



# City of South Pasadena Agenda Report

Michael A. Cacciotti, Mayor  
Richard D. Schneider, M.D., Mayor Pro Tem  
Robert S. Joe, Councilmember  
Marina Khubesian, M.D., Councilmember  
Diana Malumud, Councilmember

Evelyn G. Zneimer, City Clerk  
Gary E. Pia, City Treasurer

COUNCIL AGENDA: July 19, 2017  
TO: Honorable Mayor and City Council  
VIA: Elaine Aguilar, Interim City Manager   
FROM: Anthony J. Mejia, Chief City Clerk   
SUBJECT: **Consideration of Whether to Transition from an At-Large Electoral System to a District-Based Electoral System for Members of the City Council**

## Recommendation

It is recommended that the City Council provide direction as follows:

1. Whether to adopt a resolution entitled "A Resolution of the City Council of the City of South Pasadena, California, declaring its intent to transition from at-large elections for City Council to district-based elections for City Council pursuant to Elections Code Section 10010."
- OR
2. Authorize a response letter to plaintiff's counsel, Kevin Shenkman, asserting no violation of the California Voting Rights Act (CVRA).

## Commission Review and Recommendation

This matter was not reviewed by a commission.

## Background

The City of South Pasadena currently elects its City Councilmembers through an "at-large" electoral system in which each Councilmember can reside anywhere in the South Pasadena and is elected by the voters of the entire electorate to provide citywide representation. All voters are thus insured of the opportunity to elect two or three Councilmembers every two years, resulting in a five-member City Council elected to serve the citywide purposes of the electorate.

On June 5, 2017, the City of South Pasadena (City) received a certified letter from Malibu-based attorney Kevin Shenkman, on behalf of his client Southwest Voter Registration Education Project, containing unsubstantiated allegations that the City's at-large electoral system violates the CVRA. Mr. Shenkman alleges evidence of Latino "polarized voting" in the South Pasadena electorate and threatens litigation if the City declines to adopt a district-based electoral system.

A district-based electoral system is one in which a city is physically divided into separate districts, each with one Councilmember who resides in the district and is chosen by the voters residing in that particular district. In a district-based electoral system, voters within each district may only vote for one candidate every four years.

Due to a recent change in the law (Assembly Bill 350, amending Elections Code [EC] Section 10010) discussed in more detail below, the City must determine within 45 days of receipt of the plaintiff's threat letter: 1) whether to adopt a Resolution of Intent to initiate the transition to a district-based electoral system; or 2) assert in a response letter to the plaintiff's attorney that the record does not support a violation of the CVRA in South Pasadena. The deadline is July 20, 2017; accordingly, the City Council must decide this evening whether to adopt the attached Resolution of Intent, or whether to direct the City Attorney to send a letter to Mr. Shenkman to correct his misapprehension of the facts in South Pasadena (Attachment 3). Although the City does not believe that the record shows any Latino racially-polarized voting in South Pasadena in violation of the CVRA, Mr. Shenkman can ignore this and proceed to engage the City in costly litigation in an attempt to force a district-based electoral system, leaving South Pasadena's electoral system in the hands of the Court.

### **Analysis**

The Federal Voting Rights Act of 1965 (FVRA) requires a successful plaintiff to show that: 1) a 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, 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.

However, the CVRA prescribes an extremely light burden on the plaintiff to establish a violation. Under the CVRA, plaintiffs can prove a violation *solely* on evidence of racially-polarized voting EC Section 14027. Racially-polarized voting 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 (EC Section 14026[e]). The CVRA defines a “protected class” broadly as a class of voters who are members of a race, color, or language minority group (EC 14626[d]).

The CVRA appears to eliminate the first precondition that plaintiffs must prove that the minority group is sufficiently large and geographically compact to form a majority in a single member district (EC 14026[c]). The CVRA also eliminates the requirement that plaintiffs prove discrimination under the totality of circumstances test (EC 14028[e]). The most likely remedy in a successful CVRA action would be to order cities with an at-large electoral system to change to a district-based electoral system in which a minority group will be empowered either to elect its preferred candidates, or influence the election outcome.<sup>1</sup> However, where minority race voters are spread relatively evenly throughout a city, as is the case with Latino residents in South Pasadena, a district-based electoral system under the CVRA is equally likely to dilute the vote of a minority race that is unable to account for the majority of voters within any district boundaries. Additionally, voters in each district may only elect one candidate every four years, rather than having the opportunity to elect two or three candidates every two years.

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<sup>1</sup> League of California Cities Analysis regarding the California Voting Rights Act, prepared by Marguerite Mary Leoni and Christopher E. Skinnell, of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP

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Mr. Shenkman purports that during the election of 2011, a Latino candidate – Art Salinas – ran for City Council and lost, despite “*receiving significant support from Latino voters*” and asserts a “*complete absence of Latinos to be elected to the City Council in recent history.*” Mr. Shenkman **fails** to recognize the successful candidacies of David Sifuentes in 2007 and Diana Mahmud in 2013, both of Latino descent. Mr. Shenkman further alleges the existence of polarized voting and threatens litigation if the City declines to adopt a district-based electoral system. In spite of Mr. Shenkman’s unsubstantiated claims, the CVRA finds that a violation may be 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, including ballot measures (EC 14028[b]).

Approximately 20 percent of South Pasadena residents are Latino and unlike other cities where at-large elections have prevented minorities from electing candidates of their choice, the electoral history for the City Council of the City of South Pasadena demonstrates that Latino candidates have been regularly elected. Since 2007, Latinos have won two of the three times they were on the ballot. Today, the South Pasadena City Council is represented by residents from a diverse range of racial and ethnic backgrounds including Asian-American, Latino, Armenian, Italian, and Caucasian.

Despite the City’s history of inclusionary voting history, it is unknown whether analyses of other electoral choices by South Pasadena voters would identify the presence of racially-polarized voting. As a result of the lower threshold established by the CVRA, cities and other jurisdictions throughout California have been facing challenges to their at-large electoral systems, with little or no regard to whether a district-based electoral system will actually dilute minority race voting power, rather than empower it. Many of these jurisdictions have voluntarily switched to district-based electoral systems instead of facing litigation. AB 350 amended EC Section 10010 to place a cap of a maximum of \$30,000 on attorney’s fees that a plaintiff would be entitled to recover if the target city, within 45 days of receipt of the plaintiff’s threat letter, voluntarily adopts a Resolution of Intent to consider an ordinance to establish a district-based electoral system, and then actually adopts such an ordinance within 90 days following the date it adopted the Resolution of Intent.

The CVRA contains an attorney’s fees provision that entitles a prevailing plaintiff to an award of its reasonable attorney’s fees and litigation expenses, including expert witness fees. On the other hand, a prevailing defendant is not entitled to recover any costs, unless the Court finds the action to be “frivolous, unreasonable, or without foundation,” an extremely high standard.

Cities that have attempted to defend their existing at-large electoral systems under the CVRA have incurred significant legal costs, including reimbursement of the attorneys’ fees incurred by plaintiffs. Awards in these cases have reportedly ranged from approximately \$400,000 to over \$4,500,000. For example, in February 2015, the City of Santa Barbara reportedly paid \$800,000 in attorney’s fees and expert costs to settle their CVRA lawsuit. Another example is the City of Palmdale that incurred an expense in excess of \$4.5 million in its unsuccessful attempt to defend against a lawsuit brought under the CVRA.

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Staff estimates that the cost to defend a CVRA lawsuit would exceed \$500,000 if successful, and could likely exceed \$2,000,000 if the plaintiff prevailed and the City was ordered to pay the plaintiff's attorney's fees. These fees and costs would be a General Fund liability which would be a significant unanticipated expense.

*Procedures for the Transition to a District-Based Electoral System*

EC Section 10010, as amended by AB 350, provides for a 90-day "safe harbor" period in which prior to the City Council's consideration of an ordinance to establish boundaries for a district-based electoral system, requires all of the following:

- 1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold a least two (2) Public Hearings over a period of no more than thirty (30) days, at which time the public will be invited to provide input regarding the composition of the districts.
- 2) After the draft maps are drawn, the City shall publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also be published.
- 3) The City Council shall also hold at least two (2) additional Public Hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.
- 4) The first version of a draft map shall be published at least seven (7) days before consideration at a Public Hearing. If a draft map is revised at or following a Public Hearing, it shall be published and made available to the public for at least seven (7) days before being adopted.

A tentative timeline for the consideration and implementation of a district-based electoral system is identified in Exhibit A of Attachment 1. Public input and testimony on the composition of districts and the proposed maps are very important and all South Pasadena residents are encouraged to participate in these Hearings. The maps will be drawn by National Demographics Corporation, a professional demographer with extensive experience in the CVRA and drafting of districts.

If the City Council adopts the ordinance approving a district-based electoral system, the two Council offices for reelection in November 2018 would be elected from districts (Diana Mahmud and Michael A. Cacciotti). In November 2020, the remaining three Council offices would be elected from districts (Robert S. Joe, Marina Khubesrian M.D., and Richard D. Schneider M.D.). The offices of City Clerk and City Treasurer would remain unaffected and at-large positions.

**Fiscal Impact**

There will be significant staff time needed to transition to a district-based electoral system due to the need to conduct multiple Public Hearings and community workshops, in addition to the cost for a demographics consultant. Should the City Council determine to proceed to adopt the Resolution of Intent this evening, the City will be required to reimburse the plaintiff for its attorney's fees and costs up to \$30,000, but will not be exposed to additional legal fees in defense of a lawsuit brought under the CVRA.

**Legal Review**

The City Attorney has reviewed this item.

**Public Notification of Agenda Item**

The public was made aware that this item was to be considered this evening by virtue of its inclusion on the legally publicly noticed agenda, posting of the same agenda and reports on the City's website and/or notice in the *South Pasadena Review* and/or the *Pasadena Star-News*.

**Attachments:**

1. Letter from Kevin Shenkman, received on June 5, 2017
2. Draft Resolution of Intent to Transition to District-Based Elections
  - a. Exhibit A – Tentative Timeline for the Consideration and Implementation of a District-Based Electoral System
3. Draft Response Letter to Kevin Shenkman

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**ATTACHMENT 1**

Letter from Kevin Shenkman, received on June 5, 2017



28905 Wight Road  
Malibu, California 90265  
(310) 457-0970  
[kshenkman@shenkmanhughes.com](mailto:kshenkman@shenkmanhughes.com)

ATTACHMENT 1

VIA CERTIFIED MAIL

June 2, 2017

Anthony Mejia  
City Clerk  
City of South Pasadena  
1414 Mission St.  
South Pasadena, CA 91030

City of South Pasadena

JUN 05 2017

City Clerk's Division

*Re: Violation of California Voting Rights Act*

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

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

Voting rights advocates have targeted "at-large" election schemes for decades, because they often result in "vote dilution," or the impairment of minority groups' ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) ("*Gingles*"). The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected



officials to “ignore [minority] interests without fear of political consequences”), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). “[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group's ability to elect its preferred representatives. *Rogers*, at 616.

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

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

To establish a violation of the CVRA, a plaintiff must generally show that “racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “elections in which at least one candidate is a member of a protected class or elections involving ballot measures,

or other electoral choices that affect the rights and privileges of members of a protected class.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

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

South Pasadena’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of South Pasadena’s council elections.

The election of 2011 is illustrative. In that election, a Latino candidate – Art Salinas – ran for council and lost. Mr. Salinas received significant support from Latino voters, but fell short of securing a seat in South Pasadena’s at-large election due to the bloc voting of South Pasadena’s majority non-Latino electorate. The near absence of Latino candidates willing to run in South Pasadena’s at-large election system is also indicative of the vote dilution of South Pasadena’s at large election system – the lack of Latino candidates is itself a symptom of that vote dilution. See *Westwego Citizens for Better Gov. v. City of Westwego*, 872 F.2d 1201 (5<sup>th</sup> Cir. 1989).

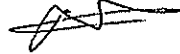
According to recent data, Latinos comprise approximately 18.6% of the population of South Pasadena. The contrast between the significant Latino proportion of the electorate and the complete absence of Latinos to be elected to the City Council in recent history is telling.

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

Given the historical lack of Latino representation on the city council in the context of racially polarized elections, we urge South Pasadena to voluntarily change its at-large system of electing council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than July 21, 2017 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,



Kevin I. Shenkman

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**ATTACHMENT 2**  
**Draft Resolution of Intent**

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DECLARING ITS INTENT TO TRANSITION FROM AT-LARGE ELECTIONS FOR CITY COUNCIL TO DISTRICT-BASED ELECTIONS FOR CITY COUNCIL PURSUANT TO ELECTIONS CODE SECTION 10010**

**WHEREAS**, members of the City Council of the City of South Pasadena (City) are currently elected in “at-large” elections, in which each City Councilmember is elected by the registered voters of the entire City; and

**WHEREAS**, Government Code Section 34886 in certain circumstances, authorizes the legislative body of a city of any population to adopt an ordinance to change its method of election from an “at-large” system to a “by-district” system in which each Councilmember is elected only by the voters in the district in which the Councilmember resides; and

**WHEREAS**, the City received a certified letter on June 5, 2017, from Kevin I. Shenkman, Esq., on behalf of his client Southwest Voter Registration Education Project, containing unsubstantiated allegations that the City’s at-large electoral system violates the California Voting Rights Act (CVRA) and threatening litigation if the City declined to adopt a district-based electoral system; and

**WHEREAS**, the City has a history of inclusionary voting as Latino candidates have been regularly elected to the City Council. Since 2007, Latinos have won two of the three times they were on the ballot, serving a total of 8 out of 10 years. Today, the City Council is represented by residents from a diverse range of racial and ethnic backgrounds including Asian-American, Latino, Armenian, Italian, and Caucasian; and

**WHEREAS**, the City denies that its election system violates the CVRA or any other provision of law and asserts that South Pasadena’s electoral system is legal in all respects and further denies any wrongdoing whatsoever in connection with the manner in which it has conducted its City Council elections; and

**WHEREAS**, although the letter was not accompanied by any evidence to support the claim of a CVRA violation, the City Council has concluded that the public interest would be better served by transitioning to a district-based electoral system because: 1) the extraordinary cost to defend against a CVRA lawsuit, 2) the risk of losing such a lawsuit would require the City to pay prevailing plaintiff’s attorney’s fees, and 3) reimbursable costs and attorney’s fees are capped at a maximum of \$30,000 by following the procedures set forth in Elections Code Section 10010 as amended by Assembly Bill 350; and

**WHEREAS**, prior to the City Council's consideration of an ordinance to establish boundaries for a district-based electoral system, Elections Code Section 10010 requires all of the following:

- 1) Prior to drawing a draft map or maps of the proposed boundaries of the districts, the City shall hold a least two (2) Public Hearings over a period of no more than thirty (30) days, at which the public will be invited to provide input regarding the composition of the districts.
- 2) After all draft maps are drawn, the City shall publish and make available for release at least one draft map and, if members of the City Council will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections shall also be published.
- 3) The City Council shall also hold at least two (2) additional Public Hearings over a period of no more than forty-five (45) days, at which the public shall be invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections, if applicable.
- 4) The first version of a draft map shall be published at least seven (7) days before consideration at a Public Hearing. If a draft map is revised at or following a Public Hearing, it shall be published and made available to the public for at least seven (7) days before being adopted.

**WHEREAS**, the City will be utilizing the services of a professional demographer to assist the City to develop a proposal for a district-based electoral system; and

**WHEREAS**, the adoption of a district-based electoral system will not affect the terms of any sitting Councilmember, each of whom will serve out his or her current term.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH PASADENA, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1.** The City Council hereby resolves to consider adoption of an ordinance to transition to a district-based electoral system as authorized by Government Code Section 34886 for use in the City's General Municipal Election for Members of the City Council beginning in November 2018.

**SECTION 2.** The City Council directs the City Clerk and City Attorney to work with a professional demographer, and other appropriate consultants as needed, to provide a detailed analysis of South Pasadena's current demographics and any other information or data necessary to prepare a draft map that divides South Pasadena into voting districts in a manner consistent with the intent and purpose of the CVRA and the Federal Voting Rights Act.

**SECTION 3.** The City Council hereby approves the tentative timelines as set forth in Exhibit A, attached to and made part of this resolution, for conducting a public process to solicit public input and testimony on proposed district-based electoral maps before adopting any such map.

**SECTION 4.** The timeline contained in Exhibit A may be adjusted by the City Clerk as deemed necessary, provided that such adjustments shall not prevent the City from complying with the time frames specified by Elections Code Section 10010.

**SECTION 5.** The City Council directs the City Clerk to post information regarding the proposed transition to a district-based electoral system on the City's website, including maps, notices, agendas and other information.

**SECTION 6.** The City Clerk of the City of South Pasadena shall certify to the passage and adoption of this resolution and its approval by the City Council and shall cause the same to be listed in the records of the City.

**PASSED, APPROVED AND ADOPTED ON** this 19<sup>th</sup> day of July, 2017.

\_\_\_\_\_  
Michael A. Cacciotti, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Evelyn G. Zneimer, City Clerk  
(seal)

\_\_\_\_\_  
Teresa L. Highsmith, City Attorney



**I HEREBY CERTIFY** the foregoing resolution was duly adopted by the City Council of the City of South Pasadena, California, at a regular meeting held on the 19<sup>th</sup> day of July, 2017, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAINED:**

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Evelyn G. Zneimer, City Clerk  
(seal)

EXHIBIT A

**TENTATIVE TIMELINE FOR THE  
CONSIDERATION AND IMPLEMENTATION OF A  
DISTRICT-BASED ELECTORAL SYSTEM**

**Day 1**

07/19/2017: City Council Meeting to introduce topic and adoption of the Resolution of Intent to transition from at-large to district-based elections.

CVRA Action cannot be commenced for 90 days (Safe Harbor Period).

**Day 24**

08/12/2017: Public Hearing #1: Saturday Community Workshop to seek community input on “communities of interest” and the composition of districts.

**Day 28**

08/16/2017: Public Hearing #2: City Council Meeting to seek community input and to provide direction on “communities of interest” and the composition of districts.

**Day 45**

09/02/2017: Optional: Saturday Community Workshop to seek community input on the content of the proposed draft district maps and sequence of elections.

**Day 49**

09/06/2017: Public Hearing #3: City Council Meeting to seek community input and to provide direction on the content of the proposed draft maps and sequence of elections.

**Day 63**

09/20/2017: Public Hearing #4: City Council Meeting to select a preferred district map and to introduce an ordinance to transition to district-based elections.

**Day 77**

10/04/2017: City Council Meeting to adopt an ordinance to transition to district-based elections.

**Day 90**

10/17/2017: Safe Harbor Period Ends & CVRA action could be filed.

**ATTACHMENT 3**  
Draft Response Letter to Kevin Shenkman

790 E. Colorado Boulevard, Suite 850  
Pasadena, CA 91101-2109  
Voice (213) 542-5700  
Fax (213) 542-5710

**COLANTUONO**  
**HIGHSMITH**  
**WHATLEY, PC**

Teresa L. Highsmith  
(213) 542-5703  
THighsmith@chwlaw.us

Our File No. 49063.0009

July 19, 2017

**ATTACHMENT 3**

**VIA CERTIFIED MAIL**

Kevin Shenkman  
28905 Wright Road  
Malibu, CA 90265

Re: City's Response Letter to Allegations of Violation of CVRA

Dear Mr. Shenkman:

Our office represents the City of South Pasadena as its City Attorney. We have been forwarded a copy of your June 2, 2017 letter to Chief City Clerk, Anthony Mejia, for initial response.

The City agrees with you that efforts should always be taken to ensure all voters have an equal voice in selecting the representatives of their choice. Dilution of the minority vote can still occur in a district-based electoral system, particularly where the minority race is spread evenly across a city. If there are an insufficient number of eligible minority race voters to produce an effective minority-majority "block" vote in any district, the result would be the actual *dilution* of the minority race's ability to elect a candidate of their choice. The resulting dilution would be further compounded by the fact that the minority race would only have one chance every four years to elect a candidate of their choice, as opposed to the opportunity to elect two or three candidates of their choice every two years. Such would be the situation in South Pasadena, resulting in real harm to our Latino community by the unintended consequences of an unfounded and incorrect conclusion that racially polarized voting occurs among Latinos in South Pasadena.

In fact, several of the statements in your June 2, 2017 form letter are factually incorrect, and therefore offer no support for your assertion of Latino polarized voting in South Pasadena. Contrary to your assertion that there is a "complete absence of Latinos

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to be elected to the City Council in recent history," Councilmember Diana Mahmud, who just completed her 2016 term as Mayor of South Pasadena, is Latina, and in fact, identified as such in her written candidate profile when she was elected in 2013. South Pasadena is a very inclusive and racially diverse community where the values of the City are to support and safeguard the civil rights, safety and dignity of all residents, regardless of their membership in a protected class, or their economic or social status, as reflected in Resolution No. 7491, adopted in December 2016. (Copy attached).

Your letter also failed to recognize that candidate David Sifuentes, who is also of Latino descent, was elected in 2007, and served on the Council until 2011. Further, you offer absolutely no evidence to support your assertion of any Latino racially polarized voting regarding Art Salinas in 2011. In fact, regression analysis methodology which looks at the racial makeup of who actually voted for Mr. Salinas by precinct reveals no racially polarized voting whatsoever. The record in South Pasadena will demonstrate that in the past 10 years, no Latino polarized voting has occurred and that two out of three Latino candidates have, in fact, been elected to City Council.

Regardless of the whether the CVRA recognizes the *Gingles* test<sup>1</sup>, attempting to force a district-based electoral system, where the result will actually be the dilution of the minority vote you purport to protect, would be completely inconsistent with the stated mission of your client, e.g., "to empower Latinos and other minorities by increasing their participation in the American democratic process." <sup>2</sup> Based on the facts and the relatively even spread of Latino voters throughout the various precincts, attempting to create five districts in the City of South Pasadena would almost certainly dilute the Latino voters' existing ability and success under the at-large system of voting to elect candidates of Latino race. This is because there is no district that could be drawn to encompass anywhere close to a plurality, let alone a sufficient majority, of Latino voters to ensure the likelihood of even a single election of a Latino candidate once every four years. Your client's motto, "Su Voto Es Su Voz" would not be served by any further attempts to dilute the vote and voice of Latino residents in South Pasadena by attempting to coerce a change to a district-based electoral system.

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<sup>1</sup> *Thornburg v. Gingles* 478 US 30 (1986)

<sup>2</sup> See Southwest Voter Registration Education Project website at: [svrep.org/about\\_svrep.php](http://svrep.org/about_svrep.php)

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We respectfully suggest that you take a second look at the evidence and your conclusions before we can discuss further whether the City should consider a change to a district-based electoral system. After you have done so, please advise us in writing of what facts you have discovered which would support any assertion that a district-based electoral system would actually benefit the South Pasadena Latino electorate by enhancing their voting power and the City will consider doing so.

Very truly yours,

Teresa L. Highsmith, Esq.

TLH:th