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March 24, 2010

President Richard Gordon
San Mateo Board of Supervisors
Hall of Justice
400 County Center
Redwood City, CA 94063

Re: Violation of California Voting Rights Act

Dear President Gordon:

San Mateo County ("San Mateo") is the sole county in California to rely upon an at-large election system for electing candidates to the Board of Supervisors. It also appears that voting in San Mateo may be racially polarized resulting in minority vote dilution and thereby violative of the California Voting Rights Act ("CVRA") of 2001. The CVRA, codified in the Elections Code, states in relevant part:

§ 14027 [A]n at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or abridgement of the rights and privileges of members of a protected class...

Accordingly, it is our belief that San Mateo's at-large system dilutes the ability of minority residents ("a protected class") to elect candidates of their choice or otherwise influence the outcome of a Board of Supervisors election.

To prove a violation of the CVRA, there must be a showing of racially polarized voting. *See* Elections Code § 14028(a). Racially polarized voting is "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." *Id.* § 14026(e). Racially polarized voting shall be determined from examining results of elections in which "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 a protected class." *Id.* § 14208(a)-(b). Demonstration of vote dilution due to racially polarized voting in an at-large election is sufficient to find a violation under the CVRA.

Our research shows that in the history of the San Mateo Board of Supervisors, only two members of the protected class have been elected to this Board, one of whom was appointed prior to her election. According to recent data, the overall percentage of minority citizen voting age population in San Mateo is 44.64%. Given the significant number of minority citizen voting age residents, we believe that the county's use of an at-large election system dilutes the vote of minority residents.

Supervisor Gordon
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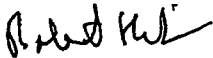
In the first case filed under the CVRA, we sued the City of Modesto and the city responded by challenging the constitutionality of the law. The California Court of Appeals upheld the CVRA, finding that the act is nondiscriminatory. See *Enrique Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 680 (2006). The California Supreme Court denied Modesto's petition for review, and the U.S. Supreme Court denied the City's writ of certiorari. See *Enrique Sanchez v. City of Modesto*, 2007 Cal. LEXIS 2772 (Cal., Mar. 21, 2007), *cert. denied*, 128 S. Ct. 438, L. Ed. 2d 306.

With the issue of constitutionality now resolved, we expect that jurisdictions throughout California will begin to voluntarily convert from at-large to district-based systems of elections, without the need for further litigation. Indeed, since the *Sanchez* decision, a number of jurisdictions, including Madera Unified School District, Merced Union High School District and Merced City School District, have adopted district-based election plans.

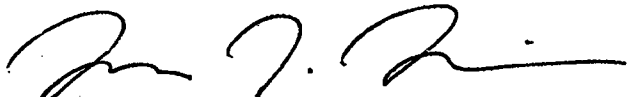
Given the historical lack of minority representation on the Board of Supervisors in the context of racially polarized elections, we again urge San Mateo to voluntarily change its at-large system of electing board members. Otherwise, on behalf of residents within the county, we will be forced to seek judicial relief. Please advise us no later than April 30th, 2010 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Sincerely,



Robert Rubin
Legal Director



Jane Kim
Community Initiatives Coordinator

cc: Warren Slocum, Chief Elections Officer & Assessor-County Clerk-Recorder
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Sean Foote, Chair of the Charter Review Committee