To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Christi Hogin, City Attorney

Date prepared: January 9, 2020  Meeting date: January 13, 2020

Subject: Resolution of Intention Regarding Potential Transition to District-Based Elections

RECOMMENDED ACTION: Provide direction to staff regarding Milton Grimes demand letter dated October 25, 2019, and either: 1) Adopt Resolution 20-02 finding the project exempt from California Environmental Quality Act, directing the retention of a demographer and directing a schedule be brought back to take actions related to district-based elections in accordance with Elections Code section 10010(a), and either: a) declaring its intention to adopt an ordinance pursuant to Government Code section 34886 to transition the election of its City Councilmembers from an at-large electoral system to a district-based system; or b) declaring its intention to place a binding initiative on the ballot for the 2020 General Municipal Election as to whether to transition to district-based elections; or 2) Take no action.

FISCAL IMPACT: Funding for this project was not included in the Adopted Budget for Fiscal Year 2019-2020. If the Council adopts Resolution No. 20-02, an expert demographer will be needed to prepare the maps, however, the cost of the demographer is unknown at this time. If the City adopts by-district elections voluntarily and within the law’s “safe harbor” provision, the City will be responsible for attorneys’ fees for a maximum amount of $30,000 to the potential plaintiff.

If the City does not comply with the potential plaintiff’s demand letter, the financial impact could be in the millions of dollars to defend and/or settle. There will also be significant staff resources required with this project that were not considered in the Adopted Budget.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2019-2020. If the City proceeds with by-district elections, other approved Work Plan tasks might need to be postponed in order to accommodate the timelines required under law.
BACKGROUND:

On October 25, 2019, Milton C. Grimes of the Law Offices of Milton C. Grimes sent the City of Malibu (“City”) a letter that claims the City’s at-large system of voting dilutes the ability of Latinos to elect candidates of their choice or to otherwise influence the outcome of the City’s elections. Mr. Grimes letter points to statewide ballot measures (Propositions 187, 209, and 227) as evidence of racially polarized voting as those measures were generally opposed by the Latino community but passed in the City. As a result, Mr. Grimes claims that the City’s at-large elections violate the California Voting Rights Act (“CVRA”). Mr. Grimes must send this letter before he can file a lawsuit claiming the City has violated the CVRA.

The Council’s hand has been forced and it must now consider transitioning to by-district elections. This is not a small decision as it will completely change the way the public is represented and how the public chooses its representation.

Under the CVRA, there are two general steps for transitioning to by-district elections: (1) engaging in the public hearing process required to set district boundaries; and, (2) adopting an ordinance transitioning to by-district elections.

This report provides background on the CVRA, the City’s options, and risks involved in the decision.

BACKGROUND ON THE CVRA:

Below is a quick summary of the CVRA and its requirements: The CVRA (California Elections Code sections 14025 – 14032) was signed into law in 2002. Like the federal Voting Rights Act of 1965, the CVRA attempts to prevent the disenfranchisement of protected classes.

A protected class is a class of voters who are members of a race, color, or language minority group (collectively referred to herein as “minority voters”.) With the passage of the CVRA, it became easier for citizens to sue cities, school districts, community college districts and special districts if they elect members of their governing bodies through “at-large” elections and if it can be proven that the votes of minority voters are being diluted.

The CVRA does not mandate the abolition of at-large election systems but makes the use of at-large election systems more susceptible to legal challenge. The most common legal remedy for an alleged CVRA violation is to change from an at-large system to a by-district election system.

To prove a violation, plaintiffs must demonstrate “racially polarized voting.” Racially polarized voting occurs when there is a difference between the choice of candidates (or ballot measures) preferred by voters in a protected class and the choice of candidates (or ballot measures) preferred by voters in the rest of the electorate. This difference can
be demonstrated by a review of voting patterns that shows the protected class votes differently from the majority and is unable to influence elections for candidates or ballot measures.

The CVRA does not require the plaintiff to establish discriminatory intent on the City’s part, historical discrimination, or that minority voters live in a geographically compact area of the City.

DISCUSSION: Numerous public agencies across the state have received demand letters similar to the one the City received, alleging violations of the CVRA. Hundreds of public agencies have now changed to by-district elections as a result of litigation or threatened litigation. The primary reason why public agencies change to by-district elections is the potential exposure to attorneys’ fees. The CVRA allows successful challengers to recover reasonable attorneys’ fees and litigation costs (which include expert witness fees). However, if the City adopts by-district elections voluntarily and within the law’s “safe harbor” provision, attorneys’ fees are capped at $30,000.

No public agency has won a CVRA lawsuit. Several settlements have resulted in millions of dollars after the initiation of litigation, while many more have resulted in settlements well over $30,000. The largest settlement so far has been the City of Palmdale, which settled its ongoing litigation for $4.7 million. The City of Santa Monica recently fought a similar lawsuit and lost, and Plaintiffs in that case are claiming $21.4 million in attorneys’ fees. The City of Modesto settled for $3 million, and the cities of Highland, Anaheim, and Whittier all settled for $1 million or more.

A. Procedure to Transition to By-District Elections

Deciding to go to by-district elections through the safe harbor provision triggers a very short and aggressive timeline. The timeline to transition is as follows:

(1) Receive a Demand Letter and Response Period.

Once the prospective plaintiff has sent a demand letter, as Mr. Grimes has done here, the prospective plaintiff cannot sue the City for at least 45 days from the City’s receipt of the written notice. The 45th day from October 28, 2019 (the date Mr. Grimes’ letter was received) is December 12, 2019. The City entered into a tolling agreement with Mr. Grimes client, the Southwest Voter Registration Education Project, which extended the City’s deadline to make a decision on this demand letter until January 13, 2020.

(2) Resolution of Intention.

Once a city council adopts a resolution outlining its intent to transition from an at-large to a district-based election, discussing the steps it will undertake to facilitate the transition, and providing an estimated time frame, the prospective plaintiff is barred from suing for at least 90 days from the date of the resolution’s adoption.
(3) Public Hearing Prior to Drawing of District Map.

Before adopting district-based elections, the City must first prepare a draft map or maps. However, before drawing a map, the City must hold at least two public hearings over a period of no more than 30 days. The public must be invited to provide input regarding the districts’ composition.

(4) District Map Drawing.

An expert is then required to prepare a proposed map or maps. Each district must be approximately the same size, using the data from the most recent census. The districts must be prepared in compliance with specific State and federal requirements, including consideration of communities of interest and natural geographic boundaries. The drawing of districts must be done carefully to ensure that minority votes are not diluted. Dilution may occur through “cracking,” which occurs when the minority community is fragmented across several districts to prevent the minority community from winning enough seats to gain a majority. Dilution may also occur through “packing,” which occurs when a minority community is concentrated into one or two districts where their votes would cause preferred candidates to win by an overwhelming majority.

(5) Timing and Sequence of Elections.

The Council would also need to establish the timing and sequence of district elections. The change to district boundaries will not affect the terms of any incumbents. Following the first election, the Council would be comprised of approximately half of its members elected by a district and approximately half of its members elected City-wide.

(6) Public Hearings for Map Consideration.

After the draft maps have been prepared, the City must publish and make them available to the public. The City must also show the staggered terms of office and the potential sequence of the elections. The Council must hold at least two additional public hearings over a period of no more than 45 days during which the public will be invited to provide input regarding the draft map and sequence of elections. The first draft map must be published at least seven days before it is considered at a public hearing. If the map is revised at or during a hearing, it must be published again and made available to the public for at least seven days before being adopted.

(7) Map Adoption.

The Council, after selecting a map and choosing the timing and sequence of the election, would then adopt an ordinance providing for district elections, approve the map, and begin implementing district elections.
(8) Attorneys’ Fees.

Should the Council choose to comply with Mr. Grimes’ demand letter, after the adoption of the resolution establishing district-based elections, Mr. Grimes would, within 30 days of the final adoption, demand reimbursement for the cost of the work product generated to support the notice. His demand must be made in writing and must be substantiated with financial documentation. The City must reimburse the potential plaintiff for reasonable costs incurred within 45 days of the written demand. The amount may not exceed $30,000.

B. Ballot Option

Another option for the City is to go through the above described process to bring the issue before the public and determine what potential districts would look like, and then place the choice of whether to adopt those voting districts on the ballot. This is a major decision and involves the fundamental issue of how the residents of Malibu will be represented on the City Council. To date, the public has not had an opportunity to weigh in and participate in this decision, and the only reason it has become an issue is due to the threat of litigation from Mr. Grimes, the poor record of entities that have fought these lawsuits, and the potential significant cost of that litigation.

Instead of adopting an ordinance establishing voting by district, the City Council could instead go through the process to explore by-district voting, but then put the final question of whether to adopt the proposed districts on the ballot in November. This choice has the benefit of leaving the ultimate decision to the voters, but it entails significant risk as the City would lose the protection of the safe harbor provisions and could be sued for alleged violation of the CVRA before the November election. In addition, if the matter is put on the November ballot and the residents vote not to adopt by-district voting, the City could still face the same type of lawsuit threatened by Mr. Grimes.

In order to put the question on the ballot, the same process would be followed as is required to stay within the safe harbor (and as outlined above). The only difference is that the resolution would be slightly different (as described below), and the City risks being sued immediately because it has not adopted a resolution stating an intent to adopt by-district voting.

Alternatively, the City could adopt the “safe harbor” version of the resolution and begin the public hearing process, but later choose to put the matter on the ballot rather than adopt an ordinance establishing districts based on the input at the public hearings. The benefit to this option is that it prolongs the period during which the City would be protected by the safe harbor provisions for an additional 90 days.
C. Proposed Resolution of Intention

If the Council prefers to stay within the safe harbor provisions described above, it should adopt the following language in Section 3 of the attached resolution of intention ("ROI"):

(1) The City Council intends to adopt an ordinance, pursuant to Government Code § 34886 to transition the election of its City Councilmembers from an at-large electoral system to a district-based system, with five (5) Councilmembers elected by district as provided by Government Code § 34871(a).

If the Council prefers to instead declare its immediate intent to put the item on the ballot in November it should instead adopt the following language in Section 3 of the attached ROI:

(2) The City Council intends to place a binding initiative on the ballot for the 2020 general municipal elections to transition the election of its City Councilmembers from an at-large electoral system to a district-based system, with five (5) Councilmembers elected by district as provided by Government Code § 34871(a).

As stated above, this is not a small decision as it will completely change the way the public is represented and how the public chooses its representation. Presently, the public has not participated in this decision, nor has the public provided any input into whether they wish to change how they are represented. It will be up to the Council to decide whether to, on its own, adopt an ordinance transitioning to district-based elections, or ultimately put it to the will of the people as a binding initiative.

In essence, the ROI requires the City to follow the same procedure and timeline for preparing district maps as set forth in Elections Code § 10010, regardless of which option it chooses. The major item that will change is at the end of the process described above, will the Council adopt an ordinance on its own going to district-based elections, or will the Council place the matter on the ballot for the public to choose. Either way, the ROI follows the procedure of engaging in community outreach, public hearings, and proposed map drawings.

The ROI provides for the proposed establishment of five (5) City Council districts and contemplates a rotating Mayor, which is the City’s current practice. If it is the desire of the Council, the resolution can be amended to change the number of districts and provide for a Mayor to be elected at-large.

The ROI provides the following timeline:

(1) Within fourteen (14) days of the adoption of the ROI, the City Manager, in accordance with her power under Municipal Code § 3.04.030, will retain the professional
services of a qualified and experienced demographer to assist the City with the transition to district-based elections.

(2) Within thirty (30) days of the selection and retention of a demographer, City staff and the demographer will develop a schedule of the steps necessary to transition to district-based elections by ordinance, as provided by Elections Code § 10010(a), including:

   (a) Conduct public outreach, including to non-English speaking communities, if any, to explain the districting process and to encourage public participation;

   (b) Before drawing a draft map or maps of the proposed district boundaries, hold at least two public hearings at which the public is invited to provide input regarding the composition of the districts and to consider district boundaries, as provided in Election Code § 10010;

   (c) After drawing a draft map or maps, publish the draft map and the potential sequence of the district elections, and hold at least two public hearings at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections;

   (d) Hold a public hearing at which the City Council will either consider and adopt an ordinance establishing district elections, including the adoption of a district boundary map and election sequence, or adopt a final map and election sequence that will be placed on the ballot initiative.

(3) The City Council shall approve a schedule that takes all of necessary actions to implement the above by April 13, 2020.

ALTERNATIVES:

The Council could choose to reject Mr. Grimes’ demand letter outright. If Mr. Grimes then sues the City for allegedly violating the CVRA, the City will face significant defense costs, and, if unsuccessful, a significant award of attorneys’ fees.

ATTACHMENTS:

1. Resolution No. 20-02
2. Milton C. Grimes demand letter dated October 25, 2019
RESOLUTION NO. 20-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU FINDING THE PROJECT EXEMPT FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT, DIRECTING THE RETENTION OF A DEMOGRAPHER AND DIRECTING A SCHEDULE BE BROUGHT BACK TO TAKE ACTIONS RELATED TO DISTRICT-BASED ELECTIONS IN ACCORDANCE WITH ELECTIONS CODE SECTION 10010(A), AND [DECLARING ITS INTENTION TO ADOPT AN ORDINANCE PURSUANT TO GOVERNMENT CODE SECTON 34886 TO THE ELECTION OF ITS CITY COUNCILMEMBERS TRANSITION FROM AN AT-LARGE ELECTORAL SYSTEM TO A DISTRICT-BASED SYSTEM] [DECLARING ITS INTENTION TO PLACE A BINDING INITIATIVE ON THE BALLOT FOR THE 2020 GENERAL MUNICIPAL ELECTION AS TO WHETHER TO TRANSITION TO DISTRICT-BASED ELECTIONS]

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On or around October 28, 2019, the City received a certified letter from Milton C. Grimes of the Law Offices of Milton C. Grimes, on behalf of his client the Southwest Voter Registration Education Project, asserting that the City’s at-large election system violates the California Voting Rights Act (“CVRA”) and threatened litigation if the City did not voluntarily transition to a district-based election system for electing its City Council.

B. The City denies that its election system violates the CVRA or any other similar law.

C. The California Legislature has provided in Elections Code § 10010 a method whereby a jurisdiction may expeditiously transition to a district or division-based election system and avoid the high costs of litigation under the CVRA by its adoption of AB 350.

D. Section 10010 will delay the CVRA litigation and limit attorneys’ fees associated with a CVRA claim if, within forty-five (45) days of receipt of a claim under the CVRA, the City adopts a resolution stating its intent to transition to district-based elections and within ninety (90) days thereafter (or as otherwise stipulated by the parties), the City takes action to transition to a district-based election system consistent with the intent and purpose of the CVRA.

E. The City Council desires to establish specific steps it will undertake to facilitate the establishing of districts and establish an estimated time frame for doing so.

SECTION 2. The City Council finds that the transition from at-large to by-district elections is exempt from environmental reviewed under the California Environmental Quality Act (“CEQA”) (Pub. Resources Code § 21000 et seq.) pursuant to State CEQA Guidelines (Cal. Code Regs., tit. 14 § 15000 et seq.) sections 15061(b)(3), 15320, and 15378(b)(3). Adoption of this Resolution is an organizational and administrative activity of the City, does not have the potential to result in
either a direct or reasonably foreseeable indirect physical change in the environment, and is therefore not a project for purposes of CEQA. Further, CEQA review is not required because there is no possibility that transitioning the election of the City Council from at-large to district-based elections will have a significant effect upon the environment.

SECTION 3.

[The City Council intends to adopt an ordinance, pursuant to Government Code § 34886 to transition the election of its City Councilmembers from an at-large electoral system to a district-based system, with five (5) Councilmembers elected by district as provided by Government Code § 34871(a).] [The City Council intends to place a binding initiative on the ballot for the 2020 general municipal elections to transition the election of its City Councilmembers from an at-large electoral system to a district-based system, with five (5) Councilmembers elected by district as provided by Government Code § 34871(a).]

SECTION 4. Within fourteen (14) days of the effective date of this resolution, the City Manager shall, pursuant to the provisions of Municipal Code § 3.04.030, retain the services of a demographer experienced and qualified to assist the City in drafting a district map consistent with the CVRA and the Federal Voting Rights Act.

SECTION 5. Within thirty (30) days of the selection and retention of a demographer, City staff and the demographer will develop and bring back to the City Council for approval a schedule for the following actions in accordance with Elections Code Section 10010(a):

(a) Conduct public outreach, including to non-English speaking communities, if any, to explain the districting process and to encourage public participation;

(b) Before drawing a draft map or maps of the proposed district boundaries, hold at least two public hearings at which the public is invited to provide input regarding the composition of the districts and to consider district boundaries, as provided in Elections Code § 10010;

(c) After drawing a draft map or maps, publish the draft map and the potential sequence of the district elections, and hold at least two public hearings at which the public is invited to provide input regarding the content of the draft map or maps and the proposed sequence of elections;

(d) [Hold a public hearing at which the City Council will consider and adopt an ordinance establishing district elections, including the adoption of a district boundary map and the sequence of elections.] [Hold a public hearing at which the City Council will consider adopting a final map and election sequence that will be placed on the November 2020 ballot.]

SECTION 6. The City Council shall approve a schedule that takes all of necessary actions to
implement the above by April 13, 2020.

SECTION 7. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 13th day of January 2020.

_____________________________
KAREN FARRER, Mayor

ATTEST:

_____________________________
HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

_____________________________
CHRISTI HOGIN, City Attorney
VIA CERTIFIED MAIL

October 25, 2019

Heather Glaser, City Clerk
City of Malibu
23825 Stuart Ranch Rd
Malibu, CA 90265

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 City of Malibu. The City of Malibu ("Malibu" or "City") relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within the City of Malibu is racially polarized, resulting in minority vote dilution, and, therefore, the City’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.” \textit{Id.}

The City of Malibu’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 City’s elections.

Malibu has a population of approximately 13,000, with Latinos comprising a significant and growing portion of the City’s population. Even since the 2010 Census, when the Latino population comprised 6.1% of the total population, the Latino proportion has almost certainly increased, based on statewide and local demographics trends. Despite this significant proportion, the Latino community has been consistently underrepresented on the Malibu City Council. Never has any Latino been elected to, or otherwise served on, the Malibu City Council. Therefore, not only is the contrast between the significant Latino proportion of the electorate and the complete present and historical absence of Latinos on Malibu’s City Council outwardly disturbing, it is also fundamentally hostile towards participation by members of this protected class.

The City’s at-large election system has also impeded the emergence of Latino candidates in Malibu. For instance, in the entire history of the City of Malibu, there has not been one Latino to emerge as a candidate for a seat on the Malibu City Council. Opponents of fair, district-based elections may attribute the lack of protected class members vying for elected positions to a lack of interest in local government from these communities. On the contrary, the alarming absence of Latino candidates seeking election to the Malibu City Council reveals vote dilution. \textit{See Westwego Citizens for Better Government v. City of Westwego,} 872 F. 2d 1201, 1208-1209, n. 9 (5th Cir. 1989).

The City’s election history is additionally illustrative. 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.” \textit{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 Malibu, resulting in their victory in Malibu. Proposition 187 prevailed in Malibu with 50.9% of the vote; Proposition 209 prevailed in Malibu with 54.6% of the vote; and Proposition 229 prevailed in Malibu with 65.9% of the vote.
As you may be aware, in 2012, I was involved (coincidentally, with a Malibu law firm) in the lawsuit against the City of Palmdale for violating the CVRA. After an eight-day trial, the plaintiffs 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, I (again, along with that same Malibu law firm) 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 complete and historical lack of representation of Latinos on the Malibu City Council in the context of racially polarized elections, we urge the City to voluntarily change its at-large system of electing its City Councilmembers. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than December 20, 2019 as to whether you would like to discuss a voluntary change to your current at-large system.

I look forward to your response.

Very truly yours,

Milton C. Grimes