Agenda Item 4.A

DATE: **October 4, 2021**

TO: Honorable Mayor and Members of the City Council through City Manager
FROM: Eric Danly, City Attorney
Kendall Rose, City Clerk

SUBJECT: Resolution Declaring Its Intent to Initiate Procedures to Consider Transition From At-Large Elections to District-Based Elections Pursuant to California Elections Code Section 10010, Approving a Tentative Schedule for Conducting Public Hearings And Related Actions

RECOMMENDATION

It is recommended that the City Council adopt a resolution (Attachment 1) declaring its intent to initiate procedures to consider transition from at-large elections to district-based elections pursuant to California Elections Code Section 10010, approving a tentative schedule for conducting public hearings and related actions.

BACKGROUND

On August 23, 2021, the City of Petaluma City Clerk received a letter ("Letter") (Attachment 2) from Kevin Shenkman, an attorney based in Malibu, who has sent similar letters to other public entities throughout California alleging violations of the California Voting Rights Act. (Elections Code §§14025-14032). The Letter was sent on behalf of Mr. Shenkman's client the Southwest Voter Registration Education Program. The Letter alleges that the City's at-large election system has impaired the ability of Latino voters to elect their preferred candidates and demands that the City convert to district-based elections for City Council. Lastly, the Letter requests that the City inform Mr. Shenkman by October 8, 2021 whether the City would discuss a voluntary change to its current at-large election system.

Section 10 of the Petaluma City Charter states that, "The mayor and councilmen shall be elected at the general municipal election on a general ticket from the city at large." A "district-based" election is one in which the city is divided into separate districts, each with one Council Member who resides in the district and is chosen by the voters that reside in that district. The CVRA generally requires jurisdictions with "at-large" elections to convert to "district-based" elections if liability is found. (Elections Code § 14027). It is estimated that over 100 cities and other public agencies in California have received similar demand letters under the CVRA. The threshold to establish liability under the CVRA is very low, and prevailing CVRA plaintiffs are guaranteed to recover their attorneys' fees and costs. (Elections Code § 14030). With the exception of one case pending before the California Supreme Court, all public entities that have tried to contest the conversion to elections by district have either lost or have agreed to make the transition to district-

based elections through subsequent settlement. Those jurisdictions have had to pay significant attorney's fees awards to plaintiffs, often amounting to millions of dollars, and have had to convert to district-based elections.

As discussed in more detail below, the CVRA was amended several years ago to provide a safe harbor that allows a jurisdiction to convert to district-based elections while minimizing its exposure to paying large attorney's fees awards to plaintiffs. Santa Rosa, Windsor, and Rohnert Park have all received letters claiming a violation of the CVRA. Under the threat of litigation, these jurisdictions have all transitioned from at-large elections to district-based elections under the safe-harbor rule. Other entities in the Bay Area that have received similar letters and made the transition include: the County of San Mateo, the cities of Brentwood, Concord, Fremont, Half Moon Bay, Livermore, San Ramon, Martinez, Menlo Park, Napa, Pacifica, Redwood City, Richmond, San Bruno, San Rafael, Santa Clara, South San Francisco, and Vallejo.

DISCUSSION

Proving a Violation of the California Voting Rights Act

The CVRA provides that

> An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution.[1]

'Protected class is defined in Section 14026(d) as

> a class of voters who are members of the same race, color, or language minority group.

The CVRA provides that a violation occurs

> if it is shown that racially-polarized voting occurs in elections for members of the governing body of the [city].[2]

Racially-polarized voting is a difference in election choices of voters of a protected class and the rest of the electorate.[3]

> [t]he occurrence of racially polarized voting shall be determined from examining results of 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.[4]

Racially-polarized voting may be determined by an analysis of voting behavior and whether or not

[1] Elections Code Section 14027.
[2] Elections Code Section 14028.
[3] Elections Code Section 14026(e).
[4] Elections Code Section 14028(b).

members of the protected class who are preferred by the protected class have been elected.[5] Accordingly, that candidates of a protected class have been elected to the City Council does not preclude a finding that racially-polarized voting exists for that class. Under the CVRA, the history regarding class members' success as candidates is only a factor that may be considered in determining the existence of racially-polarized voting.[6]

Proof "of intent on the part of the voters or elected officials to discriminate against a protected class is not required" to find a violation of the CVRA.[7] There are other factors that "are probative, but not necessary" to establish a violation.[8] The other, non-exclusive, probative 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.

In summary, racially-polarized voting occurs when the electoral choices of a protected class in a particular election or elections are different from those of members not within the protected class. The comparison is made between the group whose voting power is asserted to be diluted and all other voters outside that group. Thus, if it were alleged that the votes of Latinx community members within a jurisdiction were being diluted, the racially polarized voting analysis would compare the voting choices between the Latinx votes and the voting choices of whites, African-Americans, Asian-Americans, and all other groups.[9] This is typically determined by statistical analysis.

Additionally, racially polarized voting is not determined solely by how the electorate voted in elections involving the agency's governing board. In a CVRA lawsuit, the court may look at the voting preferences of groups in not only city council elections, but also in elections involving other local agencies (such as counties, and school districts), state elections (for the Assembly or Senate, for example), and ballot initiatives (state or local).[10]

CVRA Safe Harbor Provision

[5] Elections Code Section 14028(b).
[6] Elections Code Section 14028(b).
[7] Elections Code Section 14028(d).
[8] Elections Code Section 14028(e).
[9] *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385.
[10] Elections Code Section 14208(a)-(b).

AB 350 enacted in 2014, provides a 90-day "safe harbor" from CVRA litigation for jurisdictions that choose to transition to a district election system.[11] If a jurisdiction receives a demand letter pursuant to Elections Code §10010(e)(1), it has 45 days from receipt of the letter to "pass a resolution outlining its intention to transition from at-large to district-based elections" with "specific steps it will undertake to facilitate this transition, and an estimated timeframe for doing so."[12] If the resolution is passed, a prospective plaintiff is prohibited from filing a CVRA action for 90 days from the date the resolution was passed. This item tonight is a Resolution of Intention.

Within the 90-day safe harbor period the jurisdiction can adopt an ordinance establishing district elections. To accomplish that, it must hold two public hearings for input on district composition over a period of not more than 30 days before maps are drawn.[13] Next, the jurisdiction must release at least one draft map at least seven days before the first of two public hearings on the composition of the proposed districts and the proposed sequence of elections, and then hold a second public hearing so that the two public hearings on the composition of the proposed maps and the proposed sequence of elections occur within a period of not more than 45 days.[14] The jurisdiction must then hold a public hearing to enact a district-based election ordinance which includes the district map and district councilmember election terms.[15] If a map is revised at or following a hearing it must be published and made available to the public for at least seven days before being adopted.[16] For it to complete its transition to district elections within the 90-day safe harbor period, a City must adopt the district election ordinance before the expiration of the safe harbor period.

The City and the prospective plaintiff may enter into a written agreement to extend the 90-day safe harbor period by an "additional 90 days in order to provide additional time to conduct public outreach, encourage public participation, and receive public input."[17] If the City enters a 90-day extension agreement it must agree to establish the district boundaries no later than six months before the next regular election. [18] Within 10 days of entering a 90-day extension agreement, the City must make available on its website a tentative schedule of the public outreach events and public hearings on district elections.[19]

In summary, the schedule of deadlines that applies to cities that opt to adopt a resolution of intention to transition to district elections is as follows:

> i. Within 45 days of receiving the demand letter the City must pass a Resolution of Intention to Transition to District-Based Elections. In Petaluma's case this date is October 7. More practically, at this regularly scheduled City Council meeting on October 4 with an effective date of October 7, 2021.

[11] Elections Code Section 10010.
[12] Elections Code Section 10010(e)(3)(A).
[13] Elections Code Section 10010(a)(1).
[14] Elections Code Section 10010(a)(2).
[15] Elections Code Section 10010(a)(2).
[16] Elections Code Section 10010(a)(2)
[17] Elections Code Section 10010(e)(3)(C)(i)
[18] Elections Code Section 10010(e)(3)(C)(i).
[19] Elections Code Section 10010(e)(3)(C)(i-ii).

ii. The City must hold two public hearings to receive input on district composition over a period of not more than 30 days.

iii. The City must hold two public hearings on the content of the maps and sequence of the district elections in which councilmembers will be elected at different staggered terms over a period of not more than 45 days.

iv. The City must hold a public hearing to adopt an ordinance enacting district no later than January 5, 2022.

v. If the City receives an additional 90-day extension, by written agreement with a prospective plaintiff or otherwise, to finish steps 2-4, an additional 90-days are available for completing steps 2-4.

vi. If the City complies with the applicable deadlines, the plaintiff's fee recovery is capped at approximately $30,000 (adjusted for inflation).[20]

Attached as Exhibit A to the Resolution (Attachment 1) is a tentative schedule for public hearings. If Council passes the Resolution of Intention tonight and complies with the statutorily required public hearing dates, the City will limit the prospective plaintiff's attorney's fees and costs to approximately $30,000.

PUBLIC OUTREACH

This agenda item appeared on the City Council's tentative agenda document on September 20, 2021, which was a publicly noticed meeting. Moreover, all of the statutorily required public hearings will be noticed in compliance with the California Brown act and appear on the tentative agenda of the City Council meeting preceding the public hearing.

The City will also have a dedicated webpage on the City website to provide information to the public about future events. The City also anticipates a social media blast to encourage public engagement in drawing any district maps.

COUNCIL GOAL ALIGNMENT

This action helps achieve the following City Council goal: Workplan Item #161:

> Increase community engagement through programs that attract new followers. Complete minority outreach strategy and begin implementing recommendations from the strategy.

ALTERNATIVES

[20] Section 10010(f).

If the Resolution of Intention to transition from at-large elections to district-based elections is not passed the City will not be in the "safe harbor provision" pursuant to Elections Code §10010 and plaintiffs could sue the City under the CVRA.

FINANCIAL IMPACTS

If the Resolution of Intention to transition from at-large elections to district-based elections is passed and the City conducts the required public hearings within the statutorily prescribed timeline the City will be in the "safe harbor provision" and the prospective plaintiff will only be able to seek approximately $30,000 in fees and costs pursuant to Elections Code §10010.

The City is also hiring a demographer to help with the transition for district-based elections.

ENVIRONMENTAL COMPLIANCE

The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a Resolution declaring the City's intent to initiate procedures to consider transition from at-large elections to district-based elections and approving a tentative schedule for conducting public hearings does not meet CEQA's definition of a "project," because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

ATTACHMENTS

1. Draft Resolution with Exhibit A (Tentative Schedule)
2. Letter

Resolution No. 2021-XXX N.C.S.
of the City of Petaluma, California

RESOLUTION DECLARING ITS INTENT TO INITIATE PROCEDURES TO CONSIDER TRANSITION FROM AT-LARGE ELECTIONS TO DISTRICT-BASED ELECTIONS PURSUANT TO CALIFORNIA ELECTIONS CODE SECTION 10010, APPROVING A TENTATIVE SCHEDULE FOR CONDUCTING PUBLIC HEARINGS AND RELATED ACTIONS

WHEREAS, Section 10 of the Petaluma City Charter states that, "The mayor and councilmen shall be elected at the general municipal election on a general ticket from the city at large"; and

WHEREAS, on August 23, 2021, the City of Petaluma City Clerk received a letter ("Letter") from Kevin Shenkman, an attorney, alleging violations of the California Voting Rights Act. (Elections Code §§14025-14032); and

WHEREAS, a violation of the CVRA is established if it is shown that racially polarized voting occurs in elections (Elections Code section 14028(a)); and

WHEREAS, "racially polarized voting" means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate (Elections Code §14026(e)); and

WHEREAS, the California Legislature has provided a procedure whereby a jurisdiction can expeditiously change to a district-based election system and avoid the high cost of litigation under Elections Code §10010. Under that procedure, a jurisdiction can limit the amount of its liability to prospective plaintiffs and their attorneys to a maximum amount of approximately $30,000 for reimbursable expenses and costs (the "safe harbor provision"); and

WHEREAS, the City denies that it's at-large election system violates the CVRA or any other provision of law and asserts the City's election system is legal in all respects and the City further denies any wrongdoing whatsoever in connection with how it has conducted its City Council elections; and

WHEREAS, despite the foregoing, the City Council has determined that the public interest would be served by transitioning to a district-based electoral system because of: (1) the high cost to defend against a CVRA lawsuit, (2) the risk of losing such a lawsuit, which would require the City to pay the prevailing plaintiffs' attorneys' fees, and (3) the availability of changing to district elections under the safe harbor provision; and

WHEREAS, California Elections Code §10010 requires that a City changing to district-based elections under the safe harbor provision do all of the following within 90 days from the date this resolution is approved:

1. Before drawing a draft map or maps of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than 30 days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting process and to encourage public participation;

2. After draft maps are drawn, the political subdivision shall publish and make available for release at least one draft map and, if members of the governing body of the political subdivision will be elected in their districts at different times to provide for staggered terms of office, the potential sequence of the elections. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days, at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections. The first version of a draft map shall be published at least seven days before consideration at a hearing. If a draft map is revised at or following a hearing, it shall be published and made available to the public for at least seven days before being adopted;

3. Adopt an ordinance establishing district-based elections pursuant to Elections Code §10010(a).

WHEREAS, Exhibit A attached hereto sets forth a tentative schedule for the proposed statutorily prescribed public hearing dates pursuant to Elections Code §10010; and

WHEREAS, the City has retained an experienced demographer to assist the City to develop a proposal for a district-based electoral system; and

WHEREAS, the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a Resolution declaring the City's intent to initiate procedures to consider transition from at-large elections to district-based elections and approving a tentative schedule for conducting public hearings does not meet CEQA's definition of a "project," because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Petaluma as follows:

1. The above recitals are hereby declared to be true and correct and are incorporated into this resolution as findings of the City Council.

2. The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a Resolution declaring the City's intent to initiate procedures to consider transition from at-large elections to district-based elections and approving a tentative schedule for conducting public hearings does not meet CEQA's definition of a "project," because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

3. The City Council hereby resolves its intent to consider adoption of an ordinance to transition to a district-based election system as authorized by Government Code Section 34886 beginning in November 2022.

4. The City Council directs staff to work with the City's demographer, and other appropriate consultants as needed, to provide a detailed analysis of the City's current demographics and any other information or data necessary to prepare a draft map that divides the city into voting districts in a manner consistent with the intent and purpose of the California Voting Rights Act, the Federal Voting Rights Act, and all other federal and state laws.

5. The City Council hereby approves the tentative schedule set forth in Exhibit A, attached hereto, for conducting a public process to solicit input and testimony on proposed district-based electoral maps before adopting any such map and transitioning to district elections.

6. The tentative schedule may be adjusted by the City Manager as necessary, especially if an agreement tolling safe harbor deadlines is reached with the plaintiff's attorney to allow additional time for public input or otherwise as appropriate.

7. The City Council directs staff to post information regarding the proposed transition to a district- based election system, including maps, notices, agendas and other information and to establish a means of communication to answer questions from the public.

8. This Resolution shall become effective on October 7, 2021.

Under the power and authority conferred upon this Council by the Charter of said City.

REFERENCE: I hereby certify the foregoing Resolution was introduced and adopted by the Council of the City of Petaluma at a Regular meeting on the 4th day of October 2021, by the following vote:

Approved as to form:

_____
City Attorney

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
City Clerk

_____
Mayor

DRAFT SCHEDULE

Activity	**135-day Timeline Established by Elections Code §10010 (Adopt Ord. by 1/5/22)**
Received Demand Letter	8/23/2021
2020 Census Data released	9/20/2021
Adopt a **Resolution of Intention, effective 10/7/2021,** to transition from at-large to district-based elections	10/4/2021
Launch Districting Website Page	TBD
Public Hearing #1 to gather public testimony about communities of interest (no draft maps are drawn until these are complete)	10/18/2021 or 11/1/2021
Public Hearing #2 to gather input public testimony about communities of interest (no draft maps drawn until these are complete)	11/1/2021 or 11/15/2021
Launch mapping tools on website for public to submit proposed maps	TBD
Initial draft maps posted on website at least 7 days prior to public hearing	11/29/2021
Public Hearing #3 to gather public input on draft maps and election sequencing	12/6/2021
Changes to initial draft maps posted on website at least 7 days prior to public hearing	12/22/2021
Public Hearing #4 to gather public input on draft maps and election sequencing and adoption of Ordinance to establish district-based elections	1/3/2022
Six months prior to next regular election the Ordinance must be adopted	5/8/2022
First district-based election to be held	11/8/2022

*All dates shown are City Council Regular Meeting dates. Public Hearings other than the hearing to Adopt the Ordinance could be scheduled for Special Meeting dates.

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VIA CERTIFIED MAIL

RECEIVED
AUG 23 2021
CITY CLERK

August 19, 2021

Kendall Rose – City Clerk
City of Petaluma
11 English Street
Petaluma, CA 94952

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 Petaluma ("Petaluma" or "City"). Petaluma 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.*

As of the 2019 release of data from the American Community Survey conducted by the United States Census Department, Latinos comprised 21.9% of the City's population of 60,520. The complete and unbroken absence of Latino representation on the City's governing board, in contrast to the significant Latino proportion of the City's population, is revealing.

Petaluma'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. It appears that in the past 20 years, the City's elections have been almost completely devoid of Latino candidates, and while opponents of voting rights may claim that indicates an apathy among the Latino 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 Latino candidates, when they do emerge, in the City's elections. In 2014, Ken Quinto emerged as a candidate for City Council, yet despite significant support from Latino voters, he still lost his bid for a seat on the Petaluma City Council due to a lack of support from non-Hispanic white voters. Mr. Quinto resided in the Northeast portion of the City, which has generally been underrepresented on the Petaluma City Council. This election evidences vote dilution which is directly attributable to the City's unlawful at-large election system.

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 Petaluma's city council and exogenous 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 October 8, 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