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11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF LOS ANGELES

14 OLGA RIOS, MARIANA RIOS, and  
15 THOMAS CHAVEZ,  
16 Plaintiffs,  
17 vs.  
18 ABC UNIFIED SCHOOL DISTRICT,  
19 Defendant.

Case No.: **BC505510**  
**COMPLAINT FOR VIOLATION OF THE  
CALIFORNIA VOTING RIGHTS ACT**  
[Elections Code sections 14025-14032]

**BY FAX**

**CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court**

**APR 10 2013**

John A. Clarke, Executive Officer/Clerk  
By Amber Hayes, Deputy

1 Plaintiffs Olga Rios, Mariana Rios, and Thomas Chavez ("Plaintiffs") complain and allege as  
2 follows:

3 **NATURE OF THE CASE**

4 1. This action is brought by Plaintiffs for declaratory and injunctive relief against the ABC  
5 Unified School District, located in Los Angeles County, California (also referred to as "ABC" or  
6 "ABC USD"), for its violation of the California Voting Rights Act of 2001 (hereinafter the "CVRA"),  
7 Cal. Elec. Code § 14025 *et seq.* ABC's at-large method of election of its Board of Trustees ("Board")  
8 has resulted in vote dilution for Latino/a residents and has denied them effective political participation  
9 in elections to the Board. ABC's at-large method of election for electing members to its Board of  
10 Trustees prevents Latino/a residents from electing candidates of their choice or influencing the  
11 outcome of Board elections.

12 2. The effects of ABC's at-large method of election are apparent and compelling. Despite  
13 a Latino/a population of approximately 32% in the ABC USD, and a Latino/a California voting age  
14 population of approximately 23%, there are no Latino/a members of the seven member Board of  
15 Trustees at present, and there has been none in over fifteen years. Moreover, during that period, and  
16 previously, Latino/a voters of the ABC USD lacked the ability to elect candidates of their choice to the  
17 Board. The historical and current absence of any Latinos/as on ABC's Board reveals a lack of access  
18 for Latino voters to the political process.

19 3. ABC's at-large method of election violates the CVRA.

20 4. Plaintiffs bring this action to enjoin ABC's continued abridgment of Latino voting  
21 rights. Plaintiffs seek a declaration from this Court that the at-large method of election currently used  
22 by ABC violates the CVRA. Plaintiffs seek injunctive relief enjoining ABC from further imposing or  
23 applying its current at-large method of election. Further, Plaintiffs seek injunctive relief requiring the  
24 ABC to design and implement district-based elections or other alternative relief tailored to remedy the  
25 ABC's violation of the CVRA.

26 **PARTIES**

27 5. Plaintiff Olga Rios is a registered voter residing in the City of Lakewood, California,  
28 within the ABC USD, and is eligible to vote, and has voted, in the ABC USD Board elections.

1 Plaintiff Rios is Latina and is a member of a protected class under the CVRA. (Cal. Elec. Code  
2 § 14026).

3 6. Plaintiff Mariana Rios is a registered voter residing in the City of Hawaiian Gardens,  
4 California, within the ABC USD, and is eligible to vote, and has voted, in the ABC USD Board  
5 elections. Plaintiff Rios is Latina and is a member of a protected class under the CVRA. (Cal. Elec.  
6 Code § 14026).

7 7. Plaintiff Thomas Chavez is a registered voter residing in the City of Norwalk,  
8 California, within the ABC USD, and is eligible to vote, and has voted, in the ABC USD Board  
9 elections. Plaintiff Chavez is Latino and is a member of a protected class under the CVRA. (Cal.  
10 Elec. Code § 14026).

11 8. Defendant ABC USD is a political subdivision within the State of California, governed  
12 by an elected Board of Trustees, and is subject to the CVRA.

### 13 JURISDICTION

14 9. This Court has jurisdiction over Plaintiffs' claims for declaratory and injunctive relief  
15 under the CVRA. Cal. Elec. Code § 14032.

### 16 VENUE

17 10. Venue as to Defendant is proper in the County of Los Angeles. Defendant is situated in  
18 the County of Los Angeles, where Plaintiffs reside and where violations of the CVRA have and, unless  
19 enjoined, will continue to occur. Cal. Civil Proc. Code § 395(a).

### 20 FACTS

21 11. ABC USD is located in the southeastern part of Los Angeles County. It includes the  
22 Cities of Artesia, Cerritos, Hawaiian Gardens, and portions of Lakewood, Long Beach, and Norwalk.

23 12. The population of the ABC USD area is 105,316 according to the 2011 Census. The  
24 Hispanic/Latino population is approximately 32% of that total. The Latino citizen voting age  
25 population ("CVAP") is approximately 23% of the total CVAP.

26 13. The Latino/a population located within ABC USD is geographically concentrated and  
27 compact.

1           14.     ABC includes nineteen elementary schools, five middle schools, four comprehensive  
2 high schools, a college prep 7-12 school, a continuation high school, infant/children centers, extended-  
3 day care, and adult school.

4           15.     ABC USD is governed by a seven member Board of Education.

5           16.     Members of the ABC USD Board are elected pursuant to an at-large method of election.  
6 Under this method of election, all of the eligible voters of the entire ABC USD elect members to the  
7 Board. Candidates are not required to reside in any particular portion or zone of the District. In turn,  
8 any eligible voter may vote for any candidate, regardless of where the voter resides.

9           17.     Board elections are held every other year, in November of odd-numbered years. The  
10 terms are staggered such that one half of the members (i.e., three or four) are elected in each odd-  
11 numbered year. The terms are normally for four years.

12           18.     There are no Latino/a members of the Board of Trustees at present, and have been none  
13 since the mid-1990s. There has never been more than one Latino/a member of the Board at any time in  
14 at least the past two decades. All seven of the current Board members reside in the city of Cerritos;  
15 none of the current Board members reside in any of the other five cities that lie wholly or partly within  
16 the District.

17           19.     Elections conducted within the ABC USD are characterized by racially polarized  
18 voting. Racially polarized voting occurs when members of a protected class as defined by the CVRA,  
19 Cal. Elec. Code § 14026(d), vote for candidates and electoral choices that are different from the rest of  
20 the electorate. Racially polarized voting exists within the ABC USD because there is a difference  
21 between the choices of candidates or other electoral choices that are preferred by Latino/a voters and  
22 the choices of candidates or other electoral choices that are preferred by voters in the rest of the  
23 electorate.

24           20.     Racially polarized voting consists both of voter cohesion on the part of Latino/a voters  
25 and of bloc voting by the non-Latino electorate against the choices of Latino/a voters. Such polarized  
26 voting is legally significant in the ABC Board elections because it dilutes the opportunity of Latino/a  
27 voters to elect candidates of their choice.

28

1           21.     Patterns of racially polarized voting impede opportunities for Latino voters to elect  
2 candidates of their choice to the at-large Board positions in the ABC USD, where the non-Latino  
3 majority dominates elections. Racially polarized voting patterns have regularly occurred in ABC  
4 USD elections since at least the 1990s, and can be observed in analysis of the voting for and against  
5 the Latino/a candidates for the Board during that period, thereby harming Latino/a voters. In addition,  
6 racially polarized voting has occurred in the ABC USD area in elections for statewide elective office,  
7 in which there were one or more Latino/a candidates, further demonstrating the prevalence of racially  
8 polarized voting patterns in the ABC USD electorate.

9           22.     The at-large method of election and repeated racially polarized voting has caused Latino  
10 vote dilution within the ABC USD. Where Latinos and the rest of the electorate express different  
11 preferences on candidates and other electoral choices, non-Latino voters, by virtue of their overall  
12 numerical supermajority among eligible voters, defeat the preferences of Latino/a voters.

13           23.     The obstacles posed by the ABC USD's at-large method of election, together with  
14 racially polarized voting, impair the ability of Latino/a voters to elect candidates of their choice or to  
15 influence the outcome of elections conducted in the ABC USD.

16           24.     An alternative lawful method of election, specifically, district-based elections, would  
17 provide an opportunity for the members of the protected class as defined by the CVRA to elect  
18 candidates of their choice or to influence the outcome of the ABC USD Board elections.

19           25.     On June 24, 2011, Plaintiffs' counsel sent the then-President of the Board, Maynard  
20 Law, and the then-Superintendent, Dr. Gary Smuts, a letter, informing them that, based on Plaintiffs'  
21 investigation, the ABC USD's at-large election system violated the CVRA, and demanding that the  
22 ABC change from at-large to district-based elections. A copy of that letter is attached as Exhibit A to  
23 this Complaint. Subsequently, the ABC USD responded to the demand letter. That response letter was  
24 styled as a privileged and confidential settlement from an attorney for Defendant to Plaintiffs' counsel.

25           26.     However, on January 12, 2012, Dr. Smuts released an open letter addressed to the  
26 "ABC Community," in which he publicly disclosed the results of a "demographic study" in the form of  
27 an Executive Summary which purportedly "assess[ed] whether the [ABC] District's at-large election  
28 methodology has produced results inconsistent with the California Voting Rights Act, and if so

1 whether the District must change to a methodology where voters in a particular ward or area elect a  
2 candidate who resides in that particular area.” The Executive Summary concluded that “changing  
3 election methodologies is not required by the CVRA.”

4 27. Following the public release of the Executive Summary and ABC’s rejection of  
5 Plaintiffs’ counsel’s demand that ABC change its election system, Plaintiffs and others in the ABC  
6 USD community continued to advocate for conversion from the at-large to a district election system.  
7 Their advocacy efforts included obtaining and submitting to the Board a number of statements by  
8 elected officials in the ABC and nearby areas, as well as community organizations and individual  
9 constituents, that the present at-large system discriminates against and dilutes minority voters’ rights  
10 and fails to represent fairly all geographical and racial/ethnic portions of the community, and should be  
11 changed to a district election system.

12 28. On January 16, 2013, ABC USD responded to continued community concerns raised by  
13 Plaintiffs and others that the at-large system violated the CVRA, in the form of a letter from ABC’s  
14 Superintendent, Dr. Mary Sieu, to Charles Ara, one of the principle advocates in favor of the change in  
15 the election system. In that response, ABC USD relied on the previous investigation done in response  
16 to Plaintiffs’ counsel’s letter and reiterated its opinion that ABC USD had not violated the CVRA and  
17 would not change its at-large election system. A copy of Dr. Sieu’s letter is attached as Exhibit B to  
18 this Complaint.

19 29. Following the public rejection of Plaintiffs’ and others’ advocacy efforts directed at  
20 obtaining a voluntary change in the election system, Plaintiffs have determined that only litigation  
21 could bring about compliance by ABC USD. Unless enjoined from proceeding with at-large elections  
22 to the Board, Defendant will conduct its future elections under the unlawful at-large election system.

23 **FIRST CAUSE OF ACTION**  
24 **(Violation of California Voting Rights Act of 2001,**  
25 **Cal. Elec. Code § 14025 et seq.)**

26 30. Plaintiffs refer to and incorporate paragraphs 1 to 29 as thoughtfully set forth herein.

27 31. Defendant’s use of an at-large system of elections for the election of its Board violates  
28 the California Voting Rights Act. Cal. Elec. Code §§ 14027-14028.

1 32. The Court is authorized to provide appropriate remedies for Defendant's violation of the  
2 California Voting Rights Act. Cal. Elec. Code § 14029.

3 33. An actual controversy has arisen and now exists between the parties relating to the legal  
4 rights and duties of all Plaintiffs and the Defendant, for which Plaintiffs desire a declaration of rights.

5 34. Defendant's wrongful conduct has caused and, unless enjoined by this Court, will  
6 continue to cause immediate and irreparable injury to Plaintiffs. In particular, unless enjoined by this  
7 Court, Defendant will hold elections for Trustees of the Board in November 2013 using an unlawful at-  
8 large election system.

9 35. Plaintiffs have no adequate remedy at law for the injuries they currently suffer and will  
10 otherwise continue to suffer.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs ask this Court to:

13 1. Find and declare that the ABC USD's current at-large method of election for the Board  
14 violates the CVRA, and that adoption of an election system using single member districts is required  
15 by the CVRA;

16 2. Grant preliminary and permanent injunctive relief against ABC USD from imposing or  
17 applying its current at-large method of election;

18 3. Grant injunctive relief mandating the ABC USD to design and implement district-based  
19 elections, as defined by the CVRA (Cal. Elec. Code § 14026), and/or other alternative relief tailored to  
20 remedy ABC USD's violation of the CVRA;

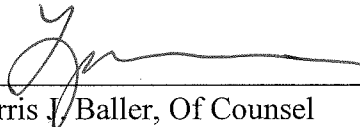
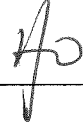
21 4. Grant Plaintiffs attorneys' fees and costs of litigation pursuant to the CVRA, California  
22 Elections Code § 14030, California Code of Civil Procedure § 1021.5 and/or other applicable law; and,

23 5. Grant Plaintiffs such further relief as the Court deems just and proper.

24 Dated: April 10, 2013

Respectfully submitted,

25 GOLDSTEIN, BORGAN, DARDARIAN & HO

26  
27   
28   
\_\_\_\_\_  
Morris J. Baller, Of Counsel  
Laura L. Ho

# **EXHIBIT A**



# GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN

A PROFESSIONAL CORPORATION

OF COUNSEL:  
BARRY GOLDSTEIN

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OAKLAND, CALIFORNIA 94612-3536  
WWW.GDBLEGAL.COM

TELEPHONE: 510/763-9800  
FACSIMILE: 510/835-1417

June 24, 2011

Via Federal Express

Mr. Maynard Law  
President, Board of Education  
ABC Unified School District  
16700 Norwalk Blvd.  
Cerritos, CA 90703

Dr. Gary Smuts  
Superintendent, ABC Unified School District  
16700 Norwalk Blvd.  
Cerritos, CA 90703

Re: Demand for compliance with California Voting Rights Act

Dear Mr. Law and Dr. Smuts:

We have received complaints from Latino citizens and voters of the ABC Unified School District that the use of an at-large election system for the election of candidates to the Board of Education in your jurisdiction results in minority vote dilution and prevents minority voters from electing candidates of their choice or influencing the results of elections. Upon those complaints, we have investigated demographic and electoral information for your jurisdiction with particular attention to the prohibitions of the California Voting Rights Act ("CVRA") of 2001. Based on that investigation, we believe that ABC USD's at-large election system violates the CVRA and must be changed to a district election system.

The CVRA, which is a part of the California Elections Code, states in relevant part:

§ 14027. [A]n 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 or abridgement of the rights and privileges of members of a protected class.

Latino residents of ABC USD are of course such a "protected class," and we believe that the at-large election system does result in dilution of their voting rights. Our analysis of population data from census figures reported shows that over 30% of the population of the District is Latino. However, none of the five current members of the Board of Education is Latino. Our review of membership and election records indicates that there has been only one Latino member of the Board in the past fifteen years –and that individual was elected nearly 15 years ago, in 1997. Several other Latino candidates have run unsuccessfully for election since

then, but the number of such candidates has been limited by the perception that under the at-large election system as it operates in the District, Latinos have little or no chance of being elected. Based on our review of election returns and demographic information, we believe that the lack of success of Latinos in gaining election and of Latino voters in selecting candidates of their choice results from racially polarized voting by the ABC Unified School District electorate.

The CVRA defines racially polarized voting is “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). The CVRA further specifies that racially polarized voting is determined by examining the results of elections in which “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 a protected class.” *Id.* § 14208(a)-(b). We have followed that method in concluding that racially polarized voting exists in the ABC USD. Demonstration of minority vote dilution due to racially polarized voting under an at-large election system is sufficient to prove a violation of the CVRA.

There cannot be any doubt that the CVRA imposes constraints on the District in its choice of election system, in light of the facts summarized above. The constitutionality of the CVRA has been upheld by the California Court of Appeal in a case brought by one of the undersigned attorneys, and both the California Supreme Court and the United States Supreme Court declined to review that decision. *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660 (2006), *review denied*, 2007 Cal. LEXIS 2772 (Cal. March 21, 2007) (No. S149500), *cert. denied* 552 U.S. 974 (2007). A number of jurisdictions, including the Merced Union High School District, Merced City School District, Visalia Unified School District, Fresno Unified School District, and State Center Community College District, have recently abandoned at-large systems and adopted district election plans when they were required to review their election systems in light of demands similar to this one. Other jurisdictions, including the City of Modesto, Madera Unified School District, and Hanford Joint Union High School District, agreed to convert to district election systems after they were sued by Latino citizens represented by one of the undersigned or his colleagues. Still other jurisdictions, including the City of Tulare and Tulare Local Healthcare District, are moving in the direction of district elections as a result of litigation although their transition is not yet completed.

In light of the lack of Latino representation and the inability of Latino voters to select candidates of their choice and to influence the outcome of elections, in violation of the California Voting Rights Act, and in the context of racially polarized voting as occurs in ABC USD's elections, we demand that the District change from at-large to district elections.

We request your response to this demand by August 1, 2011. In the absence of a satisfactory response, we and our clients will be forced to consider seeking judicial relief in the form of an action to obtain an order changing the election system from at-large to district, together with other relief provided for in the CVRA including awards of litigation and expert witness costs, and attorneys' fees.

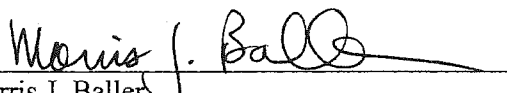
Mr. Maynard Law  
Dr. Gary Smuts

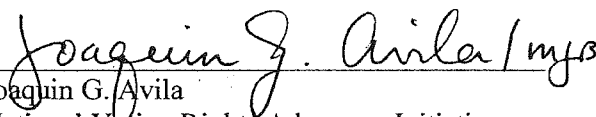
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June 24, 2011

We would be pleased to discuss the subject of this letter with you should you believe such discussion would be productive.

Sincerely yours,

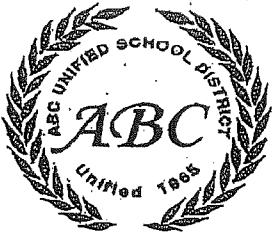
  
\_\_\_\_\_  
Morris J. Baller  
Goldstein, Demchak, Baller, Borgen & Dardarian

  
\_\_\_\_\_  
Joaquin G. Avila  
National Voting Rights Advocacy Initiative

MJB/jvd

cc: Armin Reyes, Vice President (via U.S. mail)  
Olympia Chen, Clerk (via U.S. mail)  
James Kang, Member (via U.S. mail)  
Celia Spitzer, Member (via U.S. mail)  
Sophia Tse, Member (via U.S. mail)

# **EXHIBIT B**



# ABC Unified School District

16700 Norwalk Boulevard, Cerritos, CA 90703 (562) 926-5566

## BOARD OF EDUCATION

Olympia Chen • Lynda Johnson  
James Kang • Maynard Law • Armin Reyes  
Celia Spitzer • Sophia Tse

**Superintendent**  
**Dr. Mary Sien**

January 16, 2013

Charlie Ara  
11215 Park St  
Cerritos, CA 90703

Dear Mr. Ara,

This letter is in response to your letter dated December 30, 2012. We received the letter and package following our winter break on January 7. The letter and attachments were also provided to all the Board Members. We are well aware that some members of our community believe that the District's reliance on at-large elections, as opposed to elections by trustee area, are inconsistent with the California Voting Rights Act. We have carefully considered this concern and have no reason to believe that the continued reliance on at-large elections in the District is not lawful. At-large elections have assured a high quality education for all students served by the ABC Unified School District precisely because each Board member represents the entire District and no Board member has a specific constituency he or she must seek to please in order assure his or her reelection.

In order to determine whether the rights of groups protected by the California Voting Rights Act and Federal Voting Rights Act were being denied by the District's longstanding use of at-large elections, we asked our attorneys, who are widely respected in the area of election law, to assess our potential liability under the CVRA. Our attorneys in turn utilized expert demographers who are familiar with the area served by the District to assist in analyzing District election results. In the Fall of 2011, the demographers studied the District's elections back to 1981, and completed a full statistical analysis of the 2003, 2005, 2007, and 2009 trustee elections. The demographers also looked at statewide elections, as well as elections in cities that are either entirely or partly within the District, and at the Cerritos Community College District elections because its territory includes portions of the ABCUSD.

Voting in ABCUSD elections shows people making choices based on factors other than race or ethnicity. The effort to change the District's election methodology falls into the category of trying to fix things that are not broken, and causing the expenditure of public dollars for matters unrelated to providing quality education to children. Members of groups protected by the Federal and State Voting Rights Acts have run for the ABCUSD Board and have often won seats. A copy of the Executive Summary of the study is attached to this letter.

While we firmly believe our election methodology fully complies with both State and Federal law, we remain prepared to cooperate with agencies who wish to further assess our compliance with applicable laws.

Sincerely,

  
Dr. Mary Sien  
Superintendent

Enclosure



# ABC Unified School District

16700 Norwalk Boulevard, Cerritos, CA 90703 (562) 926-5566

## BOARD OF EDUCATION

Olympia Chen • Lynda Johnson  
James Kang • Maynard Law • Armin Reyes  
Celia Spitzer • Sophia Tse

Superintendent  
Dr. Mary Sien

January 10, 2012

### EXECUTIVE SUMMARY

We have asked legal counsel to assess whether the District's at-large election methodology has produced results inconsistent with the California Voting Rights Act, and if so whether the District must change to a methodology where voters in a particular ward or area elect a candidate who resides in that particular area. Our conclusion is that changing election methodologies is not required by the CVRA, and, from an educational perspective, such a change would not be the right thing for our students. Trying to change the District's election methodology falls into the category of trying to fix things that are not broken, and causing the expenditure of public dollars for matters unrelated to providing quality education to children.

Throughout its history the District's Board members have been voted upon by all citizens of the District, and, therefore, must represent the interests of the entire community, and not any particular, ward, city or neighborhood. By holding our elections at-large, rather than by trustee area our District has been able to maintain the quality of the education provided to all of the children in the District, despite challenging economic times. Irrespective of how any individual or group might choose to assess the District's success, when compared to similar Districts, our Board has provided the leadership necessary to maintain this District's high ranking among all districts in the State

Voting in ABC USD elections shows people making choices based on factors other than the race or ethnicity of the candidates. The effort to change the District's election methodology would require the expenditure of public dollars for matters unrelated to providing quality education to children. In our diverse community, members of groups protected by the Federal and State Voting Rights Acts have run for the ABC USD Board and have often won seats. Our voters have done an outstanding job of selecting Board members not based on their race or ethnicity but on the qualifications and character of their candidates.

Our conclusions are not based on speculation or political considerations, they are based on hard statistical evidence as determined by expert demographers. Although the population of the District is ethnically diverse, the District's election results do not suggest that voting is polarized along ethnic or racial lines. ABC represents what our Constitution envisioned. That is, an electorate that selects representatives based on the content of the candidates character and qualifications, and not the color of the candidate's skin. Creating trustee areas that emphasize ethnicity might be considered a giant step backward. ABC should be a model of what is the ideal. The statistical evidence certainly does not indicate anything otherwise.