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VIA CERTIFIED MAIL

August 10, 2018

Superintendent – Palo Alto Unified School District
Palo Alto Unified School District
25 Churchill Avenue
Palo Alto, CA 94306-1099

Re: Violation of California Voting Rights Act

The Palo Alto Unified School District ("Palo Alto") relies upon at-large election system for electing candidates to its Board of Education. Moreover, voting within Palo Alto is racially polarized, resulting in minority vote dilution, and therefore Palo Alto'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 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 extend protections against vote dilution over those provided by the federal Voting Rights Act of 1965." *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4th 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered "restrictive interpretations given to the federal act." Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a "majority-minority district." *Sanchez* at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that at an-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

"elections 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 the ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns." *Id.*

Palo Alto Unified School District's Board of Education at-large system dilutes the ability of Latinos (a "protected class") and Asians – to elect candidates of their choice or otherwise influence the outcome of Palo Alto's school district elections. Currently, the Board lacks any representation from protected classes.

The recent Board of Education elections in 2014 and 2016 have been instructive. In both those years, a Latino candidate ran and lost to non-Latino candidates. There is currently no Latino elected representatives on the Palo Alto Unified School District Board, despite Latinos or Hispanics representing 7.1% of the population of the City of Palo Alto (according to U.S. Census data), and a student enrollment that is 12.3% Latino (according to California Department of Education data). Furthermore, U.S. Census data shows that 40.5% of homes in Palo Alto speak a language other than English in the home.

The 2014 Palo Alto Unified School District Board elections featured issues of school segregation and the rights and privileges of a protected class. Currently, the 2018 school board elections continue to focus on issues of race, racial appeals, and implications for protected classes. Such racial appeals include on-line messages such as "#BoardSoWhite," a direct reference to the lack of minority representation on the Board.

In 2016, a candidate of Asian descent, ran and lost to non-Asian candidates. As a result of the racially polarized voting, Palo Alto Unified School District does not appear to have any Asian elected representatives. This is despite Asians representing 31% of the population of the City of Palo Alto, according to U.S. Census data, and Asian student enrollment comprising 34.8% of all students in the district (according to California Department of Education data).

This year, Palo Alto Unified School District renamed a Palo Alto middle school after a Japanese-American alumnus who shared a name with an unrelated Japanese admiral. New

reports covering the resolution described the renaming meeting as "heated, with allegation of racism and marginalization lodged by each side." On-line comments criticized the school board for its failure to consider the racially-charged issue, with some comments specifically identifying "how the school board is chosen" as a potential cause of the racial polarization. Other on-line comments criticized protected classes for their racial identity and exercising their right to freedom of association.

As you may be aware, several jurisdictions in California have been sued on behalf of residents of the jurisdiction for violation of the CVRA. In nearly all instances, district-based remedies have been imposed upon those jurisdictions, after great expense in the defense of the at-large voting method.

Given the historical lack of Latino and Asian representation on the Palo Alto School District Board of Education in the context of racially polarized elections, we urge Palo Alto Unified School District to voluntarily change its at-large system of electing board members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than September 24, 2018 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Regards,

Alexander Tomescu