SHENKMAN & HUGHES, PC
Attorneys Malibu, California

28905 Wight Road
Malibu, California 90265
(310) 457-0970
kishenkman@shenkmanhughes.com

VIA CERTIFIED MAIL

August 23, 2024

Briana Parra - City Clerk
City of Clovis
1033 Fifth Street
Clovis, CA 93612

Re: Violation of California Voting Rights Act

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

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

Voting rights advocates have targeted "at-large" election schemes for decades, because they often result in "vote dilution," or the impairment of minority groups' ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles,* 478 U.S. 30, 46 (1986) ("*Gingles*"). The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to "ignore [minority] interests without fear of political consequences"), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973).

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

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

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a "majority-minority district." *Sanchez,* at 669. In *Pico Neighborhood Association v. City of Santa Monica* (August 24, 2023) 15 Cal.5th 292, the California Supreme Court recently confirmed this commonsense reading of the CVRA. *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.*

As of the most recent data released by the United States Census Department, Latinos comprise 30.5%, of the City's population of 120,124. Yet, Latino representation on the City's governing board has been sparse to non-existent.

The City's at-large system dilutes the ability of Latinos (a "protected class") – to elect candidates of their choice or otherwise influence the outcome of the City's elections. The City's election history is illustrative. In the 2022 election, for example, Martin Salas lost his bid for a seat on the Council despite significant support from Latino voters, due to a lack of support from non-Latino voters. Similarly, in the 2017 election Paulo Soares was supported by Latino voters but lost due to a lack of support from non-Hispanic white voters. This is not a phenomenon limited to the city council elections in Clovis; exogenous elections involving Latino candidates or choices that impact the rights and privileges of Latino voters, such as the 2022 elections for U.S. Senate and Insurance Commissioner, the 2018 elections for Secretary of State, Attorney General and Insurance Commissioner, and Propositions 227 (1998), 209 (1996) and 187 (1994) likewise reveal racially polarized voting in Clovis. These elections all evidence vote dilution which is directly attributable to the City's unlawful at-large election system.

At-large elections are well known to cause elected officials to "ignore [minority] interests without fear of political consequences." (*Gingles* 478 U.S. at 48, n. 14). What the Court of Appeal described in its recent decision in *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193 –finding that "as a matter of law the City violated its duty to 'administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing'" is one example of this effect. As the plaintiffs in *Martinez v. City of Clovis* explained in their Complaint, Clovis' failure to accommodate housing for low-income residents has had a discriminatory impact on Latinos and other persons of color.

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.

We likewise brought Clovis Unified School District's violation of the CVRA to its attention in June 2023. The Clovis Unified School District wisely scrapped its unlawful at-large

election system, avoiding the need for litigation. Yet, the City of Clovis did nothing to investigate its own compliance with the CVRA.

Given the racially polarized elections for the city council in Clovis, we urge the City to voluntarily change its at-large system of electing its City Council. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than October 14, 2024 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