

**Establishing District**

**Elections in the**

**City of**

**Atascadero**

**pursuant to the**

**California Voting**

**Rights Act**

**California Voting Rights Project**

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**Establishing District Elections in the  
City of Atascadero  
Pursuant to the California Voting Rights Act**

**Introduction**

There is a very strong case for establishing district elections in the City of Atascadero. Hundreds of California cities, school districts, and special districts have instituted district elections in recent years in compliance with the California Voting Rights Act. District elections bring government closer to the people and increase representation, result in higher turn-out in local elections, and lead more candidates to run for local office.

Notwithstanding that about 31 percent of the population in the City of Atascadero are members of protected classes, the City Council of the City of Atascadero has not represented this diversity. Apparently, no member of a protected class has sought election or been elected to the Atascadero City Council since 2006. In addition, Atascadero is becoming more diverse.

There are many examples of polarized voting in the City of Atascadero on ballot measures and for candidates for office. There are also significant differences between members of different groups in socioeconomic characteristics pertaining to education, employment, and health. At least 13 government agencies in San Luis Obispo County utilize district elections.

Abridgment of voting rights of members of protected classes is proscribed by the United States Voting Rights Act and the California Voting Rights Act. The United States Voting Rights Act and, particularly, the California Voting Rights Act provide strong and explicit protections to members of protected classes to challenge at-large forms of election to government bodies and to replace them with district elections. Violations of the California Voting Rights Act do not require any form of current intentional or purposeful discriminatory activity, and none is alleged here.

To date, no government jurisdiction in California has prevailed in a challenge to its electoral system on the basis of the California Voting Rights Act.<sup>1</sup> The at-large method of election to the Atascadero City Council impairs the ability of members of protected classes to elect candidates of their choice and their ability to influence the outcomes of elections. Therefore, district elections must be instituted in the City of Atascadero.

## **1. Benefits of District Elections**

There are many benefits of district elections which have been experienced in jurisdictions throughout California. These include greater voter turn-out and participation, and more candidates running for office. In some places, turn-out in some voting precincts has increased by as much as one-quarter after district elections were implemented and the number of candidates seeking election has more than doubled.

District elections bring government closer to the people. They result in representatives who are more knowledgeable of local problems and concerns. Candidates learn about their electoral district when running for office. Voters have a member of the City Council to whom they can turn on issues, and City Council members become more knowledgeable about neighborhood-specific concerns. There is a wider spectrum of viewpoints on the City Council and more representation from all neighborhoods and the entire community. District elections empower neighborhoods. The move to district elections has resulted in greater diversity of all sorts on elective boards and in cities.

District elections result in less expensive political campaigns. It is easier for younger and lower socioeconomic candidates to run for office if they do not have to raise as much money. This results in less influence by special interests. By walking door to door and other inexpensive electioneering means, candidates are elected who would not be elected in at-large elections.

District elections are non-partisan. They are not intended to result in the advantage of any particular political perspective, nor have they resulted in any greater representation of any political perspective. The question is strictly the method of election and representation.

The City of Atascadero will be an even better city with district elections--more representative of the people and in compliance with state law. District elections will make elections to the City Council fairer and more inclusive, and will increase representation and participation. The universal experience with district elections in California is that cities and other government jurisdictions

that have implemented them have found them to be a superior form of representation.

California cities to institute district elections just since 2016 are presented in the chart on the next page. More than 100 California cities now utilize district elections. In addition, more than 160 California public school districts have implemented district elections in recent years.

Benefits of district elections are described in "The Politics of Latino Education: The Biases of At-Large Elections," by David Leal, Valerie Martinez-Ebers, and Kenneth Meier, published in the *Journal of Politics*, a publication of the Southern Political Science Association, included here as Exhibit E and incorporated by this reference. Although focused on school districts, this article contains much important information for cities and other government agencies:

Representation is an integral part of the political system ...

Latino representation on school boards was associated with better educational conditions. In school districts with more Latino representation, Latino students experienced greater access to equal education ... There also appeared to be a ripple effect, whereby more Latino school board members led to more Latino school administrators, which in turn led to more Latino teachers ...

Our study supports the findings of earlier research showing minority population translating into minority school board seats at a substantially higher rate with district elections than with at-large elections. Our findings show that at-large election systems usually disadvantage Latinos; the obvious recommendation is that at-large systems should be replaced by single-member systems.<sup>2</sup>

As members of protected classes are elected to governing councils, there tends also to be more members of protected classes who become employed by government agencies. In addition, because candidates for higher elective office are overwhelmingly elected first to local office, district elections lead in time to greater representation at all levels of elective office.

**A. California Cities to Institute District Elections  
Since 2016 (Partial List)**

Anaheim	Menlo Park
Arroyo Grande	Merced
Bellflower	Novato
Brentwood	Oceanside
Buellton	Oxnard
Buena Park	Palmdale
Camarillo	Palm Springs
Carlsbad	Paso Robles
Carpinteria	Patterson
Cathedral City	Rancho Cucamonga
Chino	Redwood City
Citrus Heights	Riverbank
Claremont	San Clemente
Corona	San Juan Capistrano
Costa Mesa	San Rafael
Chino	Santa Clara
Dixon	Santa Maria
Duarte	Santee
Eastvale	Stanton
El Cajon	Sunnyvale
Fort Bragg	Turlock
Fremont	Upland
Fullerton	Vallejo
Garden Grove	Visalia
Goleta	Vista
Grover Beach	West Covina
Hesperia	Wildomar
Highland	Woodland
King City	Yucaipa
Lompoc	

## 2. United States Voting Rights Act

The United States Voting Rights Act is landmark federal legislation that prohibits racial discrimination in voting. Passed in 1965 in the wake of the suppression of civil and voting rights, the United States Voting Rights Act is intended to enforce the voting rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution--in particular, the provisions of the Fifteenth Amendment: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race ... [or] color".

According to the United States Voting Rights Act: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color ... A violation ... is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens ... in that its members have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. The extent to which members of a protected class have been elected to office in the ... political subdivision is one circumstance which may be considered" (52 U.S. Code Sec. 10301).

The United States 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 protected classes (*Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)). Although legal actions against government jurisdictions in California to require district elections since 2002 have been brought pursuant to the California Voting Rights Act (rather than the federal Voting Rights Act), the United States Voting Rights Act provides explicit and strong protection as well for the voting rights of members of protected classes.



### 3. California Voting Rights Act

Building upon the United States Voting Rights Act, the California Voting Rights Act was passed by the California legislature in 2001 and signed into law in 2002 to allow legal challenges to government agencies in California with at-large methods of election to require them to institute district elections. According to the Rose Institute of State and Local Government at Claremont McKenna College (the state leader in gathering information on the transition from at-large to district elections): "The California Voting Rights Act was written to promote the use of by-district elections to encourage the election of candidates preferred by previously 'underrepresented' voters such as Latinos."<sup>3</sup> A copy of the California Voting Rights Act is included here as Exhibit B and incorporated by this reference.

The core provision of the California Voting Rights Act (CVRA) is:

14027. 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.

The CVRA is clear: **at-large methods of election are against the law in California when they impair the ability of protected classes to elect candidates of their choice or to influence the outcomes of elections** as a result of dilution of the vote or abridgment of the rights of voters who are members of a protected class. On showing vote dilution or abridgment of the rights of voters of protected classes, at-large methods of election must be discontinued in favor of district elections.

According to Section 14028 of the CVRA: "A violation of Section 14027 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." Also: "Other factors such as ... 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, ... are probative ... factors to establish a violation" of the CVRA (Sec. 14028(e)).

The CVRA is also clear with respect to what the remedy for illegal, at-large elections is: "Upon a finding of a violation ..., the court shall implement appropriate remedies, **including the imposition of district-based elections**, that are tailored to remedy the violation" (Sec. 14029, emphasis added). "District-based elections" are the only specified remedy for illegal at-large elections in the California Voting Rights Act. No remedy has been ordered by a California court for violation of the California Voting Rights Act other than district elections.

*When, as in the City of Atascadero, a political subdivision utilizes an illegal at-large method of election, district elections must be implemented.*

To date, dozens of legal actions have been brought against cities, school districts, and special districts for violation of the California Voting Rights Act. Every single action has been successful. The replacement of at-large elections by district elections is sweeping California as a result of the CVRA. The Rose Institute states in addition: "Another significant effect of the California Voting Rights Act is the financial cost it has imposed ...--many challenges so far have resulted in settlements or legal awards over one million dollars."<sup>4</sup>

The California Voting Rights Act was ruled constitutional by a California Court of Appeal in 2007. This decision held: "The CVRA is race neutral. It does not favor any race over others or allocate burdens or benefits to any groups on the basis of race. It simply gives a cause of action to members of any racial or ethnic group that can establish that its members' votes are diluted."<sup>5</sup> The Court of Appeal also held: "Curing vote dilution is a legitimate government interest"; and: "To prove a violation, plaintiffs ... do not need to show that members of a protected class live in a geographically compact area."<sup>6</sup>

The CVRA also states: "Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required" (Sec. 14028(d)) to establish a violation of the California Voting Rights Act. There is not

any intention here to assert that either the City Council or staff of the City of Atascadero engages of have engaged in any form of intentional or purposeful discriminatory activity. The issue is solely with respect to the City's current at-large form of election to its City Council, which is illegal because it violates the California Voting Rights Act.

#### **4. Abridgment of Voting Rights in the City of Atascadero**

The City of Atascadero is very diverse. The first table presents population by ethnicity for the City of Atascadero pursuant to the 2020 United States Census:

##### *Ethnic Diversity in Atascadero*

##### **B. City of Atascadero, 2020 Population Ethnicity**

<u>Group</u>	<u>Percent</u>
African Am	1.5
Asian	2.9
Latino	19.6
White	69.0
Other	1.3
Multi	<u>5.7</u>
Total:	100.0

Similarly, enrollment in the Atascadero Unified School District is very diverse. The next table on the following page presents student enrollment by ethnicity in the Atascadero Unified School District in 2020-21 (source: California State Department of Education). Since today's student enrollment is tomorrow's community profile, school enrollment ethnicity gives a good idea of the direction in which diversity in a community is headed:

**C. Atascadero Unified School District,  
2020-21 Student Ethnic Enrollment**

<u>Group</u>	<u>Percent</u>
African Am	1.2
Asian	2.2
Latino	28.4
White	62.9
Other	1.8
Multi	<u>3.5</u>
Total:	100.0

Moreover, both the City of Atascadero and Atascadero Unified School District are becoming even more diverse. In the 2000 census, the City of Atascadero was 10.5% Latino and in the 2010 census it was 15.6%. Between 2014-15 and 2020-21, white student enrollment in the Atascadero Unified School District declined from 65.6% to 62.9% and Latino student enrollment increased from 26.3% to 28.4%.

**Abridgment of Protected Class Voting Rights**

Abridgment of protected class voting rights characterizes elections in the City of Atascadero. The next table on the following pages presents the candidates for full terms in City Council elections in the City of Atascadero since 2006 and the number of votes they received. No member of a protected class has apparently sought election or been elected to the Atascadero City Council since 2006:

**D. City Council Candidates and the Votes They Received in  
City of Atascadero Elections, 2006 to Present**

<u>Year</u>	<u>Candidate</u>	<u>Votes</u>
2006	O'Malley	5,522
	Beraud	4,582
	Kelley	3,632
	Ketcherside	1,527
2008	Fonzi	8,226
	Clay	7,317
	Kelley	5,689
	Colamarino	3,939
	Heatherington	3,763
	Heinemann	2,290
2010	O'Malley	6,313
	Sturtevant	3,886
	Ward	2,626
	Jack	2,361
	Heinemann	1,593
2012	Fonzi	7,539
	Kelley	6,722
	Ketcherside	3,565
2014	Moreno	4,714
	Sturtevant	3,815
	Colamarino	3,365
	Ward	2,713
2016	Fonzi	7,723
	Bourbeau	6,464
	Eister	3,006
	Heinemann	2,891

<u>Year</u>	<u>Candidate</u>	<u>Votes</u> (cont.d)
2018	Newsom	6,886
	Funk	6,834
	Dariz	5,742
2020	Bourbeau	6,862
	Dariz	6,170
	Keen	5,578
	Mattson	4,604
	Heinemann	1,553

The apparent absence of candidates from protected classes seeking election or elected to the Atascadero City Council since 2006 is also the case for other offices in the City of Atascadero. The following table presents candidates for Mayor, Treasurer, and Clerk since 2006 and the number of votes they received (the office of Mayor was not instituted as an elective office until 2012):

**E. Mayor, Clerk, and Treasurer Candidates and the Votes They Received in City of Atascadero Elections, 2006 to Present**

<u>Year</u>	<u>Office</u>	<u>Candidate</u>	<u>Votes</u>
2006	Clerk	Torgerson	7,001
	Treasurer	Modica	6,907
2010	Clerk	Torgerson	7,911
	Treasurer	Modica	5,717
		Bentz	3,095
2012	Mayor	O'Malley	9,952

<u>Year</u>	<u>Office</u>	<u>Candidate</u>	<u>Votes</u> (cont.d)
2014	Mayor	O'Malley	5,160
		Scovell	3,530
	Clerk	Torgerson	6,862
	Treasurer	Sibbach	6,727
2016	Mayor	O'Malley	8,387
		Mattson	4,554
		Kitcherside	855
2018	Mayor	Moreno	10,206
	Treasurer	Sibbach	9,464
2020	Mayor	Moreno	7,001
		Tanimoto	5,555
		Donovan	3,939

As can be seen, Jerry Tanimoto's unsuccessful candidacy for Mayor in 2020 may be the only candidacy by a member of a protected class for the Atascadero City Council or city offices of Mayor, Clerk, or Treasurer since 2006.

Presenting these data in summary form, the following tables on the next page present the total numbers of candidates and elected candidates for City Council and other city offices since 2006 together with the number of protected class and elected protected class candidates in Atascadero, and the total numbers of votes cast for City Council and other city office candidates since 2006 together with the total number of votes for protected class candidates:



**F. Total Number and Elected City Council Candidates,  
Together with Protected Class Candidates,  
City of Atascadero Elections, 2006 to Present**

<u>Total</u> <u>Candidates</u>	<u>Elected</u> <u>Candidates</u>	<u>Prot. Class</u> <u>Candidates</u>	<u>Elected Prot.</u> <u>Class Cand.s</u>
34	17	0 (0%)	0 (0%)

**G. Total Number and Protected Class Candidate Votes,  
Atascadero City Council Elections, 2006 to Present**

<u>Total Votes</u>	<u>Protected Class</u>	<u>Percentage</u>
160,012	0	0%

**H. Total Number and Elected Other City Office Candidates,  
Together with Protected Class Candidates,  
City of Atascadero Elections, 2006 to Present**

<u>Total</u> <u>Candidates</u>	<u>Elected</u> <u>Candidates</u>	<u>Prot. Class</u> <u>Candidates</u>	<u>Elected Prot.</u> <u>Class Cand.s</u>
18	12	1 (6%)	0 (0%)

**I. Total Number and Protected Class Candidate Votes,  
Other Atascadero City Office Elections, 2006 to Present**

<u>Total Votes</u>	<u>Protected Class</u>	<u>Percentage</u>
113,169	5,555	5%

Apparently no members of protected classes, similarly, have sought election or been elected to other government jurisdictions of which the City of Atascadero is part, including the Atascadero Unified School District. The tables on the next page present the total numbers of candidates and elected candidates for the Atascadero Unified School District Board of Education since 2006 together

with the number of protected class and elected protected class candidates, and the total numbers of votes cast for Board of Education candidates since 2006 together with the total number of votes for protected class candidates:

**J. Total Number and Elected Board of Education Candidates,  
Together with Protected Class Candidates,  
Atascadero Unified School District Elections, 2006 to Present**

<u>Total Candidates</u>	<u>Elected Candidates</u>	<u>Prot. Class Candidates</u>	<u>Elected Prot. Class Cand.s</u>
31	20	0 (0%)	0 (0%)

**K. Total Number and Protected Class Candidate Votes,  
Atascadero Unified School District Elections, 2006 to Present**

<u>Total Votes</u>	<u>Protected Class</u>	<u>Percentage</u>
206,975	0	0%

**Polarized Voting in Atascadero**

Pursuant to the California Voting Rights Act, it is not necessary that polarized voting be demonstrated only in elections to the government agency's governing board. Rather, voting issues with respect to which the CVRA becomes applicable "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" (Sec. 14026(e))--irrespective of whether the difference in voting occurs for the governing board of the government agency or in other electoral choices.

This is made clear by legal specialists in districting, electoral issues, and voting rights Marguerite Leoni and Christopher Skinnell. They write in "The California Voting Rights Act," published by the *Public Law Journal*, an official

publication of the State Bar of California Public Law Section and distributed by the League of California Cities:

### **No Minority Candidates.**

The fact that no members of the minority group have ever run for membership on the legislative body will not insulate a jurisdiction from CVRA challenge. The CVRA expressly provides that a violation can be shown if racially polarized voting occurs in elections incorporating *other* electoral choices that affect the rights and privileges of members of a protected class, such as ballot measures. (Elec. Code Sec.s 14028(a) & (b).) Some particularly obvious examples ... might include Proposition 187 (denying services to undocumented immigrants), [and] Proposition 209 (preventing state agencies from adopting affirmative action programs) ... But other local measures may also serve the same purpose.<sup>7</sup>

This article also states that the California Voting Rights Act “makes fundamental changes to minority voting rights law in California”; the CVRA “alters established paradigms of proof and defenses ..., thus making it easier for plaintiffs in California to challenge allegedly discriminatory voting practices”; the CVRA “prescribe[s] an extremely light burden ... to establish a violation”; the CVRA “eliminate[s] the first precondition that plaintiffs must prove at the liability stage in federal litigation, that is, that the minority group is sufficiently large and geographically compact to form a majority in a single member district”; the CVRA “eliminates the requirement that plaintiffs prove discrimination”; the CVRA “mandates the award of costs, attorneys fees, and expert expenses to prevailing plaintiffs”; the CVRA “denies not only attorneys fees but also the costs of litigation to prevailing defendants”; the “sole fact that the voters of a city or special district have enacted an at-large electoral system by ballot measure, or rejected a by-district electoral system by ballot measure, will not protect a jurisdiction”; and “Demands by minority group representatives for a change to by-district elections must be taken seriously, even if the minority group is not numerous enough to form a majority in a new single member district. Changing voluntarily permits the elected representatives ... to control the districting process and the considerations that will guide the districting. Once the

single member districts are in place, the [government jurisdiction] is in the CVRA safe harbor.”<sup>8</sup> A copy of this article is included here as Exhibit F.

There are many examples of polarized voting, vote dilution, or differential voting in the City of Atascadero on state ballot measures, including:

**L. Polarized Voting on State Ballot Measures  
In City of Atascadero since 2000**

<u>Year</u>	<u>State Ballot Measure</u>
2000	Proposition 36--Drug Treatment
2000	Proposition 39--School Facilities
2002	Proposition 46--Housing
2002	Proposition 47--Public Education Bonds
2002	Proposition 49--After School Programs
2004	Proposition 61--Children’s Hospital
2004	Proposition 62--Primaries
2004	Proposition 63--Mental Health Services
2004	Proposition 66--Limit “3 Strikes”
2008	Proposition 1A--High-Speed Train Bond
2008	Proposition 11--Redistricting
2012	Proposition 39--Business Taxes
2016	Proposition 51--School Bonds
2016	Proposition 56--Healthcare
2016	Proposition 57--Juvenile Criminal Sentences
2018	Proposition 2--Mental Health Services
2020	Proposition 17--Voting Rights

Furthermore, there are also instances of polarized voting in Atascadero on local ballot measures, including Measure C-20 on the November 2020 ballot in the Atascadero Unified School District, and for candidates for local and state office.

Moreover, this analysis extends only to the year 2000. Research indicates that if the analysis were continued to the 1980s, incorporating state and local ballot measures and state and local candidates for office, it would be possible to demonstrate **30 or more** instances of polarized voting, vote dilution, or differential voting in the City of Atascadero since this time.

Pursuant to the CVRA, as previously cited: “A violation of Section 14027 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*” (Sec. 14028(a)). The emphasized passage was incorporated into the CVRA to provide for challenges to government agencies in which very few or no members of protected classes had run for their elected boards. Pursuant to the California Voting Rights Act, district elections must be established in the City of Atascadero.

As a result of abridgment of protected class voting rights and polarized voting, many government agencies in San Luis Obispo county have instituted district elections in recent years. At least 13 government jurisdictions in Santa Luis Obispo county now utilize district elections or have made the decision to establish district elections, including:

**M. San Luis Obispo County Government  
Jurisdictions Utilizing District Elections**

Board of Supervisors

County Board of Education

San Luis Obispo County Community College District

City of Arroyo Grande\*

City of Grover Beach\*

City of Paso Robles\*

Atascadero Unified School District\*

Lucia Mar Unified School District\*

Paso Robles Joint Unified School District\*

San Luis Coastal Unified School District\*

San Miguel Joint Union School District\*

Oceano Community Services District\*

Port San Luis Harbor District\*

(\* Decision to implement district elections since 2016)

### *Effects of Past Discrimination*

The California Voting Rights Act further states: "Other factors such as ... 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, ... are probative, but not necessary factors to establish a violation" (Sec. 14028(e)). As well as the examples of abridgment of voting rights, polarized voting, vote dilution, and differential voting previously outlined, there is significant evidence of the extent to which members of protected classes in the City of Atascadero bear effects of past discrimination in areas of education, employment, and health.

The table on the next page presents comparisons between the white and Latino populations in the City of Atascadero on socioeconomic characteristics pertaining to education, employment, and health in the 2020 United States Census:

**N. Comparison Between White and Latino Populations  
In City of Atascadero on  
Various Socioeconomic Characteristics, 2020**

	<u>White Population</u>	<u>Latino Population</u>
<i>Education</i>		
Adults with high school degree	96.8%	86.9%
Adults with bachelor's degree	34.0%	13.8%
<i>Employment</i>		
Average per capita income	\$39,181	\$27,346
Median household income	\$81,548	\$62,724
Population below poverty level	7.0%	11.5%
Households receiving food stamps	3.9%	9.2%
<i>Health</i>		
Individuals without health insurance	4.6%	12.5%

In addition, the California Assessment of Student Performance and Progress (CAASPP) is the main state assessment for students in California schools. The CAASPP provides educational performance measures in a variety of areas. The following tables present achievement for students tested in the Atascadero Unified School District in 2018-19 in English Language Arts/Literacy and Mathematics, disaggregated by white and Latino students:

**O. Atascadero Unified School District 2018-19 CAASPP  
English Language Arts/Literacy Achievement by Ethnicity**

<u>Achievement Level</u>	<u>White</u>	<u>Latino</u>
4 -- Exceeds Standard	27.70%	12.54%
3 -- Meets Standard	29.01%	25.52%
2 -- Nearly Meets Standard	22.50%	28.47%
1 -- Standard Not Met	20.79%	33.48%

**P. Atascadero Unified School District 2018-19 CAASPP  
Mathematics Achievement by Ethnicity**

<u>Achievement Level</u>	<u>White</u>	<u>Latino</u>
4 -- Exceeds Standard	22.69%	9.69%
3 -- Meets Standard	23.81%	15.57%
2 -- Nearly Meets Standard	28.50%	29.81%
1 -- Standard Not Met	25.00%	44.93%

Regrettably, in addition, discrimination was historically practiced in Atascadero against non-whites. When Atascadero was founded, a clause was placed in property deeds that only whites could purchase land.<sup>9</sup> According to Jane Hemenway: "I offer the following excerpt from the deed for our property in Atascadero ... Among the CCRs, the deed says: 'The said parcel herein described, or any part thereof, shall not be conveyed, transferred, deeded or let to, or held, occupied, resided on, or owned by any person other than one of the white or Caucasian race' ... In a later section, the deed stipulates that although many of the CCRs will expire on January 1, 1925, the restriction on race 'shall continue in force forever.'"<sup>10</sup>

Although Covenants, Conditions, and Restrictions on property with respect to race and religion were a historically not uncommon practice, their existence would serve to strengthen a legal action to establish district elections in the City of Atascadero. According to the California Voting Rights Act, a "history of discrimination" is "probative" in establishing a violation (Sec. 14028 (e)).

Clear and compelling evidence exists that the City of Atascadero's current, at-large method of election to its City Council does not meet the requirements--and is therefore violative--of the California Voting Rights Act. If this matter were to become the subject of litigation through a lawsuit being filed, it would be possible to establish dozens of examples of abridgment of protected class voting rights, polarized voting, vote dilution, effects of discrimination, and past discrimination. It is very likely the City of Atascadero would be ordered by a court to implement district elections. In the event the City of Atascadero were not willing to institute district elections voluntarily, attached hereto as Exhibit A is a



draft complaint against the City of Atascadero to require it to implement district elections pursuant to the California Voting Rights Act.

## **5. Methods of Establishing District Elections** **In the City of Atascadero**

There are two basic methods by which district elections may be instituted in the City of Atascadero: a) a pre-litigation settlement agreement by the Atascadero City Council outlining the City's intention to transition from at-large to district elections, specifying the steps it will take to facilitate this transition and estimating the time-frame for this transition; or b) litigation.

If the Atascadero City Council chooses a pre-litigation settlement, then, pursuant to Section 10010 of the California Elections Code, the process the City of Atascadero will follow when district elections are implemented, as determined by the settlement agreement, is:

1) Within 45 days of receipt of the certified letter notifying the City of Atascadero that its method of conducting elections violates the CVRA, the Atascadero City Council will adopt a resolution outlining its intention to transition from at-large to district elections, specifying the steps it will take to facilitate this transition and estimating the time-frame for the transition.

2) If the Atascadero City Council passes a resolution to this effect, a legal action could not be commenced for another 90 days after the resolution's passage, or as modified by the settlement agreement.

3) Before district lines are drawn, the Atascadero City Council holds two public hearings at which the public is invited to provide input concerning the composition of districts. The timing of these hearings, too, may be as determined in a settlement agreement. In advance of the hearings, the City of Atascadero should conduct outreach to the public, including to non-English speaking communities, explaining the districting process and encouraging participation.

4) Following the two public hearings, the City of Atascadero publishes and makes available for release at least one draft map and the proposed sequence of elections to new districts. The Atascadero City Council then holds two more

public hearings at which the public is invited to provide input on the draft map or maps and proposed sequence of elections.

5) In determining the sequence of elections, the Atascadero City Council is required to give special consideration to the purposes of the California Voting Rights Act. For this reason, it is likely that among the first districts in which district elections are held will be districts including significant proportions of members of protected classes.

6) After adopting the resolution of intention to transition from at-large to district elections and holding the public hearings, the Atascadero City Council adopts a map of districts and a sequence of elections.

If the City of Atascadero establishes district elections according to the above process, as modified by a settlement agreement, no litigation is necessary.

## **6. Advantages of a Settlement Agreement**

A pre-litigation settlement agreement is the best way to ensure the most expeditious, least expensive, and most cooperative process to establish district elections in the City of Atascadero. There are many advantages of a pre-litigation settlement rather than a court action to enforce the California Voting Rights Act. Most importantly, the City of Atascadero and the Atascadero City Council retain a greater role in and more control over the transition process to district elections and legal costs are contained.

A greater role by the Atascadero City Council over the transition process to district elections could manifest itself in a number of ways, including:

**1) Retention of elective Mayor.** Pursuant to Assembly Bill 2220, passed into legislation in 2016, cities of any size may adopt a resolution to implement district elections, with or without an elective mayor. As a result of a court action, the Atascadero City Council could lose the authority whether or not there would continue to be an elective mayor.

**2) Participation in timing of the first district elections, whether in 2022 or 2024.** If this matter were to go to court, a court could require that the first district elections be held in November 2022. As a result of a pre-litigation settlement agreement, the first district elections could be held in November 2024. Elsewhere in California, settlement agreements have been reached to hold the first district elections in November 2024 to enable more time for implementation of district elections and development of all census data for government jurisdictions that may not have planned to implement district elections in 2022. Existing incumbents elected in 2018 would be eligible to run for reelection in 2022 under existing electoral arrangements through a settlement agreement to implement district elections in November 2024. Also, costs of transition to district elections would be deferred until 2024.

**3) The Atascadero City Council would retain the ability to draw the lines of City Council districts** both now and in the future rather than the court drawing the lines of City Council districts through a court-determined process.

4) **The existing City Council would be retained** and there would be no chance of a special election. Occasionally in court actions brought pursuant to the CVRA, past at-large elections have been nullified and courts have ordered new, special elections to elect councilmembers from districts.

5) **Saving of plaintiffs' attorney fees and its own legal expenses by the City of Atascadero**, potentially saving hundreds of thousands or more than a million dollars. Pursuant to the CVRA: "In any action to enforce [the California Voting Rights Act] the court shall allow the prevailing plaintiff party ... a reasonable attorney's fee ... and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs" (Sec. 14030). In addition: "Prevailing defendant parties shall not recover any costs" (id.).

In recent years, many jurisdictions have had to pay hundreds of thousands and even millions of dollars in attorneys' fees to prevailing plaintiff parties. Moreover, jurisdictions are responsible for their own legal costs, which can also be hundreds of thousands of dollars. The following table presents some settlements in California Voting Rights Act litigation:

**Q. Settlements in CVRA Litigation (partial list)**

<u>Jurisdiction</u>	<u>Settlement</u>
City of Palmdale	\$4,500,000
City of Modesto	\$3,000,000
City of Anaheim	\$1,200,000
City of Whittier	\$1,000,000
Santa Clarita Community College Dist.	\$850,000
San Mateo County	\$650,000
Tulare Healthcare District	\$500,000
City of Escondido	\$385,000

**Settlements in CVRA Litigation (cont.d)**

City of Garden Grove	\$290,000
City of Bellflower	\$250,000
Madera School District	\$162,500

As a result of the potentially significant costs of litigation, **the California Voting Rights Project strongly recommends that government agencies reach settlement in the 45-day statutory pre-litigation stage.** In this case, pursuant to Assembly Bill 350 signed into legislation in 2016, costs to government jurisdictions are capped at \$30,000 plus annual CPI adjustment (now, \$32,377) for demographic and legal services.<sup>11</sup>

It should be emphasized that Assembly Bill 350 applies only to the pre-litigation phase of cases brought pursuant to the CVRA. If a CVRA action becomes the subject of litigation through a complaint being filed, then there is no limit on attorneys' fees and costs other than as stated in the CVRA.

In addition, because Assembly Bill 350 would "impose additional duties on local agencies, the bill would impose a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.... This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for these costs shall be made pursuant to ... statutory provisions" (Legislative Counsel's Digest of Assembly Bill 350). Accordingly, it may be possible for the City of Atascadero to receive reimbursement from the state for a pre-litigation settlement. A copy of Assembly Bill 350 is included here as Exhibit C.

The preceding are only some of the advantages of a pre-litigation settlement. It should be noted that pursuant to Assembly Bill 2220 passed in 2016, no vote of the people is required to institute district elections in the City of Atascadero. A copy of Assembly Bill 2220 is included here as Exhibit D and incorporated by this reference.

As an example of a settlement agreement in another government jurisdiction, a copy of the resolution and settlement agreement establishing district elections in the City of Carpinteria is included here as Exhibit I and incorporated by this reference.

## Conclusion

The City of Atascadero will benefit from district elections. District elections will increase participation and representation and bring the City into compliance with the California Voting Rights Act. More candidates will seek election to office and the community will become even more involved in the City.

For further information on the likelihood of district elections being ordered by a court, see the February 21, 2017, Council Agenda Report in the City of Santa Maria, which is included here as Attachment G and incorporated by this reference. According to this report: "After much analysis and in-depth conversations with those most familiar with these types of litigation matters, staff is recommending that the City Council adopt a resolution declaring its intention to transition from at-large to district-based elections ... Staff makes this recommendation due to the extraordinary costs to successfully defend against a CVRA lawsuit and the fact that no apparent city has successfully prevailed against a CVRA lawsuit, and that the public interest would best be served by transitioning to a district-based election system."<sup>12</sup>

Also see, similarly, the November 16, 2021, staff report and resolution of the Governing Board of the Atascadero Unified School District establishing district elections, included here as Attachment H: "Cities, public entities, and other school districts have recently had their at-large systems challenged under the California Voting Rights Act. These situations have resulted in expensive and divisive litigation"; "the California Voting Rights Act ('CVRA') favors the use of a by-trustee area elections system"; "the Board desires to promote meaningful voter involvement in the election of Board members."

District elections will enable the City of Atascadero to meet legal requirements and result in more involvement by the public, to the City's benefit and in compliance with the law. Clear and compelling evidence would sustain a legal action brought pursuant to the California Voting Rights Act to institute district elections in the City of Atascadero. A pre-litigation settlement agreement provides the best opportunity to establish district elections in a manner that



retains participation by the City Council in the transition to district elections and is cost-effective.

## Endnotes

<sup>1</sup> Cf. "CVRA Settlement Agreement / Resolution of Intention," Council Agenda Staff Report, City of Carpinteria (August 14, 2017): "The City Attorney's Office has surveyed the reported case law concerning litigation based on a violation of the CVRA. There is no reported case in which the defendant public agency has prevailed on the merits by proving that a violation of the CVRA did not occur" (p. 3).

<sup>2</sup> David L. Leal, Valerie Martinez-Ebers, and Kenneth J. Meier, "The Politics of Latino Education: The Biases of At-Large Elections," *Journal of Politics* (Vol. 66, No. 4, November 2004; included here as Exhibit E).

<sup>3</sup> Justin Levitt et al., "Quiet Revolution in California Local Government Gains Momentum" (Claremont McKenna College: Rose Institute of State and Local Government, November 3, 2016), p. 1. The Rose Institute remarks on the switch from at-large to district elections in California: "This quiet tectonic shift in local government is accelerating" (id.).

<sup>4</sup> Id., p. 2.

<sup>5</sup> *Sanchez v. City of Modesto*, Court of Appeal, Fifth District, California, No. F048277 (December 6, 2006).

<sup>6</sup> Id.

<sup>7</sup> Marguerite Mary Leoni and Christopher E. Skinnell, "The California Voting Rights Act," *Public Law Journal* (Vol. 32, No. 2, Spring 2009; Official Publication of the State Bar of California Public Law Section; included here as Exhibit F).

<sup>8</sup> Id.

<sup>9</sup> Paul McCambridge, "Race Debate Embroils Atascadero's Historical Society," *San Luis Obispo Tribune* (March 29, 2013).

<sup>10</sup> Judith Hemenway, "More Proof of Systemic Racism," *San Luis Obispo Tribune* (August 4, 2020). Also see Tribune Editorial Board, "A 'Whites Only' Clause Remains in Some SLO County Property Deeds. It's Past Time to Remove It," *San Luis Obispo Tribune* (August 23, 2020).

<sup>11</sup> Pursuant to Assembly Bill 350: "The amount of reimbursement required by this section is capped at \$30,000, as adjusted annually to the Consumer Price Index for All Urban Consumers, U.S. city average, as published by the United States Department of Labor" (Section 1. 10010(f)(3); included here as Exhibit C). The increase in the Consumer Price Index for All Urban Consumers in 2017 was 2.1%, in 2018 the increase was 1.9%, in 2019 the increase was 2.3%, and in 2020 the increase was 1.4%, meaning the cap for reimbursement is now \$32,377.

<sup>12</sup> City of Santa Maria, "Council Agenda Report" (February 21, 2017; included here as Exhibit G).

## **Exhibits**

- A. Draft Complaint Against the City of Atascadero for Violation of the California Voting Rights Act**
- B. California Voting Rights Act**
- C. Assembly Bill 350**
- D. Assembly Bill 2220**
- E. David L. Leal, Valerie Martinez-Ebers, and Kenneth J. Meier, “The Politics of Latino Education: The Biases of At-Large Elections,” *Journal of Politics* (Nov. 2004)**
- F. Marguerite Mary Leoni and Christopher E. Skinnell, “The California Voting Rights Act,” *Public Law Journal* (Spring 2009)**
- G. City of Santa Maria Council Agenda Report**
- H. Atascadero Unified School District Staff Report and Resolution of Intention**
- I. Resolution and Settlement Agreement Establishing District Elections in the City of Carpinteria**

**EXHIBIT "A"**

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DRAFT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN LUIS OBISPO**

**Complaint for Violation of the  
California Voting Rights Act of 2001  
Against the City of Atascadero**

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Plaintiffs, by and through their counsel of record, hereby bring this action against defendant City of Atascadero, California, and Does 1 through 25 (collectively “Defendants” or “the defendants”). In support of their complaint, Plaintiffs allege as follows:

**I. INTRODUCTION**

1. This action is brought by Plaintiffs for injunctive relief against Defendants for their violation of the California Voting Rights Act of 2001, California Elections Code Sec.s 14025, *et seq.* (the “CVRA”). The imposition of the City of Atascadero’s at-large method of election has resulted in vote dilution for residents of protected classes and has denied them effective political participation in elections to the City of Atascadero City Council. The City of Atascadero’s at-large method of election for electing members to its City Council prevents residents of protected classes from electing candidates of their choice in City of Atascadero City Council elections.

2. The effects of the City of Atascadero’s at-large method of election are apparent and compelling. More than 30 percent of the population in the City of Atascadero is comprised of members of protected classes, but apparently no member of a protected class has sought election or been elected to the Atascadero City Council since 2006. The deficiency of members from protected classes as candidates for and elected to the Atascadero City Council reveals the lack of access to the political process.

3. The City of Atascadero’s at-large method of election violates the CVRA. Plaintiffs bring this action to enjoin the City of Atascadero’s continued abridgment of the voting rights of members of protected classes. Plaintiffs seek a declaration from this Court that the at-large method of election currently employed by the City of Atascadero violates the CVRA. Plaintiffs seek injunctive relief enjoining the City of Atascadero from further imposing or applying its

1 current at-large method of election. Further, Plaintiffs seek injunctive relief requiring the City of  
2 Atascadero to design and implement district-based elections to remedy its violation of the  
3 CVRA.  
4

## 5 **II. THE PARTIES**

6 4. At all material times, Plaintiffs are and have been registered voters residing in the  
7 City of Atascadero and are eligible to vote in the City of Atascadero's elections.  
8

9 5. At all material times, defendant City of Atascadero, California, is and has been a  
10 political subdivision of the State of California subject to the provisions of the CVRA.

11 6. Plaintiffs are unaware of the true names and capacities of the defendants sued  
12 herein as Does 1 through 25, inclusive, and therefore sue these defendants by such fictitious  
13 names. Plaintiffs will amend this complaint to allege the true names and capacities of these  
14 defendants when their true names are ascertained. Plaintiffs are informed and believe, and on  
15 that basis allege, that the acts and conduct alleged herein of each defendant was known to,  
16 authorized by, and/or ratified by the other defendants. Does 1 through 25, inclusive; are  
17 individuals or entities which have caused the City of Atascadero to violate the CVRA, failed to  
18 prevent the City of Atascadero's violation of the CVRA, or are otherwise responsible for the acts  
19 and omissions alleged herein.  
20

21 7. Plaintiffs are informed and believe, and allege on that basis, that each defendant  
22 named herein, at all times mentioned in this complaint, was the agent, employee, partner, joint  
23 venturer, and/or employer of the other defendants and was at all times herein mentioned acting  
24 within the course and scope of that agency, employment, partnership, ownership, or joint  
25 venture.  
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**III. JURISDICTION AND VENUE**

8. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful acts subject to this complaint occurred in San Luis Obispo County.

9. Venue is proper in this court because the City of Atascadero is a public entity located within this county.

**IV. GENERAL ALLEGATIONS**

**A. Political Background on the City of Atascadero**

10. The City of Atascadero is governed by a City Council, including Mayor. The City of Atascadero City Council serves as the governmental body responsible for the operation of the City. The City Council, including Mayor, is comprised of five members.

11. The City Council of the City of Atascadero is elected at-large. All of the voters of the City of Atascadero elect all of the members of the City Council.

12. Vacancies to the City Council are elected on a staggered basis. Every two years, the electorate elects two City Council members who each serves a four-year term. Every four years, the electorate elects the Mayor.

13. Apparently no member of a protected class has been a candidate for or elected to the four City Council positions since the year 2006.

**B. Racial Polarization's Impact on the City of Atascadero**

14. Elections held within the City of Atascadero are characterized by racially polarized voting.

15. Racially polarized voting occurs when members of a protected class--as defined by California Elections Code Sec. 14025(d)--vote for candidates or other electoral choices that differ from the rest of the electorate.

1  
2 16. Racially polarized voting exists within the City of Atascadero. There is a clear  
3 difference between the choice of candidates and other electoral choices that are preferred by  
4 voters from protected classes and the choice of candidates and other electoral choices that are  
5 preferred by voters in the rest of the electorate.

6 17. Racially polarized voting consists of both voter cohesion on the part of members of  
7 protected classes and voter cohesion by the non-protected class electorate against the choices of  
8 protected class voters.

9  
10 18. Patterns of racially polarized voting and vote dilution have the effect of impeding  
11 opportunities for protected class voters to elect candidates of their choice to the at-large City  
12 Council positions in the City of Atascadero. The non-protected class electorate dominates  
13 elections.

14 19. Voters from protected classes are harmed by racially polarized voting.

15  
16 20. There are many examples of racially polarized voting in the City of Atascadero on  
17 ballot measures, where protected class voters and voters in other precincts have differed in their  
18 electoral choices. State ballot measures which provide evidence of racially polarized voting  
19 include: 2000--Proposition 36 (drug treatment); 2000--Proposition 39 (school facilities); 2002--  
20 Proposition 46 (housing); 2002--Proposition 47 (public education bonds); 2002--Proposition 49  
21 (after school programs); 2004--Proposition 61 (children's hospital); 2004--Proposition 62  
22 (primaries); 2004--Proposition 63 (mental health services); 2004--Proposition 66 (limit "3  
23 Strikes"); 2008--Proposition 1A (high-speed train bond); 2008--Proposition 11 (redistricting);  
24 2012--Proposition 39 (business tax); 2016--Proposition 51 (school bonds); 2016--Proposition 56  
25 (healthcare); 2016--Proposition 57 (juvenile criminal sentences); 2018--Proposition 2 (mental  
26 health services); 2020--Proposition 17 (voting rights). There is also evidence of racially  
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1 polarized voting and vote dilution on local ballot measures, including Measure C-20 on the  
2 November 2020 ballot in the Atascadero Unified School District for school bonds, and for  
3 candidates for local and state office.  
4

5 **C. Impact of Polarization on Protected Classes**

6 21. Members of protected classes in the City of Atascadero bear the effects of past  
7 discrimination in areas such as education, employment, and health. Members of protected  
8 classes have graduated at a lower rate from high school and college than whites, have lower per  
9 capita and median household income, and have higher percentages of households and individuals  
10 below the poverty line, receiving food stamps, and without health insurance. There are marked  
11 differences in the educational performance of white and protected class students in the  
12 Atascadero Unified School District.  
13

14 22. Atascadero has a history of discrimination. Restrictive covenants were placed in  
15 property deeds in the early decades of the twentieth century.  
16

17 23. The at-large method of election voting has caused the dilution of protected class  
18 votes in the City of Atascadero. Protected class voters and the rest of the electorate regularly  
19 express different preferences on candidates and other electoral choices, which has been to the  
20 detriment of protected class voters.  
21

22 24. The obstacles posed by the City of Atascadero's at-large method of election impairs  
23 the ability of protected class voters to elect candidates of their choice in elections held in the City  
24 of Atascadero.

25 25. An alternative method of election exists, district-based elections, that will provide  
26 an opportunity for the members of protected classes as defined by the CVRA to elect candidates  
27 of their choice in City of Atascadero elections.  
28

1 26. All allegations made in this complaint are based upon information and belief,  
2 except those allegations which pertain to the named Plaintiffs, which are based on personal  
3 knowledge. The allegations of this complaint are stated on information and belief and are likely  
4 to have evidentiary support after a reasonable opportunity for further investigation or discovery.  
5

6 **V. CAUSES OF ACTION**

7 **First Cause of Action**

8 **(Violation of California Voting Rights Act of 2001)**

9 **(Against All Defendants)**

10  
11 27. Plaintiffs hereby reallege and incorporate by reference each and every allegation  
12 stated in paragraphs 1 through 26 above as though set forth fully herein.

13 28. Plaintiffs are registered voters and reside within the City of Atascadero.

14 29. Plaintiffs are members of a protected class of voters under the CVRA.

15 30. Plaintiffs are over the age of 18 and are eligible to vote in the City of Atascadero's  
16 elections.  
17

18 31. The City of Atascadero is a political subdivision within the State of California.

19 32. The City of Atascadero employs an at-large method of election.

20 33. Racially polarized voting has occurred, and continues to occur, in elections in the  
21 City of Atascadero and in elections incorporating other electoral choices by voters in the City of  
22 Atascadero. As a result, the City of Atascadero's at-large method of election is imposed in a  
23 manner that impairs the ability of a protected class as defined by the CVRA to elect candidates of  
24 its choice in City of Atascadero elections.  
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2 34. An alternative method--district-based elections--exists that will provide an  
3 opportunity for the members of a protected class as defined by the CVRA to elect candidates of  
4 their choice in City of Atascadero City Council elections.

5 35. An actual controversy has arisen and now exists between the parties relating to the  
6 legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a declaration of  
7 rights.

8 36. Defendants' wrongful conduct has caused and, unless enjoined by this Court, will  
9 continue to cause, immediate and irreparable injury to Plaintiffs, and those similarly situated.  
10

11 37. Plaintiffs, and those similarly situated, have no adequate remedy at law for the  
12 injuries they currently suffer and will otherwise continue to suffer.

13 **VI. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as  
15 follows:  
16

17 1. For a decree that the City of Atascadero's current at-large method of election for its  
18 City Council violates the California Voting Rights Act of 2001;

19 2. For preliminary and permanent injunctive relief enjoining the City of Atascadero  
20 from imposing or applying its current at-large method of election;

21 3. For injunctive relief mandating the City of Atascadero to design and implement  
22 single-member district-based elections, as defined by the California Voting Rights Act of 2001, to  
23 remedy the City of Atascadero's violation of the California Voting Rights Act of 2001;

24 4. For an award of Plaintiffs' attorney fees, costs, and prejudgment interest pursuant  
25 to the CVRA, California Elections Code Sec. 14030, and other applicable law; and  
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5. For such further relief as the Court deems just and proper.

Dated: February 21, 2022

**EXHIBIT "B"**

# CALIFORNIA VOTING RIGHTS ACT

## ELECTIONS CODE SECTIONS 14025-14032

14025. This act shall be known and may be cited as the California Voting Rights Act of 2001.

14026. As used in this chapter:

(a) "At-large method of election" means any of the following methods of electing members to the governing body of a political subdivision:

(1) One in which the voters of the entire jurisdiction elect the members to the governing body.

(2) One in which the candidates are required to reside within given areas of the jurisdiction and the voters of the entire jurisdiction elect the members to the governing body.

(3) One that combines at-large elections with district-based elections.

(b) "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.

(c) "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county, charter city and county, school district, community college district, or other district organized pursuant to state law.

(d) "Protected class" means a class of voters who are members of a race, color, or language minority group, as



this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.).

(e) "Racially polarized voting" means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.), 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. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting.

14027. 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 the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.

14028. (a) A violation of Section 14027 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 conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.

(b) The occurrence of racially polarized voting shall be determined from examining results of 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. One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section. In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis.

(c) The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.

(d) Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required.

(e) Other factors such as 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 are probative, but not necessary factors to establish a violation of Section 14027 and this section.

14029. Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation.

14030. In any action to enforce Section 14027 and Section 14028, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorney's fee consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

14031. This chapter is enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution.

14032. Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located.