

Shareholders  
Linda M. Dardarian  
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Of Counsel  
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Morris J. Baller

October 2, 2018

**Certified Mail, Return Receipt Requested**

City of Sunnyvale  
City Clerk  
603 All America Way  
Sunnyvale, CA 94088-3707

Re: Notice of California Voting Rights Act Violation

Dear City Clerk:

We represent Sunnyvale resident and voter Samir Kalra. On behalf of Mr. Kalra and other Asian American Sunnyvale voters, we write to inform the City of Sunnyvale ("City") that the City's at-large method for electing members of the seven-seat City Council violates the California Voting Rights Act ("CVRA") due to racially polarized voting, which has diluted the voting power of Asian American voters.

The CVRA states, in pertinent part:

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 or abridgment of the rights of voters who are members of a protected class.

Cal. Elec. Code § 14027. Asian American voters are a "protected class" within the meaning of the CVRA. *See* Cal. Elec. Code § 14026; Office of Management & Budget, Revisions to the Standards for the Classification of Federal Data on Race & Ethnicity, 62 Fed. Reg. 58782, 58789 (Oct. 30, 1997).

Asians and Asian Americans are approximately 43.3% of the City's total population<sup>1</sup> and about 30.8% of the City's eligible voters<sup>2</sup> (*i.e.* citizen voting age population), yet all seven current City Councilmembers are White.

We believe that this lack of representation is attributable to the City's at-large election system. In at-large elections with numbered-posts, a voting majority can prevent a voting minority from electing its preferred candidates onto every single seat of a governing body. Indeed, in Sunnyvale, there have been few Asian Americans elected into the seven Council offices despite forming the plurality of residents and almost a third of eligible voters. In the last

<sup>1</sup> According to the 2012-2016 American Community Survey 5-year Estimates.

<sup>2</sup> According to the 2011-2015 American Community Survey 5-year Estimates. Approximately 49% of the City's eligible voters are White.

ten years, no Asian American has been elected onto the City Council. In Sunnyvale's history, only two Asian American candidates, Otto Lee and Dean Chu, have been elected onto the Council.

A CVRA violation is established if it is shown that racially polarized voting occurs. Cal. Elec. Code § 14028. Racially polarized voting is defined as “voting in which there is a difference . . . in the choice of candidates or other electoral choices that are preferred by voters in the rest of the electorate.” Cal. Elec. Code § 14026(e). The CVRA instructs that racially polarized voting can be determined by looking at the results of elections “in which at least one candidate is a member of a protected class.” Cal. Elec. Code § 14028(b).

A review of elections in Sunnyvale confirms that Asian Americans are nearly always unsuccessful in contested elections for City Council seats. Most recently, in 2011 candidate Bo Chang ran for Seat 5 and lost against Pat Meyering, while candidate Maria Pan came in third in her race for Seat 7. In 2007, candidate Dean Chu ran for Seat 4 and lost to David Witthum, while Otto Lee ran unopposed for Seat 5.

We believe that Asian American candidates have been effectively prevented from occupying seats on the City Council because of the City's use of at-large elections with numbered posts in combination with racially polarized voting patterns. We also believe that the existence of these racially polarized voting patterns can be demonstrated, based on election results for the City Council and other elections in which Sunnyvale residents voted. Based on these voting patterns and the dilution of Asian American votes, we believe the City must change its election system to better reflect the choices of the Asian American electorate.

We have extensive experience representing voters in other jurisdictions across California on challenges to at-large election systems and engaging and educating the public in districting and redistricting processes. Goldstein, Borgen, Dardarian & Ho (“GBDH”) is a civil rights law firm based out of Oakland, California with expertise in class action and complex litigation. GBDH has successfully litigated and/or resolved CVRA cases against other charter cities, including Palmdale, Anaheim, and Santa Clara.

For over forty years, Asian Law Alliance (“ALA”) has helped tens of thousands of Asian/Pacific Islanders in the South Bay in obtaining decent housing, justice in the immigration process, and access to basic human and legal rights. ALA and GBDH worked together to successfully challenge the City of Santa Clara's at-large election system and replace it with single-member districts.

Asian Americans Advancing Justice – Asian Law Caucus (“Advancing Justice – ALC”) is the nation's first legal and civil rights organization serving low-income Asian Pacific American communities. Advancing Justice – ALC has worked with California cities transitioning to district elections, and their residents, to implement best practices for maximizing public participation in districting hearings and to educate and engage community members. Advancing Justice – ALC has recently played this role in Fremont and South San Francisco and intends to play this role in Redwood City's upcoming shift to district elections. Advancing Justice – ALC also helped successfully litigate and resolve a CVRA case against the County of San Mateo.

We commend the City for initiating steps to consider alternatives to at-large elections. If done with careful consideration of the impact on the City's voters and with robust public input, changing the City's election system without litigation could save the City the expense of a long, drawn-out court fight. We invite a discussion of potential remedies appropriate for the City of Sunnyvale, including single-member districts. We are open to a stipulation to extend the safe harbor deadlines in Elections Code section 10010(e) and, to make as much time for community education and engagement as possible, we are open to signing such a stipulation before AB 2123 takes effect in January 2019 and limits stipulated extensions to 90 additional days. Please contact us at your earliest convenience.

Sincerely,



Laura L. Ho  
Ginger L. Grimes  
GOLDSTEIN, BORGEN, DARDARIAN & HO

Richard Konda  
ASIAN LAW ALLIANCE

Jonathan Stein  
ASIAN AMERICANS ADVANCING JUSTICE --  
ASIAN LAW CAUCUS

LLH/kbm

cc: Office of the City Clerk  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

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Sunnyvale, CA 94086

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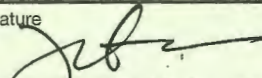
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1. Article Addressed to:

City of Sunnyvale  
attn: City Clerk  
603 All America Way  
Sunnyvale, CA  
94088-3707

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