15.1%
Households receiving food stamps	3.5%	20.2%

Furthermore, the California Assessment of Student Performance and Progress (CAASPP) is a major state assessment system for students in California schools. The CAASPP provides educational performance measures in a variety of areas. The following tables present achievement for students tested in the Mountain View Los Altos Union High School District in 2022-23 in English Language Arts/Literacy and Mathematics, disaggregated by white and Latino students:

**J. Mountain View Los Altos Union High School District
2022-23 CAASPP English Language Arts/Literacy Achievement by Ethnicity**

<u>Achievement Level</u>	<u>White</u>	<u>Latino</u>
4 -- Exceeds Standard	69.88%	25.69%
3 -- Meets Standard	22.67%	38.53%
2 -- Nearly Meets Standard	5.59%	22.94%
1 -- Standard Not Met	1.86%	12.84%

**K. Mountain View Los Altos Union High School District
2022-23 CAASPP Mathematics Achievement by Ethnicity**

<u>Achievement Level</u>	<u>White</u>	<u>Latino</u>
4 -- Exceeds Standard	32.24%	15.76%
3 -- Meets Standard	26.17%	20.26%
2 -- Nearly Meets Standard	23.29%	26.72%
1 -- Standard Not Met	18.30%	37.26%

Clear and compelling evidence exists that the Mountain View Los Altos Union High School District's current, at-large method of election to its Board of Education does not meet the requirements of the California Voting Rights Act. It is very likely the Mountain View Los Altos Union High School District would be ordered by a court to implement district elections. In the event the Mountain

View Los Altos Union High School District would not voluntarily institute district elections, attached hereto and incorporated herein as Exhibit A is a draft complaint against the Mountain View Los Altos Union High School District requiring it to implement district elections pursuant to the California Voting Rights Act.

5. Methods of Instituting District Elections in the Mountain View Los Altos Union High School District

There are two basic methods by which district elections may be instituted in the Mountain View Los Altos Union High School District: a) litigation; or b) a pre-litigation settlement agreement by the Mountain View Los Altos Union High School District Board of Education outlining the District's 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 Mountain View Los Altos Union High School District Board of Education chooses a pre-litigation settlement, then, pursuant to Section 10010 of the California Elections Code, the process the Mountain View Los Altos Union High School District will follow when district elections are implemented, as determined by the settlement agreement, is:

1) Within 45 days of receipt of the certified letter notifying the Mountain View Los Altos High School District that its method of conducting elections violates the CVRA, the Mountain View Los Altos Union High School District Board of Education will adopt a resolution outlining the District's 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 Mountain View Los Altos Union High School District Board of Education passes a resolution to this effect, a legal action may not be commenced for another 90 days after the resolution's passage, or as modified by the settlement agreement.

3) Before district lines are drawn, the Mountain View Los Altos Union High School District Board of Education holds two public hearings at which the public is invited to provide input concerning the composition of districts. The

timing of these hearings may also be as determined in a settlement agreement. In advance of these hearings, the Mountain View Los Altos Union High School District should conduct outreach to the public, including to non-English speaking communities, explaining the districting process and encouraging participation.

4) Following these two hearings, the Mountain View Los Altos Union High School District publishes and makes available for release at least one draft map and the proposed sequence of elections to new districts. The Mountain View Los Altos Union High School District then holds two more public hearings at which the public is invited to provide input on the draft map or maps and proposed sequence of elections.

5) In determining the sequence of elections, the Mountain View Los Altos Union High School District is required to give special consideration to the purposes of the California Voting Rights Act. For this reason, it is likely that among the first districts in which district elections will be held will be districts including significant proportions of members from protected classes.

6) After adopting the resolution of intention to transition from at-large to district elections and holding the hearings, the Mountain View Los Altos Union High School District Board of Education adopts a map of districts and a sequence of elections.

If the Mountain View Los Altos Union High School District establishes district elections according to the above process, as modified by a settlement agreement, no litigation is necessary.

Upon adopting the resolution of intention to transition from at-large to district elections, the Mountain View Los Altos Union High School District may seek a waiver from the California State Board of Education--as permitted by California Education Code Sections 33050-33053--of the requirement of voter

approval for the transition to district elections, which reduces the cost of the transition to district elections. Such waivers are routinely granted.

6. Advantages of a Settlement Agreement

A pre-litigation settlement agreement is the best way to ensure the most expeditious, least expensive, and most cooperative process to establish district elections in the Mountain View Los Altos Union High School District. There are many advantages of a pre-litigation settlement agreement rather than litigation to institute district elections. Most importantly, the Mountain View Los Altos Union High School District Board of Education retains a greater role in and more control over the transition process to district elections and legal costs are capped.

A greater role by the Board of Education and more control over the transition to district elections could manifest itself in a number of ways through a settlement agreement, including:

1) The Mountain View Los Altos Union High School District would retain the ability to draw the lines of voting districts both now and in the future. As a result of litigation, the court could draw the lines for voting districts through a court-determined process.

2) Participation in determining the date of the first district elections and timing of hearings. As a result of a settlement agreement, the timing of hearings to draw district boundaries could be postponed and the first district elections to the Board of Education could be held in November 2026.

3) Saving of plaintiffs' attorney fees and costs, and its own legal expenses, by the Mountain View Los Altos Union High School District, potentially saving hundreds of thousands or even more dollars. 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 attorneys' fees to prevailing plaintiff parties. Moreover, jurisdictions are responsible for their own legal costs, which also can be hundreds of thousands of dollars. The following table presents some settlements in California Voting Rights Act cases:

L. Settlements in CVRA Litigation (partial list)

<u>Jurisdiction</u>	<u>Settlement</u>
City of Palmdale	\$4,500,000
City of Modesto	\$3,000,000
City of Anaheim	\$1,200,000
City of Whittier	\$1,000,000
Santa Clarita Community College Dist.	\$850,000
San Mateo County	\$650,000
Tulare Healthcare District	\$500,000
City of Escondido	\$385,000
City of Garden Grove	\$290,000
City of Bellflower	\$250,000

As a result of the potentially significant costs of litigation, **the California Voting Rights Project strongly recommends that government jurisdictions reach settlement in the 45-day statutory pre-litigation phase.** In this case, pursuant to Assembly Bill 350 signed into legislation in 2016, costs to government jurisdictions are capped at \$30,000 plus annual CPI adjustment (now, \$37,970)¹³ for demographic and legal services.

It should be emphasized that Assembly Bill 350 applies only to the pre-litigation phase of cases brought pursuant to the CVRA. If a CVRA action becomes the subject of litigation through a complaint being filed, there is no limit on attorneys' fees and costs other than as stated in the CVRA.

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). Accordingly, it may be possible for the Mountain View Los Altos Union High School District to receive reimbursement from the state for a pre-litigation settlement. A copy of Assembly Bill 350 is included here as Exhibit C and incorporated herein.

The preceding are only some of the advantages of a pre-litigation settlement agreement. An example of a settlement agreement in another school district is a copy of the resolution and settlement agreement establishing district elections in the Goleta Union School District, included here as Exhibit G and incorporated by this reference.

Conclusion

The Mountain View Los Altos Union High School District will be an even better school district with district elections. District elections will increase participation and representation and bring the District into compliance with the California Voting Rights Act. More candidates will seek election to office and the community will become even more involved in the Mountain View Los Altos Union High School District and its schools.

For further information on the likelihood of district elections being ordered by a court, see the attached Council Agenda Report in the City of Santa Maria, which is included here as Attachment F and incorporated by this reference. According to this report: "After much analysis and in-depth conversations 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 ... 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 election system."¹⁴

Abridgment of voting rights has no place in the Mountain View Los Altos Union High School District or anywhere else. District elections will, to the benefit of the Mountain View Los Altos Union High School District, assist the District to meet its goals in addition to meeting the requirements of the California Voting Rights Act. District elections will result in more participation and involvement by the community in the Mountain View Los Altos Union High School District and its schools, and bring the District into compliance with the law.

In addition, in part as a result of district elections challenges in government jurisdictions in Santa Clara County, many government agencies in

the County have enacted district elections in recent years. The final table presents government jurisdictions in Santa Clara County with district elections:

**M. Santa Clara County Government
Jurisdictions with District Elections**

Santa Clara County Board of Supervisors
Santa Clara County Board of Education

Foothill De Anza Community College District
Gavilan Joint Community College District
San Jose Evergreen Community College District
West Valley Mission Community College District

Campbell Union School District
Campbell Union High School District
Gilroy Unified School District
Moreland School District
Morgan Hill Unified School District
Oakgrove School District
San Benito School District
San Jose Unified School District
Santa Clara Unified School District

City of Campbell
City of Morgan Hill
City of San Jose
City of Santa Clara
City of Sunnyvale

Midpeninsula Open Space District
Santa Clara Valley Water District
Santa Clara Valley Open Space Authority

Clear and compelling evidence of abridgment of voting rights would sustain a legal action brought pursuant to the California Voting Rights Act to institute district elections in the Mountain View Los Altos Union High School District. A pre-litigation settlement agreement by the Mountain View Los Altos Union High School District Board of Education provides the best opportunity to implement district elections in a manner that retains participation by the Board of Education and the Mountain View Los Altos Union High School District in the transition process to district elections and is cost-effective.

Endnotes

¹ See "CVRA Settlement Agreement / Resolution of Intention," Council Agenda Staff Report, City of Carpinteria (August 14, 2017): "The City Attorney's Office has surveyed the reported case law concerning litigation based on a violation of the CVRA. There is no reported case in which the defendant public agency has prevailed on the merits by proving that a violation of the CVRA did not occur" (p. 3).

² David L. Leal, Valerie Martinez-Ebers, and Kenneth J. Meier, "The Politics of Latino Education: The Biases of At-Large Elections," *Journal of Politics* (Vol. 66, No. 4, November 2004; included here as Exhibit E).

³ 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. The Rose Institute remarks on the switch from at-large to district elections in California: "This quiet tectonic shift in local government is accelerating" (id.).

⁴ Id., p. 2.

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

⁶ Id.

⁷ *Pico Neighborhood Association v. City of Santa Monica*, California State Supreme Court, No. S263972 (August 24, 2023), p. 2.

⁸ Id., p. 29.

⁹ Asian enrollment includes Filipinos and Pacific Islanders.

¹⁰ Individuals from the Indian subcontinent are not considered members of a protected class.

¹¹ 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 Exhibit D).

¹² Id.

¹³ Pursuant to Assembly Bill 350, passed into legislation in 2016: “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 1. 10010(f)(3); included here as Exhibit C). The increase in the Consumer Price Index for All Urban Consumers was 2.1% in 2017, 1.9% in 2018, 2.3% in 2019, 1.4% in 2020, 6.6% in 2021, 6.5% in 2022, and 3.3% in 2023, meaning the cap for reimbursement is now \$37,970.

¹⁴ City of Santa Maria, “Council Agenda Report” (February 21, 2017; included here as Exhibit F).

Exhibits

- A. **Draft Complaint Against the Mountain View
Los Altos High School District for Violation
of the California Voting Rights Act**
- B. **California Voting Rights Act**
- C. **Assembly Bill 350**
- D. **Marguerite Mary Leoni and Christopher E.
Skinnell, "The California Voting Rights Act,"
Public Law Journal (Spring 2009)**
- E. **David L. Leal, Valerie Martinez-Ebers, and
Kenneth J. Meier, "The Politics of Latino
Education: The Biases of At-Large
Elections," *Journal of Politics* (Nov. 2004)**
- F. **City of Santa Maria Council Agenda
Report with Respect to Implementing
District Elections**
- G. **Resolution and Settlement Agreement
Establishing District Elections in the
Goleta Union School District**

EXHIBIT "A"

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DRAFT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

**Complaint for Violation of the
California Voting Rights Act of 2001
Against the Mountain View Los Altos Union High School District**

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3 Plaintiffs, by and through their counsel of record, hereby bring this action against
4 defendant Mountain View Los Altos Union High School District, California, and Does 1 through
5 25 (collectively "Defendants" or "the defendants"). In support of their complaint, Plaintiffs
6 allege as follows:

7
8 **I. INTRODUCTION**

9
10 1. This action is brought by Plaintiffs for injunctive relief against Defendants for their
11 violation of the California Voting Rights Act of 2001, California Elections Code Sec.s 14025, *et*
12 *seq.* (the "CVRA). The imposition of the Mountain View Los Altos Union High School
13 District's at-large method of election has resulted in vote dilution for residents of protected
14 classes and has denied them effective political participation in elections to the Mountain View
15 Los Altos Union High School District Board of Education. The Mountain View Los Altos Union
16 High School District's at-large method of election for electing members to its Board of
17 Education prevents residents of a protected class from electing candidates of their choice in
18 Mountain View Los Altos Union High School District Board of Education elections.

19 2. The effects of the Mountain View Los Altos Union High School District's at-large
20 method of election are apparent and compelling. Notwithstanding that close to 70 percent of the
21 enrollment in the Mountain View Los Altos Union High School District is comprised of students
22 from protected classes and despite almost 60 percent of the total population of the Mountain
23 View Los Altos Union High School District being members of protected classes, this diversity
24 has not been represented on the Mountain View Los Altos Union High School District Board of
25 Education either with respect to candidates, elected members, or votes received. The deficiency
26 of individuals from protected classes as candidates for and elected to the Mountain View Los
27
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1 Altos Union High School District Board of Education, and the votes they have received, reveals
2 the lack of access to the political process.

3
4 3. The Mountain View Los Altos Union High School District's at-large method of
5 election violates the CVRA. Plaintiffs bring this action to enjoin the Mountain View Los Altos
6 Union High School District's continued abridgment of the voting rights of members of protected
7 classes. Plaintiffs seek a declaration from this Court that the at-large method of election
8 currently employed by the Mountain View Los Altos Union High School District violates the
9 CVRA. Plaintiffs seek injunctive relief enjoining the Mountain View Los Altos Union High
10 School District from further imposing or applying its current at-large method of election.
11 Further, Plaintiffs seek injunctive relief requiring the Mountain View Los Altos Union High
12 School District to design and implement district-based elections to remedy its violation of the
13 CVRA.
14

15 **II. THE PARTIES**

16
17 4. At all material times, Plaintiffs are and have been registered voters residing in the
18 Mountain View Los Altos Union High School District and are eligible to vote in the Mountain
19 View Los Altos Union High School District's elections.

20 5. At all material times, defendant Mountain View Los Altos Union High School
21 District, California, is and has been a political subdivision of the State of California subject to the
22 provisions of the CVRA.
23

24 6. Plaintiffs are unaware of the true names and capacities of the defendants sued
25 herein as Does 1 through 25, inclusive, and therefore sue these defendants by such fictitious
26 names. Plaintiffs will amend this complaint to allege the true names and capacities of these
27 defendants when their true names are ascertained. Plaintiffs are informed and believe, and on
28

1 that basis allege, that the acts and conduct alleged herein of each defendant was known to,
2 authorized by, and/or ratified by the other defendants. Does 1 through 25, inclusive, are
3 individuals or entities that have caused the Mountain View Los Altos Union High School District
4 to violate the CVRA, failed to prevent the Mountain View Los Altos Union High School
5 District's violation of the CVRA, and/or are otherwise responsible for the acts and omissions
6 alleged herein.
7

8 7. Plaintiffs are informed and believe, and allege on that basis, that each defendant
9 named herein, at all times mentioned in this complaint, was the agent, employee, partner, joint
10 venturer, and/or employer of the other defendants and was at all times herein mentioned acting
11 within the course and scope of that agency, employment, partnership, ownership, or joint
12 venture.
13

14 **III. JURISDICTION AND VENUE**

15 8. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful
16 acts subject to this complaint occurred in Santa Clara County.
17

18 9. Venue is proper in this court because the Mountain View Los Altos Union High
19 School District is a public entity located within this county.
20

21 **IV. GENERAL ALLEGATIONS**

22 **A. Political Background on the Mountain View Los Altos Union High School District**

23 10. The Mountain View Los Altos Union High School District is governed by a Board
24 of Education. The Mountain View Los Altos Union High School District Board of Education
25 serves as the governmental body responsible for the operation of the Mountain View Los Altos
26 Union High School District. The Board of Education is comprised of five members.
27
28

1 11. The Board of Education of the Mountain View Los Altos Union High School
2 District is elected at-large. All of the voters of the Mountain View Los Altos Union High School
3 District elect all of the members of the Board of Education.
4

5 12. Vacancies to the Board of Education are elected on a staggered basis. Every two
6 years, the electorate elects two or three Board of Education members, each of whom serves a
7 four-year term.
8

9 13. Notwithstanding their proportion of Mountain View Los Altos Union High School
10 District enrollment and total population, members of protected classes have not run for, been
11 elected to, or received votes in accordance with the diversity of the Mountain View Los Altos
12 Union High School District.
13

14 **B. Racial Polarization's Impact on the Mountain View Los Altos Union High School**
15 **District**

16 14. Elections held within the Mountain View Los Altos Union High School District are
17 characterized by racially polarized voting.

18 15. Racially polarized voting occurs when members of a protected class -- as defined
19 by California Elections Code Sec. 14025(d) -- vote for candidates or other electoral choices that
20 differ from the rest of the electorate.

21 16. Racially polarized voting exists within the Mountain View Los Altos Union High
22 School District. There is a clear difference between the choice of candidates and other electoral
23 choices that are preferred by voters from a protected class and the choice of candidates and other
24 electoral choices that are preferred by voters in the rest of the electorate.
25
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1 17. Racially polarized voting consists of both voter cohesion on the part of members of
2 a protected class and voter cohesion by the non-protected class electorate against the choices of
3 protected class voters.
4

5 18. Patterns of racially polarized voting and vote dilution have the effect of impeding
6 opportunities for voters of a protected class to elect candidates of their choice to the at-large
7 Board of Education positions in the Mountain View Los Altos Union High School District. The
8 non-protected class electorate dominates elections.
9

10 19. Voters from a protected class are harmed by racially polarized voting.

11 20. There is evidence of racially polarized voting and vote dilution in the Mountain
12 View Los Altos High School District on state ballot measures since 2002, including:

<u>Year</u>	<u>Ballot Measure</u>	<u>Purpose</u>
2002	49	After school programs
2004	62	Primary elections
2004	66	"Three Strikes"
2004	72	Health care coverage
2006	87	Alternative energy
2008	9	Crime victims
2010	19	Cannabis
2010	26	Tax limitations
2012	31	State budget
2012	34	Death penalty
2012	37	Genetically engineered food
2014	45	Health insurance

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<u>Year</u>	<u>Ballot Measure</u>	<u>Purpose</u>
2016	53	Revenue bonds
2016	61	Prescription drugs
2016	66	Death penalty
2018	3	Water quality
2018	10	Rent control
2020	16	Water quality
2020	18	Voting rights
2022	30	Air pollution

21. There is also evidence of racially polarized voting and vote dilution in the Mountain View Los Altos Union High School District on local ballot measures and for candidates for local office since 2004, including:

<u>Year</u>	<u>Ballot Measure or Office</u>
2004	Sta. Clara Co. Measure A, Prevailing wage
2006	Sta. Clara Co. Measure A, Land use
2010	Sta. Clara Co. Measure B, Parcel tax
2012	Sta. Clara Co. Measure A, Sales tax
2016	City of Mountain View, Just cause evictions
2016	City of Mountain View, Rent control
2020	City of Mountain View, Alex Nunez for City Council

22. It is estimated that it would be possible since the 1990s to demonstrate as many as 40 or more instances of polarized voting, vote dilution, or differential voting in the Mountain View Los Altos Union High School District in elections to the Mountain View Los Altos Union

1 High School District Board of Education, state ballot measures, local ballot measures, and
2 candidates for state and local office.

3
4 **C. Impact of Polarization on Protected Classes**

5 23. Members of protected classes in the Mountain View Los Altos Union High School
6 District bear the effects of past discrimination in areas such as education, employment, and
7 health. Members of protected classes have graduated at a lower rate from high school and
8 college than whites, have lower per capita income, and are more likely to receive food stamps
9 and experience poverty. There are also marked differences in the educational performance of
10 white and Latino students in the Mountain View Los Altos Union High School District in
11 California Assessment of Student Performance and Progress (CAASPP) testing.

12
13 24. Many school districts, as well as other government agencies, in Santa Clara County
14 utilize district elections, including, among school agencies, the Santa Clara County Board of
15 Education, Foothill De Anza Community College District, Gavilan Joint Community College
16 District, San Jose Evergreen Community College District, West Valley Mission Community
17 College District, Campbell Union School District, Campbell Union High School District, Gilroy
18 Unified School District, Moreland School District, Morgan Hill Unified School District,
19 Oakgrove School District, San Benito School District, San Jose Unified School District, and
20 Santa Clara Unified School District. Many of these districts and other government agencies in
21 Santa Clara County implemented district elections after California Voting Rights Act challenges.

22
23
24 25. The at-large method of election voting has caused the dilution of protected class
25 votes in the Mountain View Los Altos Union High School District. Voters of a protected class
26 and the rest of the electorate regularly express different preferences on candidates and other
27 electoral choices, which has been to the detriment of protected class voters.

28

1 26. The obstacles posed by the Mountain View Los Altos Union High School District's
2 at-large method of election impairs the ability of voters of a protected class to elect candidates of
3 their choice in elections held in the Mountain View Los Altos Union High School District.
4

5 27. An alternative method of election exists -- district-based elections -- that will
6 provide an opportunity for the members of a protected class as defined by the CVRA to elect
7 candidates of their choice in Mountain View Los Altos Union High School District elections.
8

9 28. All allegations made in this complaint are based upon information and belief,
10 except those allegations which pertain to the named Plaintiffs, which are based on personal
11 knowledge. The allegations of this complaint are stated on information and belief and are likely
12 to have evidentiary support after a reasonable opportunity for further investigation or discovery.
13

14 V. CAUSES OF ACTION

15 First Cause of Action

16 (Violation of California Voting Rights Act of 2001)

17 (Against All Defendants)

18 29. Plaintiffs hereby reallege and incorporate by reference each and every allegation
19 stated in paragraphs 1 through 28 above as though set forth fully herein.

20 30. Plaintiffs are registered voters and reside within the Mountain View Los Altos
21 Union High School District.

22 31. Plaintiffs are members of a protected class of voters under the CVRA.

23 32. Plaintiffs are over the age of 18 and are eligible to vote in the Mountain View Los
24 Altos Union High School District's elections.

25 33. The Mountain View Los Altos Union High School District is a political subdivision
26 within the State of California.
27
28

1 34. The Mountain View Los Altos Union High School District employs an at-large
2 method of election.

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4 35. Racially polarized voting has occurred, and continues to occur, in elections in the
5 Mountain View Los Altos Union High School District and in elections incorporating other
6 electoral choices by voters in the Mountain View Los Altos Union High School District. As a
7 result, the Mountain View Los Altos Union High School District's at-large method of election is
8 imposed in a manner that impairs the ability of a protected class as defined by the CVRA to elect
9 candidates of its choice in Mountain View Los Altos Union High School District elections.
10

11 36. An alternative method -- district-based elections -- exists that will provide an
12 opportunity for the members of a protected class as defined by the CVRA to elect candidates of
13 their choice in Mountain View Los Altos Union High School District Board of Education
14 elections.

15 37. An actual controversy has arisen and now exists between the parties relating to the
16 legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a declaration of
17 rights.
18

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

21 39. Plaintiffs, and those similarly situated, have no adequate remedy at law for the
22 injuries they currently suffer and will otherwise continue to suffer.
23

24 **VI. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
26 follows:
27
28

1 1. For a decree that the Mountain View Los Altos Union High School District's
2 current at-large method of election for its Board of Education violates the California Voting
3 Rights Act of 2001;
4

5 2. For preliminary and permanent injunctive relief enjoining the Mountain View Los
6 Altos Union High School District from imposing or applying its current at-large method of
7 election;
8

9 3. For injunctive relief mandating that the Mountain View Los Altos Union High
10 School District design and implement single-member district-based elections, as defined by the
11 California Voting Rights Act of 2001, to remedy the Mountain View Los Altos Union High
12 School District's violation of the California Voting Rights Act of 2001;

13 4. For an award of Plaintiffs' attorney fees, costs, and prejudgment interest pursuant
14 to the CVRA, California Elections Code Sec. 14030, and other applicable law; and
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16 5. For such further relief as the Court deems just and proper.
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18 Dated: September 13, 2024
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EXHIBIT "B"

CALIFORNIA VOTING RIGHTS ACT

ELECTIONS CODE SECTIONS 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.

EXHIBIT "C"



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

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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.

EXHIBIT "D"

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

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); *Grove 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 held³ 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.

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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EXHIBIT "E"

The Politics of Latino Education: The Biases of At-Large Elections

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This paper investigates the determinants and consequences of Latino political representation in the field of K-12 education. The first task is to examine the association between Latino population and the Latino presence on school boards. We then investigate if Latino representation is affected by the electoral structure of school boards, as scholars have reached differing conclusions on whether at-large and ward systems hinder or enhance minority descriptive representation. The next step examines the consequences of Latino representation, specifically whether board membership is associated with the share of Latino school administrators and teachers. The regression results show that Latino population positively affects Latino board representation, but that at-large systems hinder descriptive representation. The primary determinant of Latino administrators is Latino school board membership, and the primary determinant of Latino teachers is Latino administrators. In sum, at-large elections negatively influence Latino educational representation, which produces a ripple effect that ultimately reduces the share of Latino teachers.

Latinos are now the largest minority group in the United States, but numbers alone are no guarantee of political influence. The traditional view of how minorities gain access to the benefits of the U.S. political system is via education, but research has long established that access to education itself is inherently political. The Latino community has for many generations struggled for educational equity but has faced numerous structural and other impediments. We therefore investigate the political dynamics of Latino education in the field of K-12 education, a subject of major academic and policy consequence.

This paper specifically will examine the politics of Latino representation on school boards and whether such descriptive representation has substantive effects. The first question is whether Latino population size is associated with the Latino presence on school boards. We then investigate if such representation is affected by the electoral structure of school boards because scholars disagree whether at-

large and ward systems influence minority representation. Third, we test whether such descriptive representation influences the proportion of Latino administrators and teachers. Because the most recent prior research on these questions used data from the late 1980s, this paper provides needed evidence on how current conditions have changed given the dramatic growth in the Latino population.

School board representation is an integral aspect of the political system. School boards in America are the most local electoral unit in the federal system. Almost 100,000 people serve on 15,000 boards, and they constitute the largest bloc of elected officials in America. Overseeing the education of forty-five million public school students, they are entrusted with annual school expenditures of approximately three hundred billion dollars (Toch and Glastris 1994).

Boards are involved in all aspects of school policy. They hire and fire superintendents, set the curricula, decide spending priorities, and adopt reform plans. Although many decisions are in practice left to superintendents and other administrators, school boards are tasked to oversee these experts (Wirt and Kirst 1989). Boards, therefore, shoulder much responsibility for the quality of public education in America.

The question of Latino representation in school policymaking might be less urgent if Latino educational achievement were high, but this is far from the case. While education may be the best way to escape poverty and realize the American dream, many Latinos find their hopes prematurely dashed through low educational achievement. A report by the White House Initiative on Educational Excellence for Hispanic Americans (1999) documents how Latino underachievement in education begins as early as kindergarten and continues through higher education. By the age of nine, Latino children perform below their non-Latino peers in the subjects of reading, mathematics, and science. Their overall scores on the National Assessment of Educational Progress (NAEP) are also consistently below average. One-third of Latino students between the ages of 15 and 17 are enrolled below grade level, and Latinos are less likely to take college preparatory courses in high school.

The high Latino dropout rate is well known: 1998 data show a dropout rate of 30%, in comparison to 14% for African Americans and 8% for Anglos. Overall, Latinos perform lower than most groups on standardized tests, and they have the lowest high school graduation rates and four-year college enrollments of all racial and ethnic groups in the country (Riley and Pompa 1998; Secada et al. 1998).

Latinos also attend schools that are increasingly segregated in terms of race, ethnicity, and class (Orfield and Yun 1999). They often face institutional racism and cultural biases at school in terms of programming, curriculum, and tracking and ability grouping practices (Carrasquillo 1994; Grossman 1995; Spring 2000). In sum, Latinos are arguably the most educationally disadvantaged of all groups in the United States today (Riley and Pompa 1998).

Whether the dismal state of Latino education is related to political dynamics is a key question for political scientists to investigate. Meier and Stewart was one of the first investigations of this possibility. Using regression analysis and con-

trolling for intermediary factors, they discovered that Latino students were subject to more suspensions and expulsions, were underrepresented in gifted and talented classes, and were overrepresented in special education classes. Not only were such practices associated with lower student achievement, but they also served as "a substitute for segregation" (1991, 197).

Meier and Stewart also discovered that such treatment was associated with community political power. Most importantly, Latino representation on school boards was associated with better educational conditions. In districts with more Latino representation, Latino students experienced greater access to equal education and less "second-generation" discrimination. There also appeared to be a ripple effect, whereby more Latino school board members led to more Latino school administrators, which in turn led to more Latino teachers.

Others have found evidence that Latino representation on school boards is associated with policy outcomes of interest to this community. Leal and Hess (2000), for instance, found that the percentage of school board members who are Latino is positively associated with funding for bilingual education programs, even after controlling for objective student need for bilingual education. Board representation is, therefore, not just symbolic or of interest to a small number of activists but is inseparable from the aspirations of the larger community.

The first empirical part of this paper investigates the relationship between Latino population and the Latino presence on school boards. The overall literature on representation discusses two general linkages between constituents and representatives. The first is indirect representation, whereby a legislature may collectively represent the people even if there is no clear link between specific legislators and specific constituents (Weisberg 1978). Policy outcomes are therefore congruent with public opinion, even if elected officials are not actively trying to represent their constituents.

The second form of representation is direct. This takes place when the votes of a legislator are linked to the interests of his or her constituents. Elected officials in this scenario take seriously the delegate view of representation, as opposed to the trustee view exemplified by Edmund Burke in his famous letter to Bristol. Pitkin (1967) named this substantive representation and contrasted it with descriptive representation. The latter takes place when a constituency elects a representative who shares key traits but not necessarily policy views.

This paper begins by examining the descriptive representation of Latinos on school boards. While descriptive representation does not always lead to substantive representation, voters generally see a connection. This is not to say that Anglo school board members cannot adequately represent Latino constituencies, as many have undoubtedly done so. In a similar way, a lawyer may be able to represent a district of farmers. Farmers, however, may want their elected representatives to share an agricultural background. Not only would the latter likely know more about farming, but they could be better trusted to fight for farm interests behind closed doors in Washington.

This issue of trust is particularly important in the study of representation. Hall noted that many key legislative activities take place out of public view, such as "Building a coalition for a legislative package, drafting particular amendments, planning and executing parliamentary strategy, [and] bargaining with or persuading colleagues to adopt one's point of view" (1996, 2). Constituents must trust that members are acting in a way that furthers their interests, as there are few ways for them to monitor such legislative behaviors.

Bianco further observed that "many kinds of behavior that are not usually thought of as rational choices, such as voters' desire to be represented by 'someone like them,' are the product of a systematic, predictable calculus—moreover, a calculus aimed at securing favorable policy outcomes" (1994, ix). Voters therefore "focus on attributes because they cannot be the product of calculation and provide a clearer signal of a candidate's policy concerns" (62). In this way, descriptive representation is a shortcut voters use to increase the likelihood of their interests being served.

Electing a member of one's group to office also has symbolic value. As Davidson and Oleszek wrote, "When a member of an ethnic or racial minority goes to Congress, it is a badge of legitimacy for the entire grouping. Such legislators speak for people like them throughout the nation" (2000, 133). What is true for Congress at the national level is also true for school boards at the local level.

Prior studies of Latino representation in local political entities have documented its low levels. Scholars usually derive a statistic of group representation through the Engstrom and McDonald (1981) method, which regresses minority population on minority descriptive representation. Taebel (1978) found a Latino representation index of .44 for 60 large urban city councils, meaning an underrepresentation of 56%. Karnig and Welch (1979) found a similar city council ratio of .45 for 124 southwestern cities. Fraga, Meier, and England (1986) noted a ratio of .77 for 35 school districts in very large cities, and Meier and Stewart (1991) found it was .86 for a larger population of districts.

The second part of this paper examines whether specific types of electoral mechanisms affect the level of Latino descriptive representation. Historically, such representation was impeded by a variety of legal and extralegal tactics. Literacy tests, poll taxes, and simple intimidation were effective tools against the electoral participation of Latinos as well as African Americans and poor Anglos. These have largely passed from the political scene, but election laws originally adopted with discriminatory intent may still affect political representation.

School board membership is chosen through three means: elections by ward, elections at-large, and by appointment. Progressive reformers at the turn of the twentieth century advocated at-large elections as one prong in a larger effort to isolate school boards and city councils from the influence of political parties, immigrants, those of lower socioeconomic status, and the vagaries of the democratic process generally (Tyack 1974). This reform proved a substantial obstacle to minority communities, as minority candidates often lack the resources to launch district-wide campaigns and find it difficult to attract Anglo votes.

In recent decades, underrepresented minority groups used the *Voting Rights Act of 1965* as “the legal foundation for creation of district-based elections to replace at-large elections to city councils and other multimember bodies” (Bezdek, Billeaux, and Huerta 2000, 209). The above authors described the example of Corpus Christi, where the efforts of the Mexican American Legal Defense and Education Fund (MALDEF) led to the replacement of eight at-large city council seats with five ward seats and three at-large seats.¹

Whether at-large elections have discriminatory effects on minority representation is the subject of debate in the political science literature, and one with important practical ramifications. Some scholars have found that ward systems are positively associated with Latino representation on school boards (Davidson and Korbel 1981; Meier and Stewart 1991; Polinard, Wrinkle, and Longoria 1990, 1991). Others, however, have discovered no statistically significant effects (Fraga, Meier, and England 1986; Welch and Karnig 1978).

These varying findings are also present in different decades. Using data largely from the 1980s, Fraga, Meier, and England (1986) arrived at different conclusions than did Polinard, Wrinkle, and Longoria (1991) and Meier and Stewart (1991). Studies using data from the 1970s (Davidson and Korbel 1981; Welch and Karnig 1978) similarly arrived at opposite conclusions. In light of these differences across time, it is desirable to investigate representational dynamics with a contemporary survey.

A new study is also needed because the Latino population is located in a very different social and political space than was the case in the 1970s and 1980s. The 2000 Census revealed how this group is expanding throughout the United States, and many educational jurisdictions that have historically educated few Latino children are now encountering significant and growing numbers of such students. The state with the fastest-growing Latino population, for instance, is not Texas or California but North Carolina. The Latino population of this state increased by just over 440% from 1990 to 2000, growing from 69,020 to 372,964 people. The next largest growth rates were found in Arkansas (337%), Georgia (324%), and Tennessee (284%). The issues of Latino representation on school boards and the quality of education received by Latino children are therefore relevant to a growing number of states and regions. Consequently, a study using current data is vital to understanding how Latino educational representation fares in this new and expanding context.

The above dynamics are a larger and more noticeable continuation of previous trends. As Meier and Stewart noted, the school districts in their sample “have not had a stable enrollment composition over time. The average district increased its Hispanic enrollment by about ten percentage points since 1968 (Table 1–3). Some districts, of course, have become substantially Hispanic during this time period”

¹Many school boards have incorporated both ward and at-large elections under the theory that minorities can benefit from coalition building and win some of the at-large seats. McDonald and Engstrom (1992), however, suggested that this did not transpire in practice.

(1991, 31). They surveyed districts with at least 5,000 students, of whom at least 5% were Latino. Their total number of usable observations was 145; in comparison, our survey includes 857 such districts. Given these Latino population trends, additional studies might also be useful after each future census.

There is also a contemporary interest in Latinos that was largely absent in previous decades. Latino influence is now more strongly felt and more frequently commented upon in both politics and popular culture. This suggests that the role of Latinos in the contemporary political system may be qualitatively as well as quantitatively different than in previous decades.

In addition, given the extensive litigation over city council districts in recent decades, school boards are also probably the last place where at-large districts are still permitted in the presence of racial polarization. For those interested in whether and how electoral structures affect the representation of minorities on political bodies, school boards are the only arena to study. This was much less the case in the 1970s and 1980s, so a new study of school boards is the best way to investigate whether and how electoral structure can influence representation.

A related literature explores the impact of electoral systems on minority representation on city councils. Davidson and Korbel (1981) and Bezdek, Billeaux, and Huerta (2000) argued that ward districts increase Latino representation. On the other hand, Zax (1990) argued that residential segregation was a more important determinant than electoral method in the election of Latino officials. MacManus (1978) found that at-large plans did not impair the city council representation of African Americans and the Spanish speaking, although the details of the system and the socioeconomic environment were important. Taebel (1978) argued that city council size was more relevant for Latino representation than the electoral system. Rabinovitz and Hamilton (1980) suggested that a mixed system was better than a ward system for the representation of blacks on city councils.

Some have argued that electoral systems affect the representation of African Americans but not Latinos. Karnig and Welch (1979) and Welch (1990) found this was the case for city councils. One explanation is that Latinos are not subjected to the same degree of residential segregation as African Americans (Lopez 1981).

The third part of this paper investigates the consequences of descriptive representation, specifically whether the share of Latino board members is associated with the share of Latino school district employees. Administrators and teachers influence the quality of education received by students, and teachers in particular wield much power in their classrooms as "street level bureaucrats" (Lipsky 1980; on the substantive issue see Hess and Leal 1997 and Meier and Stewart 1991).

There is widespread agreement in the professional education community that minority students gain academically when they are taught by minority teachers. Empirical evidence for these propositions is less common than their assertion, however, although a growing number of scholars are testing this hypothesis in a

variety of settings. Hess and Leal (1997) examined the relationship between teacher race/ethnicity and student achievement in large urban school districts. They found that the proportion of minority teachers was positively associated with the college matriculation of all students. While they noted that the hiring of minority teachers might serve as a proxy for unobserved school conditions relevant to student achievement, the article provides intriguing evidence that minority teachers may promote the learning of both minority and Anglo students.

Meier, Wrinkle, and Polinard (1999) and Meier et al. (2001) tested how the percentage of minority teachers was associated with the student pass rates of standardized exams required by the state of Texas. They found that pass rates were higher for both minority and Anglo students in districts with a larger share of minority teachers (although see Nielsen and Wolf 2001). Meier, Wrinkle, and Polinard (1999) suggested an explanation based on discriminatory hiring practices. Districts less focused on the quality of educators than on their race will on average hire less competent teachers, thereby negatively affecting the educational outcomes of all students.

Dee (2001) argued that this question needed a randomized experimental methodology to accurately understand whether racial dynamics were factors in student achievement. He examined test score data from the Tennessee Project STAR (Student Teacher Achievement Ratio) class-size experiment, finding significant math and reading improvements among students randomly provided same-race teachers. There are also a number of more qualitative studies of Latino student achievement that highlight the importance of Latino faculty and staff (Garcia 2001; Nieto 1999; Reyes, Scribner, and Scribner 1999; Valdes 1996).

Substantial evidence also suggests that the Latino community wants more Latinos teaching their children (Nieto 1999; Romo and Falbo 1996). While the above debate asks whether minority teachers improve the educational outcomes of minority and Anglo children, this dynamic is less important from the perspective of representation theory. Many scholars have investigated whether elected officials and political institutions are responsive to constituents, but there is less discussion of the more difficult question—whether constituent wishes are objectively in their best interests. The presence of minority teachers is, therefore, an important indicator of political responsiveness to minority communities regardless of its effect on minority students.

The only previous research on board representation and the minority presence in teaching faculties and educational administrations is Meier and Stewart (1991). They found the share of Latino school board members was positively associated with Latino administrators but not with Latino teachers. They did find, however, a positive correlation between Latino administrators and Latino teachers.

Data and Methods

Data for this paper derive from three sources. Information on school board selection structures, school board ethnicity, administrator ethnicity, teacher eth-

nicity, and student ethnicity were obtained from an original survey. All school districts with more than 5,000 students were sent mail surveys in June 2001.² Nonrespondents received two follow-ups by mail. Up to six phone calls were then placed to nonrespondents in an effort to contact as many of the districts as possible; the phone interviews collected information only on the school board variables. A final attempt was made via email.

Of the 1,831 surveyed districts, 1,751 provided data on school boards (95.6%) and 1,532 (83.7%) on teachers and administrators. The actual numbers in the regression analysis are somewhat lower due to missing data for other variables. Nonrespondents on the electoral information were no different from respondents in terms of size of district, ethnic distribution in the district, and similar census data on which comparisons could be made. For the teacher and administrator data, district sizes were the same but nonrespondents were from locations with slightly smaller Latino populations. Given that the distinction between respondents and nonrespondents could not explain as much as 1% of the variance in any variable where measures existed, we are confident that any selection biases in the survey are slight and do not affect the results presented.³

Population figures and other demographic variables for 2000 were available from the 2000 census. Additional information used to check the accuracy of student enrollment figures on the survey were from the U.S. Department of Education (2001).

Findings

School Board Representation

The first step in assessing the level of descriptive representation is to examine the simple relationship between Latino population and Latino school board representation (both variables are expressed as a percentage of the total) as suggested by Engstrom and McDonald (1981). This equation essentially predicts the expected value of representation for a given level of population. The first column of Table 1 presents this seats-population relationship for all districts. The level of explained variation is consistent with past models for school board representation reported by Meier and Stewart [.60 (1991, 92)] and Fraga, Meier, and England [.77 (1986)]. Both previous studies, however, excluded districts with

²Districts with more than 5,000 students were surveyed for two reasons. First, these districts educate the overwhelming majority of Latino students, as they are located in the areas with the largest Latino populations. Our school districts had a total Latino population in 2000 of 32.84 million, which is 93% of the 35.3 million Latinos in the overall population. Second, there are significant data collection problems in many of the smaller districts. They often do not keep the type of records that larger districts do, particularly in terms of EEO data, as it is the larger districts that are regularly surveyed by the EEOC.

³We also checked to see if the districts lost from the sample because of missing data were different from those included in the analysis. The only difference we can find is that the districts with missing data are slightly smaller than other districts, which is not a major concern.

TABLE 1
The Representation Relationship: Latino School Boards

Dependent variable = Percent Latinos on School Board				
Variable	All Districts	Minority Districts	Majority Districts	Five Percent + Latino
Intercept	-3.66 (13.05)	-1.36 (6.12)	-68.54 (7.54)	-8.97 (13.57)
Population	.71 (57.48)	.43 (40.44)	.72 (13.50)	.84 (40.44)
R-squared	.66	.33	.64	.66
Standard error	9.54	6.89	19.20	12.72
F	3,304.37	793.62	182.14	1,635.55
N of cases	1,739	1,633	106	857

Numbers in parentheses are t-scores.

fewer than 5% Latino students; Fraga et al. also only included districts with more than 25,000 students.

Two coefficients from the first regression in Table 1 merit discussion. First, the slope coefficient reveals that for each one percentage point increase in Latino population, Latino representation on the school board increases by .71 percentage points.⁴ In short, the translation of population into representation is only 71% effective. This figure should not be interpreted by itself as the precise estimate of underrepresentation, however. The intercept (-3.66) is negative and significant, thereby indicating a threshold effect. At low levels of population, increases in Latino population have no influence on expected representation levels. Only after a threshold is breached does population predict a positive value for expected representation. That "threshold" can be estimated by using the regression equation to predict the level of population where estimated representation will be at least zero. In the present situation, the threshold is 5.2%.

The findings in the first column suggest that the relationship between representation and population is not linear. The next two columns therefore show the same regression for districts where Latinos are a minority of the population and districts where they are a majority of the population. Previous arguments about electoral structure and representation presuppose the group in question, in this

⁴We use population as the base for all our regressions rather than voting-age population, estimated population who are citizens, or school enrollment for both an empirical reason and a normative reason. Empirically, the measures are highly correlated. The R^2 between voting-age population and population is .9963, and between enrollment and population it is .9631. Using other measures of population changes the size of the coefficients but has no impact on the statistical significance of any findings. The population numbers also predict representation better than any of the other three measures. In normative terms, to paraphrase the Supreme Court, these electoral units were created to represent populations, not citizens or school age children or even voting-age populations.

case Latinos, constitutes a minority of the total population. After all, if Latinos have a voting majority, then they can use at-large elections in the same manner as Anglos do when there is an Anglo majority.

The .71 coefficient for all districts drops to .43 in minority districts but jumps to .72 in majority districts. Comparing these figures directly is somewhat misleading simply because the intercepts are so dramatically different. Majority districts, for example, have an expected representation value of 17.5% for districts that are 50% Latino but 100% for districts with 98% or more Latinos. Both sets of findings strongly suggest that nonlinear estimates of the expected value of representation should be examined.

Before moving to the nonlinear estimates, the last column provides a comparison to the Meier and Stewart results by limiting the analysis to districts with at least 5% Latino population. Two things are immediately apparent. The representation coefficient increases to .84, essentially the same as the .86 coefficient reported by Meier and Stewart (1991, 92). The difference in intercepts in the two analyses, however, suggests caution in comparing these two values.

Table 2 estimates nonlinear equations linking population to representation. The differences between minority and majority jurisdictions are once again dramatic. In minority Latino districts, the population-squared term is significant and adds additional explanation to the overall equation. In majority districts, the nonlinear terms induce massive collinearity so that neither coefficient is significant and the level of explained variation has not changed at all.

These findings suggest that when Latinos are a minority of the population, the population-representation relationship is nonlinear, with larger percentages

TABLE 2
The Nonlinear Population-Representation Relationship:
Latino School Boards

Dependent variable = Percent Latinos on School Board				
Variable	Minority	Districts	Majority	Districts
Intercept	-1.3619 (6.12)	.0135 (.05)	-68.54 (7.54)	-46.31 (.81)
Population	.4315 (28.17)	.0683 (1.45)	1.72 (13.50)	1.08 (.66)
Population Squared		.0096 (17.33)		.00 (.39)
Adjusted R-squared	.33	.35	.64	.63
Standard error	6.89	6.76	19.20	19.20
F	793.62	445.75	182.14	90.41
N of cases	1,633	1,633	106	106

Numbers in parentheses are t-scores

Tolerances for nonlinear equations, minority districts .10, majority districts, .0061.

getting significantly more representation than smaller percentages. The insignificant intercept for minority districts also eliminates the problematic threshold effect of the linear estimation. The insignificant linear term in this model suggests that it can be dropped from the analysis with no loss of information. The best interpretation for majority districts, however, is that the relationship between Latino population and Latino representation remains linear.

The now traditional way to assess the bias of electoral systems is to run an interaction between the various selection plans and population within a single regression (Engstrom and McDonald 1981). As noted above, there are three major selection plans for school districts: at-large systems, ward systems, and appointed systems. For those districts with less than 50% Latinos, the current sample contains 985 pure at-large systems (where all board members are elected at-large), 443 pure ward systems, and 53 pure appointed systems. The remaining 163 systems contain mixed combinations of the three selection types.

We created three variables for each district: the proportion of members elected from wards, the proportion elected at large, and the proportion appointed. Scores of 1.0 on any of these variables indicate a pure system, and lower scores indicate fewer members selected in the manner indicated by the variable. This process permits us to retain the 163 districts that do not have pure selection systems; the precise characteristics of these mixed systems are the subject of future research. To continue our distinction between majority and minority districts, these equations are estimated for both sets of districts with the hypothesis that structure matters when Latinos are a minority but does not matter when they are a majority.

Table 3 investigates this relationship for districts where Latinos are a minority. Adjusting for the nonlinear population coefficient, the regression contains five variables: Latino population squared, the ward selection percentage, the appointed selection percentage, ward selection multiplied by Latino population squared, and appointed selection multiplied by Latino population squared. This regression equation can then be used to derive representation estimates for each of the three pure systems.

Because several of the variables reduce to zero when other systems are in place, three equations can be derived from the results in Table 3:

At-Large Elections	Representation = .5283 + .0094 × Population ²
Ward Elections	Representation = -.1743 + .0148 × Population ²
Appointed	Representation = .8701 + .023 × Population ²

Because the various intercepts are not different from the at-large intercept, they can basically be ignored in discussions. Suffice it to say that while the at-large intercept is significantly different from zero, its size is trivial (that is, at 0% Latino population, the expected value of representation is .5%). The larger size of the population-squared coefficient for ward elections shows that they generate higher

TABLE 3

The Detrimental Impact of At-Large Elections: Latino School Boards

Dependent variable = Percent Latinos on School Board						
Variable	Slope	t	tol.	Slope	t	tol.
Intercept	.5283	2.25	—	.5282	2.25	
Latino Population Squared	.0094	21.45	.70	.0094	21.53	.70
Ward System	-.7026	1.77	.83	-.7054	1.78	.83
Ward x Population Squared	.0054	6.17	.67	.0054	6.20	.67
Appointed System	.3418	.33	.79	-1.2978	1.11	.63
Appointed x Population Squared	.0136	5.91	.78	—	—	—
Appointed x Population	—	—	—	.5112	6.21	.62
R-squared	.38			.38		
Standard error	6.61			6.60		
F	201.41			202.60		
N of cases	1,628			1,628		

Analysis includes districts only with less than 50% Latino population.

levels of Latino representation than at-large systems. Appointed systems generate the largest levels of representation, as found previously by Meier and Stewart (1991). For instance, with a Latino district population of 5%, expected Latino representation is .8% in at-large systems, .2% in ward systems, and 1.4% in appointed systems. With a Latino population of 25%, the respective numbers increase to 6.4%, 9.1%, and 15.2%; at 45%, the figures are 19.6%, 29.9%, and 47.2%.

The clear conclusion from Table 3 is that both *electoral* systems systematically underrepresent Latinos when they are a minority of the population, but at-large elections are significantly more detrimental to Latino representation than ward elections. It is unclear why some prior research found a lack of bias in at-large systems, but one possibility is that analyses that do not distinguish between majority and minority Latino districts may sometimes produce incorrect results. It is also possible that past research indicating differential ward and at-large effects was substantively correct but derived using incorrect models. Only a reanalysis of the data from previous projects would determine if this is the case.

We might also investigate some additional dimensions of the school board representation process, as Table 3 incorporated only two types of independent variables: population and selection plan. Such a regression overlooks the fact that Latinos are generally poorer, less well educated, less likely to own homes, and less likely to be citizens—all factors that affect voter turnout (Leighley 2001). Several demographic variables were therefore added to the equation in Table 3: percent of Latinos with college degrees, percent noncitizens, percent living in poverty, and median Latino family income. This new regression, which is not presented because of space considerations, shows that only the percentage of Latinos

who were noncitizens added any statistically significant explanation to the equation, and in that case the substantive impact was very small. To reduce Latino representation by 1.3 percentage points, fully one-half of all Latinos would need to not be citizens.⁵

As noted above, the theoretical arguments about electoral structure and ethnic minorities assume that ethnic minorities are a numerical minority. When Latinos become a numerical majority, electoral structure should have little effect on representation because they can simply use majoritarian electoral systems, such as at-large elections, to their advantage. To determine whether or not majority status changes the relationship between structure and representation, we replicated our analysis with the 106 school districts with a Latino majority. The equations in Table 4 include both linear relationships for population (as found in Table 2) and nonlinear relationships for population for comparison purposes.

Despite the substantial size of the coefficients for ward-based systems in both equations, none of the relationships are statistically significant. In short, when Latinos are a majority, there is no difference in the representational consequences of at-large elections compared to ward-based elections.

This finding should be qualified somewhat based on two additional bits of evidence. First, the equations are marked by a high degree of collinearity, thus making statistical significance difficult to obtain; tolerance levels for the linear relationship are especially low. At the same time, a joint *f*-test comparing the equations in Table 4 with those in Table 2 shows that the four additional variables as a group do not add a statistically significant level of explanation (*F*-test for the nonlinear specification = 1.67 with 4, 100df, *p* = .16; *F*-test for the linear specification = 2.01, *p* = .10). Second, the appointive system relationships do appear to be somewhat different, with coefficients that approach or modestly exceed traditional levels of statistical significance. Because the translation of descriptive representation into substantive representation has been called into question in the literature (Meier and Stewart 1991), we leave the precise meaning of the relationships in appointive systems for future research.

Administrative Representation

Political representation on urban legislatures, be they city councils or school boards, has been linked to greater access to jobs for the represented group (Eisinger 1982; Mladenka 1989). Although there is some question as to whether the causal relationship runs from elected officials to employment or from employment to elected officials (Meier and Smith 1994), we will assume, as does the overwhelming majority of the literature, that the process flows from the top down—that is, representation on school boards increases representation in admin-

⁵One reason why citizenship does not matter more than it does is that school district elections have very low turnout (often as little as 5% of registered voters). We also tried an interaction of the Latino population and the citizenship variable, but it was statistically insignificant.

TABLE 4
 Selection Process Does Not Affect Latino Representation When
 Latinos Are a Majority

Dependent variable = Percent Latinos on School Board						
Variable	Linear Slope	Population		Squared Slope	Population	
		t	tol.		t	tol.
Intercept	-65.40	6.21	—	-7.0380	1.25	
Latino Population	1.68	11.33	.71	.0116	11.25	.71
Ward System	-23.48	1.11	.04	-10.0413	.88	.15
Ward × Population	.34	1.15	.04	.0020	.98	.14
Appointed System	106.94	1.84	.04	48.6729	1.45	.11
Appointed × Population	-1.71	2.12	.04	-.0119	1.96	.11
R-squared	.65			.64		
Standard error	18.82			18.96		
F	39.46			38.55		
N of cases	106			106		

Analysis includes districts only with more than 50% Latino population.

istrative positions, and both in turn increase representation at the street level (in this paper, the teachers).

The first equation in Table 5 shows the relationship of Latino school board representation and population with the percentage of Latino administrators for minority districts. Population can be interpreted as a labor pool characteristic. Administrators are hired from a pool of individuals, a percentage of which will be Latino. To control for variation in the composition of the labor pool, therefore, the Latino population percentage is needed. In addition, the quality of this labor pool is affected by factors such as education levels, income, and even citizenship. Table 5 therefore controls for the Latino population percentage with college degrees, living in poverty, and who are not citizens.

Even with these controls, Latino board members are positively associated with more Latino administrators; a one percentage point increase in Latino board members is associated with a .16 percentage point increase in Latino administrators, *ceteris paribus*.⁶ The level of explained variation in Table 5 reveals that the hiring of Latino administrators is a far more predictable process than the election of school board members.

⁶The relationships in this table may all be nonlinear. When squared terms are added for both variables, all four slopes are positive and statistically significant. The level of explained variation increases by only three percentage points, however, and the literature does not contain any arguments about a nonlinear relationship.

TABLE 5

Latino Board Representation and Latino Administrators

Dependent variable = Percent Latino Administrators

Variable	Minority Slope	Districts		Majority Slope	Districts	
		t	tol.		t	tol.
Intercept	-.774	2.22	—	-26.866	2.85	
Latino Population	.327	30.31	.59	.391	2.40	.31
School Board Representation	.156	11.89	.68	.319	4.40	.33
Latino Non-Citizens	-.026	3.97	.89	-.359	2.55	.74
Latino College Graduates	.031	3.18	.68	1.619	3.76	.82
Latino Poverty	.014	1.44	.82	1.040	5.69	.66
R-squared	.62			.76		
Standard error	3.50			13.33		
F	450.86			65.63		
N of cases	1,371			101		

Table 5 also demonstrates how much other factors affect administrative hiring. The major influence on the percentage of Latino administrators hired is the percentage of Latino population, a percentage that reflects both the potential political clout of the Latino community as well as the potential pool of candidates for administrative positions. As expected, administrative representation increases with the percentage of college-educated Latinos. Even though citizenship is not a requirement for holding an administrative position in a school system, noncitizenship likely correlates with other factors that disadvantage Latinos, so the negative relationship is expected. The positive relationship between Latino poverty and administrative representation is likely a function of job opportunities. In communities with low poverty levels, well-paying jobs in the private sector are likely to attract many Latinos who might opt to be school administrators. High levels of poverty make safe, although lower paying, jobs in school systems more attractive. Even though each of these three relationships is statistically significant, their substantive impacts are relatively minor.

The second equation shows the same set of relationships for districts with a Latino majority. All relationships remain statistically significant although the size of the relationships, except for population, changes dramatically. The school board representation coefficient is now better than twice the size it was for minority Latino districts. Such a relationship is consistent with the notion that Latino representatives will be less constrained in pursuing their own interests in Latino majority jurisdictions than in jurisdictions where they are a minority. The other labor pool factors also increase in importance, thus suggesting that majority districts might be pushing up against the constraints of the size of the qualified labor force. The important finding in this second equation, however, is that Latino rep-

TABLE 6

The Determinants of Latino Teachers

Dependent variable = Percent Latino Teachers						
Variable	Minority Slope	Districts		Majority Slope	Districts	
		t	tol.		t	tol.
Intercept	-.058	.28	—	-32.268	7.16	—
Latino Population	.200	21.62	.36	.539	4.20	.30
School Board Representation	.055	5.93	.62	-.012	.19	.28
Latino Administrators	.290	16.04	.38	.467	6.04	.24
Latino College Grads	.013	2.06	.70	.890	2.54	.75
Latino Poverty	-.005	.72	.83	.435	2.64	.50
R-squared	.74			.82		
Standard error	2.35			10.43		
F	773.52			94.15		
N of cases	1,365			102		

resentation in majority districts differs from Latino representation in minority districts in significant ways.

Teacher Representation

Our final empirical analysis examines the determinants of Latino teachers. Well-developed models of teacher ethnicity in the literature suggest that labor pool characteristics (the size of the Latino population and the education levels of that population), Latino administrators, and Latino board members will be significantly linked to teacher representation. The strongest determinant of Latino teachers, however, is likely to be the percentage of Latino administrators.⁷

Table 6 reveals such a pattern. In Latino minority districts, a one percentage point increase in Latino administrators is associated with a .29 percentage point increase in Latino teachers, all other things being equal. Latino population also plays a role, but its impact is substantially less. Both Latino board representation and Latino college percentage have marginally significant relationships, but their direct substantive impact is small.⁸

⁷One potential question is what percentage of Latino teachers in the sample are bilingual education teachers. There are no national statistics on this question, but a separate Texas school data set indicates that less than 5% of Latino teachers are bilingual education teachers.

⁸To more fully explain this result, one might ask whether (1) non-Latino administrators resist hiring Latino teachers, (2) Latino administrators make extra efforts to hire Latino teachers, or (3) Latino teachers prefer to work for schools with relatively large numbers of Latino administrators. We cannot be certain which of these dynamics is taking place, but for the purposes of our study, it does not make a large difference whether one, two, or even all three are at work. The regressions show that the presence of Latino administrators leads to more Latino teachers, and it is beyond the scope of our paper to determine the relative importance of these three potential explanations.

The relationships for Latino majority districts are even more clear cut. Latino population, Latino administrators, and labor force characteristics matter, but school board representation does not. A one percentage point increase in Latino administrators is associated with a .47 percentage point increase in Latino teachers, all other things being equal. The corresponding impact for Latino population is a .54 percentage point increase.

The relative magnitude of the school board and administrators findings makes sense because administrators hire teachers and much of this process takes place in the schools rather than in front of the board. A number of researchers have indeed noted the indirect impact of school boards on many district decisions, as much power has devolved to administrators over time.⁹ In Latino minority districts, the impact of school board members is very small; in Latino majority districts, the influence cannot be distinguished from zero. Board members may lack a direct way to influence the composition of these street level bureaucrats. If the causal sequencing is correct, however, Latino school board members have a substantial indirect effect on teacher composition by affecting the ethnicity of school administrators.¹⁰

Conclusions

This is the first paper in a national study designed to update and expand the findings of previous research regarding the political factors and policy practices that influence educational outcomes for Latino students. Multiple studies suggest greater minority representation in the educational policy process translates into more positive outcomes for minority students (Meier, Stewart, and England 1989; Reyes, Scribner, and Scribner 1999; Spring 2000). Meier and Stewart went further in their assessment of the importance of Latino representation when they identified it as the *one* contributing variable that can be manipulated or changed by “concerted political efforts and appropriate policy decisions” (1991, 210). In this report we focus on descriptive representation with the objective of improving our ability to explain and predict the population-representation relationship.

A contemporary study of this topic is useful for several reasons. First, research in the 1970s and the 1980s arrived at different conclusions about the influence of electoral structure on minority educational representation. Second, the Latino population is now located in a different social and political situation. The 2000 Census revealed how this group is expanding throughout the United States, and many educational jurisdictions that have historically educated few Latino chil-

⁹ See Tyack (1974) for a discussion of how the responsibility for teacher hiring changed over time. Other research further suggests that the impact of Latino board members on the hiring of Latino teachers is real although indirect (Wirt and Kirst 2001, 164).

¹⁰ One might ask whether any of the above relationships vary according to which Latino national-origin group comprises the majority of the district population. We were able to test this possibility by separately analyzing majority Mexican-American districts and majority Puerto Rican districts. The regression results derived from these subsamples were very similar to those derived from the overall sample. There were only two plurality Cuban-American districts, however, and there were no majority or plurality districts for other Latino national-origin groups.

dren are now encountering significant and growing numbers of such students. A new and comprehensive national study is therefore important to understanding how Latino educational representation fares in this new and expanding context.

Third, to advance the methodology of analysis, the paper tests for a nonlinear population effect, which was not conducted in the educational representation literature. We also separately examine majority Latino population districts and minority Latino population districts, which was not done by previous research. Lastly, given the extensive litigation over city council districts, current school boards may represent the last opportunity to investigate whether and how electoral structures affect minority representation on political bodies in contemporary America.

Overall, our findings highlight the complexity of the relationship between Latino populations and their representation on school boards. Looking strictly at levels of population and levels of representation on school boards, earlier studies found Latinos significantly underrepresented. Our analysis shows this trend continues and appears to be growing.

The presence of a threshold effect, however, suggests that a nonlinear specification may be appropriate. We also note that Latinos (like any group) may be able to profit from at-large districting when they are a majority of the population. We test a squared population term and divide the sample into majority and minority Latino districts. The nonlinear Latino population variable is significant in the minority Latino districts and adds additional explanation to the overall equation. Both population variables are insignificant in the majority Latino districts and the model contains significant collinearity, however, thus suggesting that in these districts the relationship between Latino population and Latino representation remains linear.

A key question in the literature is the ethnic bias of different selection plans. Our study supports the findings of earlier research showing minority population translating into minority school board seats at a substantially higher rate with ward elections than with at-large elections. Our findings show that at-large election systems usually disadvantage Latinos; the obvious policy recommendation is that at-large systems should be replaced by single-member systems.

Interestingly, appointment systems appear more efficient than ward elections. We contend that the circumstances in appointment systems, however, are fundamentally different from elections. These differences may produce higher representation but potentially change the impact of representation. Why? The attitudes and priorities of political appointees may more closely reflect those of community elites rather than the general population, or appointees simply may behave differently than elected officials. Further study is clearly needed on the political context of appointment systems and its effect on appointee attitudes and behaviors.

We also explored other population demographics that were hypothesized to influence the low level of Latino representation on school boards. Based on theories of participation and group power, we expected the political resources of the population—*income, education, and citizenship*—to play a role. We found that the low socioeconomic status of the Latino population has no effect on the rela-

tionship. The percentage of the population that is ineligible to vote (noncitizens) has a negative effect, not surprisingly, but the size of that impact is trivial.

Finally, although our models predicting Latinos in lower positions of school authority basically mirror those previously reported, our analysis serves to emphasize the linkage between descriptive and substantive representation. While characteristics of the available labor pool play a role in predicting the presence of Latino administrators and teachers, they are overshadowed by the importance of having Latinos at higher levels of authority. Latino representation on school boards is significantly associated with increases in the percentage of Latino administrators, and the percentage of Latinos in administration is the most important variable determining the presence of Latino teachers. As we know the Latino community wants more Latinos teaching their children, greater Latino school board representation is therefore more likely to lead to education policies congruent with community wishes.

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EXHIBIT "F"

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 conversations 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. Notwithstanding 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

EXHIBIT "G"

CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE

This CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into on this 9th day of January, 2019 ("Effective Date") by and between the GOLETA UNION SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California, operating within Santa Barbara County ("DISTRICT"), and LINDSAY ROJAS and HECTOR MENDEZ, residents of District ("Prospective Plaintiffs"). The above parties are referred to herein individually as "Party" and collectively as "Parties."

RECITALS

- A. The Goleta Union School District Board of Education ("Board") is keenly aware of the importance of maintaining a fair election system. The Board has always strived to listen to all voices in the community and represent the interests of the entire community. Currently, members of the Board are elected pursuant to an "at-large" election system in which registered voters of the entire jurisdiction elect candidates to the Board.
- B. On November 26, 2018, the District received a Notice of Violation ("Notice") of the California Voting Rights Act ("Act") from Prospective Plaintiffs, dated November 20, 2018, alleging that the District's at-large system of electing District Board members violates the Act and threatening suit unless the District transitions to a district-based electoral system, an election method in which a candidate must reside within an election district or "trustee area" that is a divisible part of the District and is elected only by voters residing within that election district.
- C. The District denies that the District's at-large electoral system violates the Act. Nevertheless, in recognition that litigation involves significant costs and uncertainty, the District desires to enter into this Agreement.
- D. The Parties mutually desire to delay the institution of district-based elections until 2022 so that the trustee-area boundaries may be drawn based on 2020 federal decennial Census data, which will not become available until 2021.
- E. The Parties now wish conditionally to resolve and settle the Notice and all attendant and potential litigation arising therefrom.

NOW, THEREFORE, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties hereby agree:

1. Obligations of Parties

- A. At or before its regular meeting on February 6, 2019, the District will consider approval of a resolution of intent to institute a district-based election system for District Board elections by the November 2022 regular election.¹ The District

¹ The November 2022 regular election will occur on November 8, 2022.

shall not be construed against any Party. This Agreement is the product of bargained for and arm's length negotiations between the Parties and their counsel. This Agreement is the joint product of the Parties.

- B. This Agreement is an integrated contract and sets forth the entire agreement between the Parties with respect to the subject matter contained herein. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties with regard to such subject matter are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied on by either Party.
- C. This Agreement may not be changed, modified or amended except by written instrument specifying that it amends such agreement and signed by both Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the party making the waiver.
- D. All of the covenants, releases and other provisions herein contained in favor of the persons and entities released are made for the express benefit of each and all of the said persons and entities, each of which has the right to enforce such provisions.
- E. This Agreement shall be binding upon and inure to the benefit of each of the Parties, and their respective representatives, officers, employees, agents, heirs, devisees, successors and assigns.

7. Further Cooperation

Each Party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary or appropriate to carry out the provisions and intent of this Agreement. Except as expressly stated otherwise in this Agreement, actions required of the Parties or any of them will not be unreasonably withheld or delayed, and approval or disapproval will be given within the time set forth in this Agreement, or, if no time is given, within a reasonable time. Time will be of the essence of actions required of any of the Parties.

8. No Third Party Beneficiaries

Nothing in this Agreement is intended to benefit any third party or create a third party beneficiary. This Agreement will not be enforceable by any person not a Party to this Agreement.

9. Enforced Delay (Force Majeure)

- A. Performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of terrorism, epidemic, quarantine, casualties, acts of God, litigation,

governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, or other similar circumstances beyond the reasonable control of the Parties and which substantially interferes with the ability of a Party to perform its obligations under this Agreement.

- B. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Party written notice describing the event, its cause, when and how such Party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Either Party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. The time for performance will be extended for such period of time as the cause of such delay exists but in any event not longer than for such period of time.

10. Governing Law; Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any otherwise applicable principles of conflicts of laws. Any action arising out of this Agreement must be commenced in the state courts of the State of California, County of Santa Barbara, and each party hereby consents to the jurisdiction of the above courts in any such action and to venue in the State of California, County of Santa Barbara, and agrees that such courts have personal jurisdiction over each of them.

11. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

12. Effectiveness

This Agreement shall become effective immediately following execution by each of the Parties and ratification by the Goleta Union School District Board of Education as required by Education Code section 17604.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below ("Date of Execution").