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Attorneys for Defendant
CITY OF CYPRESS

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE**

13 SOUTHWEST VOTER REGISTRATION
14 EDUCATION PROJECT; KATHRYN
SHAPIRO; and MALINI NAGPAL,

15 Plaintiffs,

16 v.

17 CITY OF CYPRESS, CALIFORNIA; and DOES
18 1-100, inclusive,

19 Defendants.

CASE NO. 30-2022-01270865-CU-CR-CJC

**ANSWER OF DEFENDANT CITY OF
CYPRESS TO COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO
HON. DAVID A. HOFFER

Dept: C16

Trial date: Not set

21
22 Defendant CITY OF CYPRESS (“the City” or “Defendant”) hereby answers the
23 unverified Complaint filed on or about July 20, 2022, as follows:

24 **DEFENDANT’S ANSWER TO ALL CAUSES OF ACTION**

25 1. Pursuant to California Code of Civil Procedure section 431.30(d), the City
26 generally denies each and every material allegation contained in the unverified Complaint, and
27 further denies that Plaintiffs are entitled to any relief whatsoever by reason of the allegations set
28 forth in the Complaint.

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AFFIRMATIVE DEFENSES

2. In addition, without admitting any allegations contained in the unverified Complaint, the City alleges the following affirmative defenses to the Complaint, as a whole and to each cause of action set forth therein:

**FIRST AFFIRMATIVE DEFENSE
(Violation of California Constitution As Applied)**

3. If the CVRA is applied to invalidate the City’s choice of at-large elections in Section 400 of its charter, the CVRA would conflict with Article XI, section 5 of the California Constitution, which grants to charter cities plenary authority over the manner and method of electing its officers.

**SECOND AFFIRMATIVE DEFENSE
(Failure to State a Cause of Action)**

4. The Complaint, and each and every purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action under the California Voting Rights Act against the City, or at all.

**THIRD AFFIRMATIVE DEFENSE
(Violation of Equal Protection)**

5. The CVRA is unconstitutional, both on its face, and as Plaintiffs seek to have it applied in this action. If interpreted as requested by the Plaintiffs, Asian-Americans and other Cypress residents with common political, economic or other interests who reside in different parts of the City would be divided into separate districts. Such race-conscious remedies would violate the Equal Protection clauses of both the United States and California Constitutions as race-conscious remedies that are not narrowly tailored to serve a compelling government interest, and would impermissibly dilute the votes of non-Asian-American voters in the City of Cypress based on racial criteria.

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FOURTH AFFIRMATIVE DEFENSE

(Violation of Equal Protection)

6. Insofar as it is interpreted to provide that only a candidate who is the same race or ethnicity as the Plaintiffs’ protected class or classes may be regarded as the preferred candidate of that protected class, and that candidates of other races or ethnicities may not be regarded as the preferred candidate of the Plaintiffs’ protected class, the CVRA violates the equal protection guarantees of both the federal and California constitutions.

FIFTH AFFIRMATIVE DEFENSE

(Violation of Equal Protection)

7. Insofar as it creates a cause of action for impairment of minority voters’ right to “influence” elections, the CVRA violates the equal protection guarantees of both the federal and California constitutions.

SIXTH AFFIRMATIVE DEFENSE

(Violation of Section 2 of the Federal Voting Rights Act)

8. Insofar as the Complaint seeks relief in the form of an order imposing single-member districts on the City for the purposes of electing its City Council members, such relief would violate Section 2 of the Federal Voting Rights Act, because a protected class may constitute a significant plurality or even a majority of the City’s eligible voters; thus, the relief sought may impair the ability of other protected classes to elect their chosen candidates.

SEVENTH AFFIRMATIVE DEFENSE

(No Racially Polarized Voting)

9. Plaintiffs’ claims are barred in whole, or in part, because the Complaint fails to state facts sufficient to show the existence of racially polarized voting in Cypress. No facts alleged in the Complaint demonstrate that: (a) a cohesive white voting bloc; (b) usually defeats; (c) a cohesive Asian-American voting bloc. Without such facts, plaintiffs cannot prove a violation of the CVRA.

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EIGHTH AFFIRMATIVE DEFENSE

(No Vote Dilution)

10. Plaintiffs’ claims are barred in whole, or in part, because they cannot demonstrate vote dilution. Without such facts, plaintiffs cannot prove a violation of the CVRA.

NINTH AFFIRMATIVE DEFENSE

(No Politically Cohesive Minority Group)

11. Plaintiffs’ claims are barred in whole, or in part, because they cannot demonstrate that a protected class in the City of Cypress is politically cohesive. Without such facts, plaintiffs cannot prove a violation of the CVRA.

TENTH AFFIRMATIVE DEFENSE

(Lack of Causation)

12. Plaintiffs’ claims are barred in whole, or in part, because there is no causal relationship between any alleged failure of Plaintiffs to elect their chosen candidates, and the City’s at-large elections, which are permitted by California law.

ELEVENTH AFFIRMATIVE DEFENSE

(Lack of Standing: SVERP and Kathryn Shapiro)

13. Both Plaintiff Southwest Voter Education Registration Project and Plaintiff Kathryn Shapiro lack standing to file causes of action under the California Voting Rights Act. The CVRA creates a cause of action only in a “voter who is a member of a protected class and who resides in a political subdivision where a violation of [the CVRA] is alleged.” (Elec. Code, § 14032.) As an entity, the SVERP is neither a voter nor a member of a protected class. Kathryn Shapiro is not a member of a protected class as defined in the CVRA. (*Id.*, § 14026(d).) The Southwest Voter Education Registration Project also lacks standing to bring a representational claim.

TWELFTH AFFIRMATIVE DEFENSE

(No Impairment of Voting Rights)

14. Plaintiffs’ claims are barred by the provisions of Elections Code Section 14027 because the at-large method of election within the City of Cypress has not been applied in a

1 manner that impairs the ability of a protected class to elect candidates of its choice or its ability to
2 influence the outcome of an election, as a result of the dilution or the abridgment of the rights of
3 voters who are members of a protected class, as defined pursuant to Elections Code Section
4 14026.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 **(Laches)**

7 15. Plaintiffs are barred from obtaining some or all of the relief sought in the
8 Complaint by the doctrine of laches, and the delay was prejudicial to the City.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 **(Waiver)**

11 16. Plaintiffs, by their actions, omissions or conduct, have waived any potential
12 entitlement to the relief sought in the Complaint.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 **(Unclean Hands)**

15 17. Plaintiffs, by reason of their own conduct, are barred from the relief sought in the
16 Complaint, or any relief, based on the doctrine of unclean hands.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 **(One Person, One Vote Constitutional Violation)**

19 18. To the extent plaintiffs seek a remedy that is intended or designed to give more
20 representation to Asian-American voters than to other voting groups or protected classes, the
21 requested remedy violates the One Person, One Vote principle of the United States Constitution.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **(Costs for Frivolous Action)**

24 19. Plaintiffs' Complaint is frivolous, unfounded, arbitrary, and unreasonable, and the
25 City is, therefore, entitled to an award of reasonable attorneys' fees and costs upon judgment in
26 its favor in accordance with applicable law.

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OTHER AFFIRMATIVE DEFENSES

20. The City has not knowingly or intentionally waived any applicable affirmative defenses. The City reserves the right to assert and to rely upon such other affirmative defenses as may become apparent as the case proceeds or as may be raised or asserted by others in this case, and to amend its Answer accordingly. The City further reserves the right to amend its Answer to add or omit affirmative defenses as it deems appropriate.


PRAYER

WHEREFORE, the City prays for entry of judgment in its favor and against Plaintiffs as follows:

- 1. That Plaintiffs take nothing by this action, and that the relief requested by Plaintiffs be denied in its entirety;
- 2. That judgment be entered in favor of the City and against Plaintiffs;
- 3. For an award in favor of the City of its reasonable attorneys' fees, costs of expert witnesses, and other costs incurred in this action; and
- 4. For such other and further relief as the Court may deem just and proper.

DATED: September 22, 2022

BUCHALTER, APC

By: 

STEVEN G. CHURCHWELL
Attorneys for Defendant
CITY OF CYPRESS

1 **PROOF OF SERVICE**

2
3 I am employed in the County of Sacramento, State of California. I am over the age of 18
4 and not a party to the within action. My business address is at BUCHALTER, A Professional
5 Corporation, 500 Capitol Mall, Suite 1900, Sacramento, CA 95814.

6 On the date set forth below, I served the foregoing document described as:

7 **ANSWER TO COMPLAINT**

8 on all other parties and/or their attorney(s) of record to this action by faxing and/or
9 placing a true copy thereof in a sealed envelope as follows:

10 Kevin I. Shenkman
11 Andrea A. Alarcon
12 SHENKMAN & HUGHES PC
13 28905 Wight Road
14 Malibu, CA 90265
15 Email: kishenkman@shenkmanhughes.com

16 **BY MAIL** I am readily familiar with the business' practice for collection and
17 processing of correspondence for mailing with the United States Postal Service. The address(es)
18 shown above is(are) the same as shown on the envelope. The envelope was placed for deposit in
19 the United States Postal Service at Buchalter in Sacramento, California on the below date. The
20 envelope was sealed and placed for collection and mailing with first-class prepaid postage on
21 this date following ordinary business practices.

22 **BY OVERNIGHT DELIVERY** On the below date, I placed the package for
23 overnight delivery in a box or location regularly maintained by an overnight delivery service at
24 my office, or I delivered the package to a courier or driver authorized to receive documents. The
25 package was placed in a sealed envelope or package designated by the overnight delivery service
26 with delivery fees paid or provided for, addressed to the person(s) on whom it is to be served at
27 the address(es) shown above, as last given by that person on any document filed in the cause;
28 otherwise at that party's place of residence.

29 **BY PERSONAL DELIVERY** On the below date, I placed the above-referenced
30 envelope or package in a box or location regularly maintained at my office for our
31 messenger/courier service or I delivered the envelope or package to a courier or driver
32 authorized by our messenger/courier service to receive documents. The package was placed in a
33 sealed envelope or package designated by our messenger/courier service with delivery fees paid
34 or provided for, addressed to the person(s) on whom it is to be personally served at the
35 address(es) shown above as last given by that person on any document filed in the cause. The
36 messenger/courier service was provided with instructions that the envelope or package be
37 personally served on the addressee(s) by same day delivery (C.C.P. §1011).

38 **BY EMAIL** On September 22, 2022, I caused the above-referenced document(s) to be
39 sent in electronic PDF format as an attachment to an email addressed to the person(s) on whom
40 such document(s) is/are to be served at the email address(es) shown above, as last given by that

1 person(s) or as obtained from an internet website(s) relating to such person(s), and I did not
2 receive an email response upon sending such email indicating that such email was not delivered.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct to the best of my knowledge. Executed on September 22, 2022, at
5 Sacramento, California.

6
7 DANIELLE Y. POWERS

(Signature)

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