

October 22, 2015

**VIA E-MAIL AND FIRST CLASS MAIL**

Mark S. Rosen, Esq.  
Attorney at Law  
600 W. Santa Ana Blvd., Suite 814  
Santa Ana, CA 92701

Re: Montoya v. City of Garden Grove, OCSC Case No. 30-2015-00799522

Dear Mark,

I am in receipt of your letter dated October 6, 2015, and have had a chance to review it. The first part of the letter requested various documents under the California Public Records Act, which records will be provided to you by the City Clerk. Note that the City does not have records responsive to categories 5 and 6 of your letter.

As to the second part of your letter, objecting to the settlement of the above-referenced litigation, particularly with respect to the elimination of the at-large election of the City's mayor, I find it difficult to agree with your analysis as it pertains to the subject litigation and the California Voting Rights Act for the following reasons.

Elections Code section 14027 prohibits a political subdivision of the State, such as the City, from employing an at-large method of election 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. Elections Code section 14028(a) provides that a violation is established if it is shown 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. Elections Code 14026(a)(3) provides that an "at-large" method of election is not solely a system in which the voters of the entire jurisdiction elect the members of the governing body, but includes one which combines at-large elections with district-based elections. As indicated in your letter, your client, the Garden Grove Neighborhood Association (GGNA) seeks to have the City Council change the settlement agreement approved by the parties such that the court's judgment provide that the election of the mayor remain at-large while the other members of the City Council are elected by-district. Note that under the California Voting Rights Act, such a hybrid elections system is still an "at-large" election system under Elections Code 14026(a)(3), subject to court's broad authority to enjoin under Elections Code section 14029 ("Upon a finding of a violation ... the court shall implement appropriate remedies, including the imposition of district-based elections, ...). In the subject litigation, the plaintiff has

challenged the City's current at-large method of election of both the Mayor and the other members of the City Council.

Additionally, the elective mayor position in Garden Grove was not established pursuant to an initiative measure circulated by the voters pursuant to Elections Code section 9217, nor by ordinance approved by the voters, but by a question posed by the City Council to the voters in accordance with the Government Code at a time when members of the Council were not unanimous as to the selection of a mayor amongst themselves. This fact differentiates the cases you cited in your letter. Furthermore, the cases you cited will most likely be summarily dismissed by a court following the opinion of the court in *Jauregui v. City of Palmdale*, (2014) 226 Cal. App.4<sup>th</sup> 781. In *Jauregui*, the court held that the California Voting Rights Act expressly authorized the court in that case to enjoin the city clerk from certifying the election despite provisions of the Code of Civil Procedure and Civil Code that otherwise expressly prohibit the issuance of an injunction to prevent the execution of a public statute by officers of the law for the public benefit. The *Jauregui* court reasoned,

“To begin with, section 14029 is a later enacted and more specific injunctive relief provision than Code of Civil Procedure section 526, subdivision (b)(4) and Civil Code section 3423, subdivision (d). Under these circumstances, the more specific and later enacted statute, section 14029, ordinarily must be enforced. ... The Legislature intended to provide a broader basis for relief from vote dilution than available under the federal Voting Rights Act. ... It would be inconsistent with the evident legislative intent to expand protections against vote dilution to narrowly limit the scope of preliminary injunctive relief as defendant asserts. Logically, the appropriate remedies language in section 14029 extends to pre-election order of the type approved under the federal Voting Rights Act. In cases subject to the federal Voting Rights Act, courts have upheld orders enjoining an election in preclearance cases. ... Finally, as noted, remedial legislation is to be liberally or broadly construed. Sections 14025 through 14032 in general and section 14029 specifically fall within the definition of remedial legislation.” *Id.* at 806-807.

Federal courts under the federal Voting Rights Act have ordered the elimination of at-large elected mayors.

Finally, to the extent your client seeks a trial on the merits prior to the court ordering the elimination of the at-large election system for the City's Mayor, please consider that section 14030 of the Elections Code requires the court to order the payment of attorney's fees and litigation expenses, including expert witness fees and costs, to a prevailing plaintiff. The City of Palmdale in the *Jauregui* litigation ultimately paid the plaintiff's attorneys \$4.5 million in attorney's fees, after settling the matter and dismissing the various appeals that were pending in that litigation. In our case, the litigation costs would likely be substantial, and the prospects of the City prevailing at trial are minimized by the fact that the City has had a relatively large

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population of Latinos, and no Latino has been elected Mayor in the history of the City, despite Latinos having run for that office in many of the past elections.

Please do not hesitate to contact me should you wish to discuss this matter further.

Sincerely,

WOODRUFF, SPRADLIN & SMART  
A Professional Corporation

A handwritten signature in cursive script that reads "Omar Sandoval". The signature is written in black ink and is positioned above a horizontal line.

OMAR SANDOVAL  
City of Garden Grove  
City Attorney

cc: Scott C. Stiles, City Manager  
Kathy Bailor, City Clerk