

**SAN JUAN WATER DISTRICT
SPECIAL BOARD MEETING AGENDA**

April 7, 2020

4:00 p.m.

**9935 Auburn Folsom Road
Granite Bay, CA 95746**

In accordance with the California Department of Public Health's and the Governor's Executive Orders N-29-20 and N-33-20, the District's boardroom is closed and this meeting will take place solely by videoconference and teleconference. The public is invited to listen, observe, and provide comments during the meeting by either method provided for below. The Board President will call for public comment on each agenda at the appropriate time and all votes will be taken by roll call.

For members of the public interested in viewing and having the ability to comment at the public meeting via GoToMeeting, an internet enabled computer equipped with a microphone and speaker or a mobile device with a data plan is required. Use of a webcam is optional. You also may call in to the meeting using teleconference without video. Please use the following login information for videoconferencing or teleconferencing:

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*****Important Notice: The public conference lines will be terminated when the Board adjourns into closed session. Members of the public who would like to receive the report out from closed session and time of adjournment from closed session into open session and adjournment of the meeting should provide their name and an email address to the District's Board Secretary, Teri Grant, at: tgrant@sjwd.org, before or during the meeting. No other business will be conducted after the Board adjourns from closed session into open session. The Secretary will email the written report to all persons timely requesting this information promptly after the meeting.**

The Board may take action on any item on the agenda, including items listed on the agenda as information items. The Board may add an item to the agenda (1) upon a determination by at least three Board members that an emergency situation exists, or (2) upon a determination by at least four Board members (or by three Board members if there are only three Board members present) that the need to take action became apparent after the agenda was posted.

The public may address the Board concerning an agenda item either before or during the Board's consideration of that agenda item. Public comment on items within the jurisdiction of the Board is welcome, subject to reasonable time limitations for each speaker. Upon request, agenda items may be moved up to accommodate those in attendance wishing to address that item. Please inform the General Manager.

Documents and materials that are related to an open session agenda item that are provided to the District Board less than 72 hours prior to a regular meeting will be made available for public inspection and copying at the District office during normal District business hours.

If you are an individual with a disability and need assistance or accommodation to participate in this Board meeting, please call Teri Grant, Board Secretary, at 916-791-0115, or email Ms. Grant at tgrant@sjwd.org.

Please silence cell phones and refrain from side conversations during the meeting.

I. ROLL CALL

President Costa to call for Closed Session

II. CLOSED SESSION

1. Conference with legal counsel--anticipated litigation; Government Code sections 54954.5(c) and 54956.9(b); significant exposure to litigation involving claim of violation of the California Voting Rights Act asserted by the Southwest Voter Registration Education Project.

III. OPEN SESSION

1. Report from Closed Session

IV. ADJOURN

UPCOMING MEETING DATES

April 22, 2020

May 27, 2020

I declare under penalty of perjury that the foregoing agenda for the April 7, 2020 special meeting of the Board of Directors of San Juan Water District was posted by April 6, 2020, on the outdoor bulletin boards at the District Office Building, 9935 Auburn Folsom Road, Granite Bay, California, and was freely accessible to the public.

Teri Grant, Board Secretary

AGENDA ITEM II-1



28905 Wight Road
Malibu, California 90265
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VIA CERTIFIED MAIL

March 26, 2020

Edward J. Costa, Board President
Paul Helliker – General Manager
Teri Grant – Board Secretary
San Juan Water District
9935 Auburn-Folsom Road
Granite Bay CA 95746

Re: Violation of California Voting Rights Act

I write on behalf of our client, Southwest Voter Registration Education Project and its members residing in the San Juan Water District. The San Juan Water District (“SJWD” or “District”) relies upon an at-large election system for electing candidates to its governing board. Moreover, voting within the District is racially polarized, resulting in minority vote dilution, and therefore SJWD’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 candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare 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.*

SJWD’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 District’s board elections.

As of the 2010 Census, Latinos comprised approximately 13% of the District’s population, and likely a greater proportion today. However, in recent history (at least the past two decades) there appears to have been a complete absence of Latinos on the District’s Board, and that lack of representation continues today. The contrast between the significant Latino proportion of the electorate and the complete absence of Latinos to be elected to the SJWD Board is outwardly disturbing and fundamentally hostile towards participation from members of this protected class.

In light of the District’s underrepresentation of Latinos, it is no wonder why Latino residents do not emerge as candidates. During the past two decades, there seem to have been no Latinos to emerge as candidates for the SJWD Board. Opponents of fair, district-based elections may attempt to attribute the lack of candidates within protected classes to a lack of interest from their respective communities within the District. On the contrary, the virtual absence of Latino candidates reveals vote dilution. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

Where there are no “endogenous” elections involving candidates who are members of the protected class, the analysis under the CVRA necessarily turns to “elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.” *See* Elec. Code § 14028. Typically, Propositions 187, 209 and 227 are analyzed for this purpose in California voting

rights cases. Each of these propositions, though strongly opposed by the Latino community, were supported by the majority non-Hispanic white electorate in SJWD, resulting in their victory within SJWD.

Recently, this underrepresentation has manifested itself in decisions by the SJWD Board. For example, we understand that SJWD recently decided to use two different water sources for its customers – providing the better water to the more-affluent less-Latino portions of SJWD, while refusing to do the same for the less-affluent more-Latino portions of SJWD. This lack of responsiveness to the minority community is exactly what the U.S. Supreme Court cautioned is the inevitable result of at-large elections. (See *Thornburg v. Gingles* (1986) 478 U.S. 30, 48, n. 14 [at-large election system tends to cause elected officials to “ignore [minority] interests without fear of political consequences.”].)

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.

More recently, after a 7-week trial, we also prevailed against the City of Santa Monica, after that city needlessly spent millions of dollars defending its illegal election system – far in excess of what was spent in the Palmdale litigation - taxpayer dollars which could have been more appropriately spent on indispensable municipal services and critical infrastructure improvements. Just prior to the trial in that case, counsel for the City of Santa Monica – Kahn Scolnick, a partner at Gibson Dunn & Crutcher LLP proclaimed that, “the reality is that if Santa Monica fails the CVRA test, then no city could pass, because Santa Monica is doing really well in terms of full representation and success of minority candidates.” (“In Rare California Voting Rights Trial, Gibson Dunn Steps Up for Santa Monica”, Law.com, August 1, 2018). Notwithstanding Mr. Scolnick’s prediction, Plaintiffs succeeded in proving that Santa Monica’s election system was in violation of the CVRA and the Equal Protection Clause of the California Constitution.

Given the historical lack of representation of those from this protected class on the SJWD Board in the context of racially polarized elections, we urge the District to voluntarily change its at-large system of electing board members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than May 15, 2020 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,

A handwritten signature in black ink, appearing to be 'KS', written over the closing text.

Kevin I. Shenkman