SHENKMAN & HUGHES, PC
Attorneys Malibu, California

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

VIA CERTIFIED MAIL

September 17, 2021

Alisha Farnell – City Clerk
City of Cypress
5275 Orange Avenue
Cypress, CA 90630

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project and its members residing within the City of Cypress ("Cypress" or "City"). Cypress 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 bare candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a 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. 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.*

Based upon recent data from the American Community Survey conducted by the United States Census Department, Asians comprise 35.2% of the City's population of 49,006. The current complete absence of Asian representation on the City's governing board is revealing.

The City's at-large system dilutes the ability of Asians (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. It appears that in the past 20 years, the City's elections have been almost completely devoid of Asian candidates, and while opponents of voting rights may claim that indicates an apathy among the Asian-American community, the courts have held that is an indicator of vote dilution. (See *Westwego Citizens for Better Government v. City of Westwego*, 872 F.2d 1201, 1208-1209, n. 9 (5th Cir. 1989).)

Additionally illustrative is the fate of Asian candidates, when they do emerge, in the City's elections. In the City's most recent election (2020), Carrie Katsumata Hayashida emerged as a candidate for City Council, yet despite significant support from Asian American voters, she still lost her bid for a seat on the Cypress City Council. She came in third in a race for two seats, and yet when a council vacancy was filled less than a year after that election, Ms. Katsumata Hayashida was passed over for an applicant who the council thought would work more cooperatively with the council majority and city staff. Similarly, in both 2014 and 2012, Jay Sondhi ran and lost his campaigns for the Cypress City Council despite substantial support from the Asian American community in Cypress. These elections evidence vote dilution which is directly attributable to the City's unlawful at-large election system.

The City Council's recent difficulty with adopting even a resolution acknowledging the Asian American community and encouraging their participation in the City, and then its blanket refusal to show support for another minority community (LGBTQ), is also telling. The mayor's remark – "I don't believe it is our responsibility to ensure access and success to any particular group" – demonstrates the unresponsiveness to minority communities that at-large elections are known to cause. (See *Rogers v. Lodge* (1982) 458 U.S. at 458 U. S. 613,

623 [at-large elections "allow[] those elected to ignore [minority] interests without fear of political consequences"].) Contrary to the mayor's assertion, some groups in Cypress already have access, while others feel unwelcome and unwanted, and that feeling is perpetuated by statements like his.

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 racially polarized elections for Cypress' city council elections, 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 November 7, 2021 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

Sheskman & Hughes
28905 Wright Rd
Malibu, CA 90265

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Alisha Farnell - City Clerk
City of Cypress
5275 Orange Ave.
Cypress, CA 90630

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