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November 19, 2024

Certified Mail, Return Receipt Requested

Kelly Clancy
City Clerk
Office of the City Clerk, City of San Leandro
835 E 14th Street
San Leandro, CA 94577

Re: Notice of California Voting Rights Act Violation

Dear City Clerk Clancy:

Goldstein, Borgen, Dardarian & Ho (“GBDH”) represents Robert Bulatao, a resident of and registered voter in the City of San Leandro (“City”). On behalf of our client, we write to inform the City that its at-large method of electing members to its City Council violates the California Voting Rights Act (“CVRA”) and has diluted the voting power of Asian American voters. The City must thus promptly remedy those violations.

I. The City’s use of at-large elections impairs Asian American voters’ ability to elect candidates of their choice.

The CVRA prohibits at-large elections where they impair “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 the abridgment of the rights of voters who are members of a protected class.” Cal. Elec. Code § 14027. An election system that uses a combination of at-large elections and district-based elections, like the City’s from-district system, is considered an “at-large method of election” for purposes of the CVRA. Cal. Elec. Code § 14026(a); *see* Charter of the City of San Leandro §§ 215, 220, 225. Asian American voters are a protected class within the meaning of the CVRA. *See* Cal. Elec. Code § 14026(d); 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); *see, e.g., Yumori-Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385 (2020) (affirming trial court decision finding Santa Clara’s at-large election system violated CVRA as to Asian American voters).

Asians and Asian Americans are approximately 35.9% of the residents in the City of San Leandro. Even though one-third of the City’s residents are Asian or Asian American, only one current member of the seven-member Council is Asian American and only two Asian American candidates have ever been elected to the City Council (Xouhoa Bowen and Benny Lee).

The at-large method of election for city council seats is an obstacle for Asian American candidates running for office and for Asian American voters to elect candidates of their choice.

The cost of campaigning in at-large elections is much higher than district-based elections – in a pure by-district election, candidates knock on fewer doors and spend less on campaign mailers. District elections are therefore more accessible to candidates whose donor and voting base is less socioeconomically advantaged. Asian American candidates have experienced these fiscal burdens, as well as the costs of vying for the votes citywide instead of representing the interests of the Asian American community.

The City’s use of ranked-choice voting (“RCV”) in City Council elections for each council seat does not mitigate the dilutive effect of at-large elections. While RCV can help minority voting groups elect candidates of their choice by lowering the threshold of election, such anti-dilutive effects occur in multi-seat elections, not single-member districts. *See* Proportional Ranked Choice Voting, <https://fairvote.org/our-reforms/proportional-ranked-choice-voting/>. The City’s website indicates that the City transitioned to RCV to avoid holding runoff elections where no candidate passed the 50% threshold for election, rather than to empower voting minorities within the City.¹

II. The City’s electoral history shows that Asian American candidates are usually defeated in contested elections.

A CVRA violation is established if racially polarized voting occurs in elections and there is some other alternative system that would give a protected class the ability to elect candidates of its choice or influence the outcomes of elections. Cal. Elec. Code §§ 14027, 14028(1); *Pico Neighborhood Ass’n v. City of Santa Monica*, 15 Cal. 5th 292, 307-08 (2023). 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.” 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 San Leandro’s recent election results confirms that Asian American candidates running in at-large elections are usually unsuccessful in contested races. In the most recent election,² Robert Bulatao lost the race for district 6 to Dylan Boldt. In 2022, Kenneth Pon lost in District 1, while Xouhoa Bown narrowly won by 32 votes in District 5. In 2018, Benny Lee lost in his bid for Mayor and Kenneth Pon lost in District 1. In 2016, Benny Lee won, but he ran in an uncontested election as an incumbent in District 4. In 2014, Kenneth Pon lost in District 1. In 2012, Benny Lee won in District 4 with 50.09% of the vote, while Hermy Almonte lost in District 6. While Asian American candidates have been able to eke out a couple narrow wins in contested elections in the last 12 years, the electoral history of San Leandro City Council elections is clear: Asian American candidates are usually defeated in at-large elections.

¹ *See* Ranked Choice Voting, <https://www.sanleandro.org/209/Ranked-Choice-Voting>.

² We recognize that the Alameda County Registrar of Voters has not yet certified the election results for this election.

Additionally, when vacancies have occurred, the Council has declined to appoint Asian Americans to these open seats, the most recent example occurring earlier this year after the District 1 Councilmember vacated her seat. *See Yumori Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385 (2020) (affirming trial court's liability findings where the evidence showed political exclusion, among other things, by way of the fact that Santa Clara City Councilmembers and Mayors rarely publicly endorsed Asian American candidates). The Council has also failed to ensure that the City's commissions, which often act as a feeder to elected office, are demographically representative of the City. Mr. Bulatao, for example, has applied for commissions on parks, police oversight, and arts & libraries and has never been appointed.

III. Asian American voters in the City of San Leandro are represented by Mr. Bulatao and experienced counsel.

Our client Robert Bulatao is a Filipino resident and registered voter in San Leandro. He is a father to children who attend public schools in San Leandro and is active on the PTO, as well as local political organizations, particularly in police accountability and healthcare/disability advocacy. Mr. Bulatao ran for District 6 in the November 2024 election and lost. His opponent raised about \$100,000 more in campaign funds than Mr. Bulatao.

GBDH has 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. 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 jurisdictions, including the cities of Palmdale, Anaheim, Santa Clara, Sunnyvale, Bellflower, and Cypress, school districts like ABC Unified, and special districts like AC Transit. GBDH also served as appellate counsel for Plaintiffs on their CVRA claim against the City of Santa Monica, which resulted in the California Supreme Court's affirmation of voting rights in *Pico Neighborhood Ass'n v. City of Santa Monica*, 15 Cal. 5th 292 (2023), and now as trial counsel on remand from the appellate courts.

We hope that the City of San Leandro carefully considers remedying its CVRA violation, including by transitioning fully to single-member districts. We recognize that the City went through a redistricting process recently following its receipt of 2020 Census data, and two of the City's six Council districts are majority or near-majority Asian American. We are open to a discussion with you about whether the City's existing six-district map with an at-large mayor could be sufficient to remedy its CVRA violation. Please contact us at your earliest convenience.

Sincerely,



Ginger L. Grimes (she/her)

GLG/kbm