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2 **THE STATE OF CALIFORNIA**

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF ORANGE**

19 PEOPLE OF THE STATE OF CALIFORNIA,
20 *ex. rel.* MICHAEL SCHLESINGER, an
21 individual,

22 Plaintiff,

23 v.

24 ED SACHS, WENDY BUCKNAM, AND
25 GREG RATHS, individuals,

26 Defendants.

Case No.

**STATEMENT OF FACTS IN SUPPORT
OF APPLICATION FOR LEAVE TO SUE
IN QUO WARRANTO TO TRY TITLE TO
PUBLIC OFFICE**

**[Code Civ. Proc. § 803; Cal. Code Reg., Title
11, §2(a)]**

Action filed:

Trial date:

27 Pursuant to Title 11, Section 2(a) of the California Code of Regulations, Applicant and
28 proposed Relator MICHAEL SCHLESINGER, submits the following verified statement of facts
necessary for the Attorney General to consider prior to issuance of a ruling on this application for
leave to sue in quo warranto.

I. BACKGROUND

1. The City of Mission Viejo (the "City") is a general law city located within the
County of Orange and was incorporated in 1988, with a City Council consisting of five members

1 elected via at-large election for staggered four-year terms.

2 2. Proposed Defendant Ed Sachs is a resident of the City of Mission Viejo and purports
3 to hold the office of Member of the City Council of the City of Mission Viejo.

4 3. Proposed Defendant Wendy Bucknam is a resident of the City of Mission Viejo and
5 purports to hold the offices of Member of the City Council and Mayor Pro Tem of the City of
6 Mission Viejo.

7 4. Proposed Defendant Greg Rath is a resident of the City of Mission Viejo and
8 purports to hold the office of Member of the City Council of the City of Mission Viejo.

9 **II. DEFENDANTS WERE ELECTED TO TWO-YEAR TERMS FOR CITY**
10 **COUNCIL IN 2018 PURSUANT TO A STIPULATED JUDGMENT**
11 **ENTERED INTO BY CITY.**

12 5. On or about March 22, 2018, the Southwest Voter Registration Education Project
13 filed an action in the Orange County Superior Court against the City of Mission Viejo entitled
14 *Southwest Voter Registration Education Project v. City of Mission Viejo et al.*, Orange County
15 Superior Court Case No. 30-2018-00981588-CU-CR-CRC (“*SWVREP v. MV*”). Plaintiffs in
16 *SWVREP v. MV* alleged that City Council elections in Mission Viejo suffered from racially
17 polarized, resulting in a dilution of voting rights for Hispanic and Latino voters. Plaintiffs sought
18 a declaration pursuant to the California Voting Rights Act (“CVRA”) to require the City adopt a
19 district-based election system for its City Council.

20 6. On or about June 26, 2018, the City Council adopted Resolution 18-21 calling the
21 November 2018 general election for three City Council members.

22 7. On or about July 20, 2018, the City of Mission Viejo entered into a Stipulation for
23 Entry of Judgment and Judgment in *SWVREP v. MV* (the “Stipulated Judgment”), a true and correct
24 copy of which is attached hereto as **Exhibit A**.

25 8. Under the terms of the Stipulated Judgment, City was, amongst other provisions,
26 permanently enjoined from conducting any further at-large elections subsequent to the November
27 2018, general election. While then-existing council members were to serve the remainder of their
28 elected terms, the Stipulated Judgment required that council members elected in the November

1 2018 election hold two-year terms, with subsequent elections (conducted under a cumulative voting
2 system) being for four-year terms.

3 9. On or about July 26, 2018, the Court entered Judgment pursuant to the terms of the
4 Stipulation. Entry of the Stipulated Judgment effectively amended Resolution 18-21.

5 10. All of the actions taken by the City following the entry of the Stipulated Judgment
6 were in accordance with the fact that the individuals elected to the City Council in the November
7 2018 general elections would serve only two-year terms.

8 11. On or about July 27, 2018, the City announced the settlement in an article titled
9 “City Council settles Voting Rights Litigation while retaining the greatest flexibility for city voters”
10 and indicated that the City intended to pursue a cumulative voting structure. The announcement
11 made clear that the 2018 election would be for two-year terms and not four-year terms: “Mission
12 Viejo City Council Members voted into office this November will serve for two years rather than
13 the traditional four-year terms. The City will work with the community on voter education in the
14 coming years.” A true and correct copy of the announcement, posted to the City’s official website,
15 is attached hereto as **Exhibit B**.

16 12. On or about July 30, 2018, the City Clerk issued a Public Notice of Election, a true
17 and correct copy of which is attached hereto as **Exhibit C**. The Notice of Election stated that a
18 General Municipal Election was to be held in the City on November 6, 2018 for “Three Members
19 of the City Council” for a “Full term of two years.” Candidates interested in running for a city
20 council seat were informed that the term of office would be a two-year term.

21 13. On or about August 13, 2018, City issued a Public Notice that five candidates were
22 “officially lined up for three open Mission Viejo City Council seats in November,” the deadline to
23 file papers having ended on August 10, 2018. The announcement further emphasized that the
24 election was for a two-year term of office because of the settlement that it entered: “Mayor Ed
25 Sachs, Mayor Pro Tem Greg Raths and Council Member Wendy Bucknum are up for re-election.
26 On November 6, voters will consider them along with candidates Mahmoud El-Farra and Michael
27 McConnell. The five candidates are running for two-year terms rather than the typical four-year
28 term because of the recent Voting Right Litigation Settlement. Successful candidates will be sworn

1 into office on December 11, 2018 (or as soon as possible thereafter) following the canvass of returns
2 and the declaration of the official results of the election by the City Council.” (Emphasis added.)

3 A true and correct copy of the announcement, posted to the City’s official website, is attached
4 hereto as **Exhibit D**.

5 14. On November 6, 2018, the Statewide General Election was held, which included the
6 at-large election of three city council members.

7 15. On December 11, 2018, City of Mission Viejo adopted Resolution No. 18-52,
8 reciting the results of the November 2018 City Council elections, a true and correct copy of which
9 is attached hereto as **Exhibit E**. Section 5 of Resolution 18-52 specifically states that each of the
10 Defendants was elected “for the term of two years.”

11 16. On or about December 11, 2018, Defendants Sachs, Bucknum and Rath were sworn
12 into office, thus beginning each of their respective two-year terms.

13 17. Each of Defendants’ Sachs, Bucknum and Rath two-year terms as members of the
14 city council expired on or about December 11, 2020.

15 18. After the expiration of their terms on or about December 11, 2020, Defendants
16 Sachs, Bucknum and Rath did not run for re-election, and were not re-elected.

17 19. Defendants Sachs, Bucknum and Rath continue to serve as members of the Mission
18 Viejo City Council without legal authority, and are guilty of usurping, intruding into, and
19 unlawfully holding their respective offices.

20 **III. THE CITY ENTERED INTO AN AMENDED STIPULATED JUDGMENT**
21 **WHICH DID NOT AND COULD NOT ALTER THE TERM OF THE**
22 **DEFENDANTS.**

23 20. Although Defendants’ terms were to expire in December 2020, City did not adopt a
24 resolution calling the election for Defendants’ seats. Instead, the City only issued a call to election
25 for the other two city council seats held by incumbents Brian Goodell and Patricia “Trish” Kelley.

26 21. On June 23, 2020, the City Council adopted Resolution 20-25 which called the
27 November 3, 2020 general election for the purpose of the electing of two (2) Members of the City
28

1 Council for a term of two years. A true and correct copy of the resolution is attached hereto as
2 **Exhibit F.**

3 22. Resolution 20-25 only called the election for the seats held by incumbents Brian
4 Goodell and Patricia “Trish” Kelley. No provision of the resolution addresses that the two-year
5 terms of Defendants Raths, Sachs and Buckman were set to expire in December 2020, nor did the
6 Resolution authorize or address and extension of Defendants’ elected terms.

7 23. After calling the 2020 general municipal election, the City, on July 14, 2020,
8 submitted a joint ex parte application to amend the Stipulated Judgment. The Court issued an Order
9 Granting the Joint Ex Parte Application for Order Amending Stipulated Judgment (“the July 2020
10 Stipulation”). A true and correct copy of the Court Order and Amended Stipulated Judgment is
11 attached hereto as **Exhibit G.**

12 24. The July 2020 stipulation amended the Stipulated Judgment as follows:

- 13 a. The implementation of cumulative voting in Defendant City Council election
14 would begin with the November 2022 election, rather than the November 2020
15 election.
- 16 b. All five seats on Defendant’s City Council to be up for election on November
17 2022 and every four years thereafter, rather than November 2020 and every four
18 years thereafter;
- 19 c. The City would implement limited voting (each voter gets one vote), or district-
20 based voting in each election in the event that cumulative voting cannot be
21 implemented in that election; and

22 25. No provision in the July 2020 Stipulation permits for the extension of Defendants’
23 terms beyond the two years for which they were elected.

24 26. The Defendants were never re-elected to office following the expiration of their
25 terms in December 2020.

26 27. On January 10, 2022, a story appeared in the *Orange County Register* which referred
27 to a statement from the City Attorney, Bill Curley, that “[t]hree city council seats are up for
28 reelection in 2022. If districts are created so the two remaining council members, who are not up

1 for reelection until 2024, live in the same district, they will have to run against each other in 2022.
2 This statement suggests that the City intends to call an election for only three city council seats in
3 2022, rather than the five required under the Amended Stipulated Judgment. A true and correct
4 copy of the Register's story is attached hereto as **Exhibit H**.

5
6 Dated: January 11, 2022

BUNSOW DE MORY LLP

7
8 By: /s/ _____
9 Aaron R. Hand

10 *(Additional Counsel)*

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19 Attorneys for Relator
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Exhibit A

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19 Attorneys for Plaintiff

20
21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **COUNTY OF ORANGE**

23 **SOUTHWEST VOTER**
24 **REGISTRATION EDUCATION**
25 **PROJECT**

26 Plaintiff,

27 v.

28 **CITY OF MISSION VIEJO,**
CALIFORNIA; and DOES 1-100,
inclusive,

Defendants.

Case No.: 30-2018-00981588-CU-CR-CJC

NOTICE OF JUDGMENT

Dept. C-19

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

05/13/2019 at 10:50:00 AM

Clerk of the Superior Court
By e Clerk, Deputy Clerk

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TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 26, 2018, the Court entered the Judgment, stipulated by the parties, a true and correct copy of which is attached as Exhibit A.

This notice is submitted at the direction of the Court at the May 10, 2019 status conference.

DATED: May 11, 2019

**SHENKMAN & HUGHES,
R. REX PARRIS LAW FIRM, and
LAW OFFICES OF MILTON C. GRIMES**

By: 
Kevin Shenkman
Attorney for Plaintiff

EXHIBIT "A"

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 26 2018

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

SOUTHWEST VOTER
REGISTRATION EDUCATION
PROJECT

Plaintiff,

v.

CITY OF MISSION VIEJO,
CALIFORNIA; and DOES 1-100,
inclusive,

Defendants.

Case No.: 30-2018-00981588-CU-CR-CJC
C19

**STIPULATION FOR ENTRY OF
JUDGMENT AND ~~[PROPOSED]~~
JUDGMENT**

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**

2 Pursuant to California Code of Civil Procedure Section 664.6, Plaintiff Southwest
3 Voter Registration Education Project (hereinafter "SVREP" or "Plaintiff"), on the one hand,
4 and Defendant City of Mission Viejo ("Defendant" or "City"), on the other hand, stipulate to
5 entry of judgment as follows:

6 **RECITALS**

7 1. City is a municipal corporation organized and existing under the laws of the
8 State of California.

9 2. City currently elects its five (5) city council members through a plurality "first-
10 past-the-post" at-large election system on a staggered basis, such that every two years the
11 City electorate elects either two or three City Council members

12 3. On or about September 26, 2017, counsel for Plaintiff sent correspondence to
13 the City alleging that the City's current at-large election system for electing its council
14 members violates the California Voting Rights Act of 2001 (hereinafter the "CVRA"), Cal.
15 Elcc. Code §§ 14025, et seq.

16 4. On or about March 22, 2018, Plaintiff filed the above-captioned lawsuit
17 alleging that City's election system violates the CVRA. Thereafter, the City confirmed that
18 such violation is present and sought to identify remedies that best correct the violation.
19 Plaintiff and City worked together to identify appropriate remedies, which are identified in
20 this pleading.

21 5. In an effort to ensure that all residents of the City have equal access to the
22 electoral process and that all voters are equally able to elect candidates of their choice or
23 influence the outcome of city council elections in the City, and rather than further litigating
24 this matter, the parties desire to fully and finally settle and terminate all differences, disputes,
25 and disagreements between them relating or arising out of this dispute, in accordance with the
26 terms and conditions set forth in this Agreement.

27 **WHEREFORE, THE PARTIES STIPULATE TO A JUDGMENT THAT PROVIDES**
28 **AS FOLLOWS:**

1 1. Unless City adopts district-based elections (as defined in the CVRA) at some
2 later date, all elections for the City's governing board (the Mission Viejo City Council) shall
3 employ cumulative voting, in the same manner as ordered by the court in *United States v.*
4 *Village of Port Chester* (S.D.N.Y. 2010) 704 F.Supp.2d 411. City shall be permanently
5 enjoined from imposing, applying, holding, tabulating and/or certifying any further at-large
6 elections absent cumulative voting, and/or the results thereof, for positions on the City
7 Council, subsequent to the November 2018 general election.

8 2. City, in cooperation with the Orange County Registrar of Voters ("OCROV"),
9 or otherwise, may employ any suitable ballot style that allows voters in Mission Viejo to
10 exercise their cumulative voting rights consistent with this Agreement. Plaintiff will
11 reasonably participate as City may request from time to time, in addressing OCROV or
12 similar entity issues.

13 3. The members of the Mission Viejo City Council in office on the date judgment
14 is entered by the Orange County Superior Court shall continue in office until the expiration of
15 their respective terms and until their successors are elected and qualified.

16 4. In order to maximize the remedial effectiveness of the cumulative voting
17 system adopted herein, and consistent with the cumulative voting remedy ordered by the
18 court in *United States v. Village of Port Chester* (S.D.N.Y. 2010) 704 F.Supp.2d 411,
19 beginning with the November 2020 election, all five seats on the City Council shall be elected
20 at the same time. Accordingly, the election in November 2018 shall be for two-year terms on
21 the City Council, with all subsequent elections (2020, 2024, 2028, etc.) being for four-year
22 terms. City shall, at an appropriate time, amend its codes to reflect this revision.

23 5. City shall conduct an appropriate voter education program for the purpose of
24 educating City's electorate about cumulative voting and how to complete a cumulative voting
25 ballot. Instructional materials associated with the voter education program shall be available
26 in both English and Spanish, and shall be made available at all polling locations in Mission
27 Viejo during in-person voting.

28

1 6. Plaintiff is the prevailing party in the above-captioned case, entitled to its
2 reasonable attorneys' fees and expenses, pursuant to California Elections Code Section
3 14030. If the parties are unable to agree on the amount of such fees and expenses within 150
4 days of entry of judgment, the amount of such fees and expenses shall be determined by the
5 Court through a motion filed by Plaintiff within 210 days of entry of judgment. Other than as
6 provided herein, Plaintiff and Defendant shall bear their own costs, expenses and attorneys'
7 fees related to the above-captioned case.

8 7. The Parties agree to waive their right to appeal from this Joint Stipulation and
9 Stipulated Judgment. Nothing in this Joint Stipulation and Stipulated Judgment shall be
10 construed as a waiver of any party's right to appeal from an order that arises from an action to
11 enforce the terms of this Joint Stipulation and Stipulated Judgment.

12 8. This Court shall retain jurisdiction over Plaintiff and the City to enforce the
13 terms of this Stipulation pursuant to Section 664.6 of the Code of Civil Procedure.

14 9. All Doe Defendants are dismissed.

15
16 IT IS SO STIPULATED

17 DATED: July 20, 2018

18 SHENKMAN & HUGHES,
19 R. REX PARRIS LAW FIRM, and
20 LAW OFFICES OF MILTON C. GRIMES

21 By: ES for
22 Kevin Shenkman
23 Attorney for Plaintiff

24 DATED: July 20, 2018

25 MISSION VIEJO CITY ATTORNEY

26 By: William P. Curley III
27 William Curley
28 Attorney for Defendant

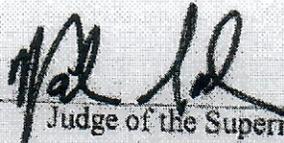
W.S. 7-26-18

~~PROPOSED~~ JUDGMENT

As the parties to *Southwest Voter Registration Education Project v. City of Mission Viejo*, Case No. 30-2018-00981588-CU-CR-CJC have filed the Stipulation for Entry of Judgment, attached above, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is hereby issued and entered pursuant to the terms of the Stipulation for Entry of Judgment, in accordance with Code of Civil Procedure Section 664.6, and that this Court shall retain jurisdiction over the Parties as provided for in that statute.

The Clerk is directed to enter this Judgment.

DATED: July 26, 2018



Judge of the Superior Court

WALTER SCHWARM

Case No. 30-2018-00981588

1 [] **BY FACSIMILE as follows:** I served such document(s) by fax at See
2 Service List to the fax number provided by each of the parties in this litigation at
Lancaster, California. I received a confirmation sheet indicating said fax was
transmitted completely.

3 [] **BY FEDERAL EXPRESS/OVERNIGHT MAIL as follows:** I placed
4 such envelope in a Federal Express Mailer addressed to the above party or parties
at the above address(es), with delivery fees fully pre-paid for next-business-day
5 delivery, and delivered it to a Federal Express pick-up driver before 4:00 p.m. on
the stated date.

6 [] **BY ELECTRONIC SERVICE as follows:** Based on a court order, or an
7 agreement of the parties to accept service by electronic transmission, I caused the
documents to be sent to the persons at the electronic notification addressed listed
8 on the attached Service List.

9 Executed on May 13, 2019, at Lancaster, California.

10 [X] I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

11
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13 _____
Cheryl Cinnater

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Exhibit B

City Council settles Voting Rights Litigation while retaining the greatest flexibility for city voters

 News Category [Announcements](#) [Projects](#) Date: July 27, 2018
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The City and Southwest Voter Registration Education Project, in evaluating the best way to alleviate all inconsistencies with the California Voting Rights Act, agreed to replace Mission Viejo's current at-large voting system. A new at-large voting process will be crafted that enhances the voting voice of all residents. This change won't happen until 2020. The 2018 election in November will proceed in the traditional fashion.

The City understands it has had some conflict with the California Voting Rights Act and needed to amend its process to comply with law. The community was not in favor of district-based elections, so the City Council sought an alternative remedy. Through cooperative negotiations and discussions with all parties, the cumulative voting structure is seen as providing the most positive response for all without moving to districts. The City Council ensured that it retained the greatest flexibility to implement either cumulative voting or reconsider districts if that's of future interest to the community.

Mission Viejo City Council Members voted into office this November will serve for two years rather than the traditional four-year terms. The City will work with the community on voter education in the coming years.

Comments

Submitted by Cathy Schlicht on Mon, 07/30/2018 - 2:13 pm

Are we in the spin cycle or...

Are we in the spin cycle or is the city promoting fake news?

Our citizens lost substantial rights on Friday, as the Stipulation totally destroys our long time tradition of "One Man One Vote".

This year's November 6 election will be for a two term, not the traditional 4 year term.

Beginning in the year 2020, and every four years thereafter, ALL 5 council members are up for re-election; We no longer have the advantage of a 2 year election cycle.

Additionally, the creation of this new cumulative or weighted voting system was established without the voice or the even knowledge of the public

The council never publicly discussed remedies to solve the city's CVRA violations, however, they did rapidly close the door to district base voting. Was this a set-up for a pre-determined outcome to save the seats of the council majority from the consequences of district based voting? At least three council members would probably have resided in the same district, where they would have had to campaign for the same seat. Did the council's action and non-action preserve their power and status at the cost of the public good?

Submitted by Henry Theis on Thu, 08/02/2018 - 9:25 pm

Looks like the Council took...

Looks like the Council took the easy route but not the best...

Submitted by Tintin on Fri, 08/03/2018 - 2:18 am

The community was quite...

The community was quite clear in rejecting the imposed district-based voting which would give undue influence to certain groups, as opposed to our current democratic plurality. What the new process is, I don't know. Even this article does not describe how the change is more fair. When we see that some San Francisco-based lawfirm can impose its will on distant communities, I begin to think that breaking California into three states may not be such a bad idea.

Submitted by Hugh Speed on Fri, 08/03/2018 - 7:31 am

Our country was founded on...

Our country was founded on the premise of 1 person, 1 vote. How did this type of voting ever get sanctioned? I understand other cities do this. That does not make it right. Our Forefathers must be spinning in their graves!

Submitted by Jerome kersey on Fri, 08/03/2018 - 10:18 am

Ms. Schlicht lost for making...

Ms. Schlicht lost for making exactly the conspiratorial allegations she makes above.

That was a good thing for the city.

Submitted by Jerome kersey on Fri, 08/03/2018 - 10:21 am

No Hugh, the country was not...

No Hugh, the country was not founded on 1 person 1 vote. Women, the poor and the 3/5ths people could not even vote. The forefathers as you call them insisted on "no taxation without representation" and then proceeded to deny a lot of people (all the women alone would make it more than 50%) the right to choose their representation.

Why are you so uninformed?

Submitted by Susan D on Fri, 08/03/2018 - 10:49 am

One person, one vote,...

One person, one vote, anything else is unconstitutional. Remember "no taxation without representation"? Just because people are quiet does not mean they are stupid.

Submitted by Cathy Schlicht on Fri, 08/03/2018 - 11:43 am

The city council will be...

The city council will be shifting blame away from themselves by stating that they were following the will of the people.

However, the public was never given the opportunity to choose between district based voting vs. weighted or cumulative voting.

On February 13, the city admitted its violations of the California Voter Rights Act and then went behind closed doors to find a remedy and never gave the public the freedom to decide how we wanted to elect our public officials.

Submitted by Kathy Dittner on Fri, 08/03/2018 - 3:52 pm

In a Register article August

In a Register article August...

In a Register article August 30, it stated that minorities would get 5 votes to our 1 vote to make it "fair"? Look up the article or tell me this is not so. What has happened to our City Council who would vote for such a solution to a problem we do not have.....that we are suppressing minority votes? I never heard of this solution nor were the voters informed.

Submitted by Dale A. George on Fri, 08/03/2018 - 5:54 pm

The problem is that days...

The problem is that days before the filing deadline for Council candidates we have this issue dropped on us.

Don't know whether this is more democratic or not as we do not have studies to support.

Would the individual Council members provide comments on this and its appropriateness ?

Submitted by William Dumler on Sat, 08/04/2018 - 9:15 am

California voting law, while...

California voting law, while not explained here seems to be the mystery here. From my perspective M.V. is forced to conform to a law, to correct a condition that does not seem to exist. How is a "weighted" voting system fair?

Now that M.V. is a city, it's as I feared, another lever of civic bureaucracy, and petty political squabbling.

Submitted by Jerome kersey on Sat, 08/04/2018 - 1:43 pm

Why is the blatantly false...

Why is the blatantly false and racially-charged comment by Kathy Dittner allowed to stand?

Submitted by Cathy Schlicht on Mon, 08/06/2018 - 10:53 am

After the February 13, 2018...

After the February 13, 2018 conclusion of the poorly advertised public hearing process, the city was to adopt an ordinance with a remedy to cure the city's admitted violations of the CVRA. Instead, the city attorney requested the creation of an Ad Hoc committee and failed to request an extension of time for our Safe Harbor period. That Safe Harbor period expired on January 22, 2018.

Consequently, the city's inaction bought us a lawsuit that was served on the city on May 15, 2018.

It took a month for Mayor Ed Sachs to assign council members Greg Rath and Trish Kelley to the CVRA Ad Hoc committee. Are we to consider it an irony that Ed Sachs, Greg Rath and Trish Kelley, who all live south of Oso Parkway, would probably have resided in the same district if the council had approved district based voting over the cumulative voting that comes into play in 2020?

Showing no urgency, the Ad Hoc Committee only met three times since its March 13 formation: April 10, May 15 and again on July 3.

There so much evidence in the public record that delay tactics were engaged in order to protect the status quo of the council majority and in so doing, the voters voice was eliminated from the process.

Currently, there is not a pathway to cumulative voting. I shared that information with Judge Schwarm, and it was added to the court's record.

Add New Comment

Your name

Email*

Comment*



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Exhibit C



CITY OF MISSION VIEJO PUBLIC NOTICE OF ELECTION

NOTICE IS HEREBY GIVEN that a General Municipal Election is to be held in the City of Mission Viejo on Tuesday, November 6, 2018, for the following officers:

Three Members of the City Council

Full term of two years

If no one or only one person is nominated for an elective office, appointment to the elective office may be made as prescribed by Section 10229 of the Elections Code of the State of California.

The polls will be open on November 6, 2018, between the hours of 7:00 a.m. and 8:00 p.m.

July 30, 2018

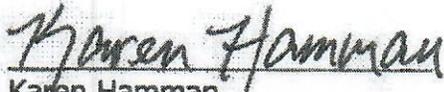

Karen Hamman
City Clerk

Exhibit D

HOME > NEWS > MISSION VIEJO VOTERS WILL CONSIDER 5 CANDIDATES IN THE NOVEMBER ELECTION

Text

Mission Viejo voters will consider 5 candidates in the November election

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Five candidates are now officially lined up for three open Mission Viejo City Council seats in November. The deadline to file papers ended on August 10.

Mayor Ed Sachs, Mayor Pro Tem Greg Rath and Council Member Wendy Bucknum are up for re-election. On November 6, voters will consider them along with candidates Mahmoud El-Farra and Michael McConnell. The five candidates are running for two-year terms rather than the typical four-year term because of the recent [Voting Rights Litigation Settlement](#).

Successful candidates will be sworn into office on December 11, 2018 (or as soon as possible thereafter) following the canvass of returns and the declaration of the official results of the election by the City Council.

The public can review the "Candidate Statements" on the [City's website](#) or obtain copies from the City Clerk's office (cityclerk@cityofmissionviejo.org).

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Exhibit E

RESOLUTION 18-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MISSION VIEJO, CALIFORNIA, RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 6, 2018, DECLARING THE RESULT AND SUCH OTHER MATTERS AS PROVIDED BY LAW

WHEREAS, a General Municipal Election was held and conducted in the City of Mission Viejo, California, on Tuesday, November 6, 2018, as required by law; and

WHEREAS, notice of the election was given in time, form and manner as provided by law; that voting precincts were properly established; that election officers were appointed and that in all respects the election was held and conducted and the votes were cast, received and canvassed and the returns made and declared in time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in general law cities; and

WHEREAS, the County Election Department canvassed the returns of the election and has certified the results to this City Council, the results are received, attached and made a part hereof as "Exhibit A".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MISSION VIEJO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the whole number of ballots cast in the precincts (except vote-by-mail ballots and early voting ballots) was 15,060. That the whole number of vote-by-mail voter ballots cast in the City was 28,878, and the whole number of early voting ballots cast in the City was 1,716, making a total of 45,654 ballots cast in the City.

SECTION 2. That the names of persons voted for at the election for City Council Member are as follows:

Greg Rath
Michael McConnell
Mahmoud El-Farra
Ed Sachs
Wendy Bucknum

SECTION 3. That the number of votes given at each precinct and the number of votes given in the City to each of the persons above named for the respective offices for which the persons were candidates were as listed in Exhibit "A" attached.

SECTION 4. The City Council does declare and determine that: Ed Sachs was elected as Member of the City Council for the term of two years; Wendy Bucknum was elected as Member of the City Council for the term of two years; and Greg Rath was elected as Member of the City Council for the term of two years.

SECTION 5. The City Clerk shall enter on the records of the City Council of the City, a statement of the result of the election, showing: (1) the whole number of ballots cast in the City; (2) the names of the persons voted for; (3) for what office each person was voted for; (4) the number of votes given at each precinct to each person; and (6) the total number of votes given to each person.

SECTION 6. That the City Clerk shall immediately make and deliver to each of the persons so elected a Certificate of Election signed by the City Clerk and authenticated; that the City Clerk shall also administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the office of the City Clerk. Each and all of the persons so elected shall then be inducted into the respective office to which they have been elected.

SECTION 7. That 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 ON DECEMBER 11, 2018.


Ed Sachs, Mayor

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Mission Viejo at a regular meeting thereof held on the 11th day December 2018, by the following vote:

AYES: Bucknum, Goodell, Kelley, Rath, and Sachs
NOES: None
ABSENT: None

ATTEST:


Karen Hamman, City Clerk

Exhibit F

RESOLUTION 20-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MISSION VIEJO, CALIFORNIA, CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 3, 2020, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on November 3, 2020, for the election of Municipal Officers; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MISSION VIEJO, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Mission Viejo, California, on Tuesday, November 3, 2020, a General Municipal Election for the purpose of electing Two Members of the City Council for the term of two years.

SECTION 2. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 3. That the City Clerk is authorized, instructed and directed to coordinate with the County of Orange Registrar of Voters to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 4. That the vote centers for the election shall be open at 7:00 a.m. of the day of the election and shall remain open continuously from that time until 8:00 p.m. of the same day when said vote centers shall be closed, pursuant to Election Code Section 10242, except as provided in Section 14401 of the Elections Code of the State of California; and the vote centers shall be open any other dates and times as specified by the Orange County Registrar of Voters.

SECTION 5. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 6. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 7. That in the event of a tie vote (if any two or more persons receive an equal and the highest number of votes for an office) as certified by the County of Orange Registrar of Voters, the City Council, in accordance with Election Code § 15651(a), shall set a date and time and place and summon the candidates who have received the tie votes to appear and will determine the tie by lot or in accordance with Election Code § 15651(b), shall conduct a special runoff election to resolve the tie vote and such special runoff election is to be held on a Tuesday not less than 40 days nor more than

125 days after the administrative or judicial certification of the election which resulted in a tie vote.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 9. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

PASSED, APPROVED AND ADOPTED ON JUNE 23, 2020.


Brian Goodell
Mayor

I, Kimberly Schmitt, City Clerk of the City of Mission Viejo, hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Mission Viejo at a regular meeting thereof, held on the 23rd day of June 2020, by the following vote of the Council:

AYES: Bucknum, Goodell, Kelley, Raths, and Sachs
NOES: None
ABSENT: None

ATTEST:



Kimberly Schmitt
City Clerk

Exhibit G

41097917

1 WILLIAM P. CURLEY, III (SBN: 125816)
2 **OFFICE OF MISSION VIEJO CITY ATTORNEY**
3 1768 Turnpost Lane
4 Hacienda Heights, CA 91745
5 Telephone: (951) 316-6614

Exempt from filing fees pursuant
to Government Code § 6103.

6 Attorney for Defendant
7 **CITY OF MISSION VIEJO**

8 Kevin I. Shenkman (SBN: 223315)
9 Mary R. Hughes (SBN: 222662)
10 **SHENKMAN & HUGHES PC**
11 28905 Wight Road
12 Malibu, CA 90265
13 Telephone: (310) 457-0970

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 16 2020

DAVID H. YAMASAKI, Clerk of the Court

14 R. Rex Parris (SBN: 96567)
15 **R. REX PARRIS LAW FIRM**
16 43364 10th Street West
17 Lancaster, CA 93534
18 Telephone: (661) 949-2595
19 Facsimile: (661) 949-7524

BY: _____, DEPUTY

20 Milton Grimes (SBN: 59437)
21 **LAW OFFICES OF MILTON C. GRIMES**
22 3774 West 54th Street
23 Los Angeles, CA 90043
24 Telephone: (323) 295-3023

25 Attorneys for Plaintiff
26 **SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT**

27 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
28 **COUNTY OF ORANGE**

29 **SOUTHWEST VOTER**
30 **REGISTRATION EDUCATION PROJECT,**

Case No. 30-2018-00981588-CU-CR-CJC

w.s. 7-16-20

31 Plaintiff.

(Proposed)
**ORDER GRANTING JOINT EX PARTE
APPLICATION FOR ORDER AMENDING
STIPULATED JUDGMENT**

32 v.

33 **CITY OF MISSION VIEJO, CALIFORNIA; and**
34 **DOES 1-100, inclusive,**

35 Defendants.

w.s. 7-16-20

1 On July 16, 2020, Plaintiff Southwest Voter Registration Education Project ("SVREP") and
2 Defendant CITY OF MISSION VIEJO ("Defendant" or "City") brought their Joint Ex Parte Application
3 ("Application") for an Order Amending the Stipulated Judgment in the above-captioned action. On
4 July 16, 2020, the matter was heard in Department C-19 of the above-referenced court, the Honorable
5 Walter P. Schwarm presiding. ~~After hearing the arguments from the parties' counsel,~~ ^{Based on the stipulation of the parties, w.s. 7-16-20} and considering
6 all of the papers filed in connection with this proceeding, the Court hereby GRANTS the Application in
7 its entirety.

8 The Stipulated Judgment is hereby amended as follows:

9 1) The implementation of cumulative voting in Defendant's City Council elections will
10 begin with the November 2022 election, rather than the November 2020 election;

11 2) All five seats on Defendant's City Council to be up for election in November 2022 and
12 every four years thereafter, rather than November 2020 and every four years thereafter;

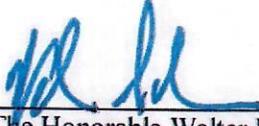
13 3) The City shall implement limited voting (each voter gets one vote), or district-based
14 voting, in each election in the event that cumulative voting cannot be implemented in that election; and

15 4) No further postponements of the implementation of the remedial changes to Defendant's
16 City Council election system will be granted for any reason.

17 In all other respects, the Stipulated Judgment shall remain the same.

18 **IT IS SO ORDERED.**

19 Dated: July 16, 2020

20 
21 _____
22 The Honorable Walter P. Schwarm
23 Judge of the Orange County Superior Court

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28 w.s. 7-16-20

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PROOF OF SERVICE

I, **Kandace M. Hawkins-Adepoju**, declare that I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to this action; my business address is 515 South Figueroa Street, Suite 750, Los Angeles, California 90071. My email address is: khawkins-adepoju@loanosmith.com

On **July 14, 2020**, I served the attached **(Proposed) ORDER GRANTING JOINT EX PARTE APPLICATION FOR ORDER AMENDING STIPULATED JUDGMENT** on the interested parties in this action, to the address(es) and/or fax number(s) listed below:

(Regular U.S. Mail) on all parties in said action in accordance with Code of Civil Procedure Section 1013, by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth above, at Lozano Smith, which mail placed in that designated area is given the correct amount of postage and is deposited at the Post Office that same day, in the ordinary course of business, in a United States mailbox in the County of Los Angeles.

Kevin I. Shenkman
Mary R. Hughes
SHENKMAN & HUGHES PC
28905 Wight Road
Malibu, CA 90265

R. Rex Parris
R. REX PARRIS LAW FIRM
43364 10th Street West
Lancaster, CA 93534

Milton Grimes
LAW OFFICES OF MILTON C. GRIMES
3774 West 54th Street
Los Angeles, CA 90043

(By Electronic Mail) on all parties in said action by transmitting a true and correct to the persons at the email addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 14, 2020**, at Los Angeles, California.

Kandace M. Hawkins-Adepoju

Exhibit H

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By-district voting will still address voter dilution in Mission Viejo, officials say



Mission Viejo City Hall in Mission Viejo on Wednesday, January 5, 2022. After facing pressure in 2018 to change its voting structure for council elections, Mission Viejo leaders shifted to cumulative voting as the best choice for addressing minority representation in city council elections. The method ran into obstacles with the state and the city abandoned efforts to implement it this year, instead opting for district-



At the polls in November, Mission Viejo voters will choose from a batch of candidates who they feel will best to represent the pocket of town, or district, in which they live; it's the solution reached for improving representation of minorities in city leadership.

After city officials said it was “unfortunate” they [couldn't get state officials on board for a cumulative voting system without a change of law](#), Mission Viejo will vote using a by-district method starting in 2022.

Both city leaders and an attorney representing the voting rights group that sued Mission Viejo over its election process had argued a cumulative system would likely best address the issue of minority vote dilution in the city. But the voting districts now being created will still tackle the problem, they said.

Attorney Kevin Shenkman sued Mission Viejo in 2018 on behalf of the nonprofit Southwest Voter Registration Education Project, arguing the city's existing at-large voting system diluted Latino votes. The system, where voters cast ballots for all open seats on the council, has been challenged in cities, schools districts and special districts throughout the state, by groups arguing the voice of minority communities can be drowned out.

District-based voting has been the most common alternative; creating smaller geographic sections of the city which can ensure a minority group is in the majority and make it less expensive to mount a campaign. But drawing a district in which Mission Viejo's Latino residents represent the majority doesn't work, city officials and Shenkman argued, because of the way the residents are clustered geographically. About 19% of the city's residents identified Hispanic or Latino [in 2020](#).

Under a cumulative method, voters cast as many ballots as open council seats, including, if they want, multiple for the same candidate.

Mission Viejo's Latino communities are primarily concentrated in two spots, in the north near the western edge of the city and to the south, near Saddleback



“It would be difficult, if not legally impossible, to combine those two communities into a single district,” Shenkman said. “So that being said, either cumulative or limited voting would allow those two areas to coalesce behind one candidate and likely bring that one candidate to victory.”

In some cities, where immigrant groups are bundled in spots throughout the city, “what cumulative and alternative voting are supposed to do is facilitate better representation in those situations,” said Pedro Hernandez, legal and policy director for government watchdog group California Common Cause.

He did say district-based elections “have generally performed well in allowing for protected voters to elect their candidates of choice.”

City Attorney Bill Curley said the options in front of the city were “both good,” but a cumulative system would have “accelerated” the time in which a minority group could gain enough influence in their district to elect a representative council member.

Still, while a Latino majority district can’t be created at the outset, because the entire state is becoming more diverse, “you will eventually see candidates emerge who somewhat more mirror those changes,” said Marcia Godwin, a professor of public administration at University of La Verne who studies local government and elections.

Groups that have been challenging governments over their election methods began with ones “where it was most apparent that there was an under representation of persons of color, and that there could be geographical districts to increase the probability of having more diverse governing bodies,” Godwin said.

In those cases, research showed a switch to district voting was successful in creating more representative leadership, she said.

“What we’re looking at now is moving to other communities where it may not be as high of a probability of increasing representation, or their populations are becoming more diverse citywide, where it is harder to draw favorable districts,” she said. “That appears to be somewhat the case in Mission Viejo.”

Godwin noted that adding more seats to a city or county’s governing board could provide better representation proportionally.



Mission Viejo had been trying to adopt cumulative voting for its 2020 election when it [ran into a roadblock with the California Secretary of State](#), which said the city would need approval from the legislature before becoming the first in the state to implement the system.

Curley said the city argued that state law allows cumulative voting with a court order, which it received in the lawsuit settlement. But the Secretary of State's office disagreed, saying the system isn't allowed in general law cities such as Mission Viejo.

Without the legislature's authorization, the city would have to operate the election process without the state's help, including creating a process to validate the results, Curley said.

He called the by-district voting method a "one-size fits all remedy."

Shenkman argued the assertion a cumulative voting plan needs state approval is "from a legal perspective clearly wrong," as case law makes it clear that the court "certainly has the power under the (California Voting Rights Act) to implement those systems." He questioned whether political differences had turned the efforts into "sort of a partisan political issue."

"I don't think any action by the legislature would have been necessary," Shenkman said. "That being said, districts also deal with the problem. In my view, not quite as effectively, but they certainly do address the issue."

Curley said he wasn't aware of a partisan issue, and the move away from cumulative voting was "the path of least resistance or the path of promptest solution. And it was really nothing more complex than that."

The city is in the process now of drawing the map that will carve out the five voting districts. It has been taking suggested configurations from the public and is expected to look at map options on Jan. 25; a decision is expected next month.

Three city council seats are up for reelection in 2022. If districts are created so the two remaining council members, who are not up for election until 2024, live in the same district, they will have to run against each other in 2022, Curley said.

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Tess Sheets | Reporter

Tess Sheets covers Fullerton, Orange and Irvine, along with communities in south Orange County including San Juan Capistrano, Mission Viejo and Lake Forest, for The Orange County Register. She also reports on transportation. Hailing from Florida, Tess previously worked for the Orlando Sentinel, where she covered criminal justice and public safety agencies. Before that, she was a breaking news reporter for Florida Today and Treasure Coast Newspapers. While she sometimes misses home, she's happy to have escaped the humidity.

tsheets@scng.com

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If you see comments that you find offensive, please use the “Flag as Inappropriate” feature by hovering over the right side of the post, and pulling down on the arrow that appears. Or, contact our editors by





1 **VERIFICATION**

2 Schlesinger v. Sachs, Bucknam, and Raths

3
4 I, Michael Schlesinger, declare:

5
6 I am a party to the Relator in this action, and I have read the foregoing
7 **STATEMENT OF FACTS IN SUPPORT OF APPLICATION FOR LEAVE**
8 **TO SUE IN QUO WARRANTO TO TRY TITLE TO PUBLIC OFFICE** and
9 know its contents. The matters stated in the **STATEMENT OF FACTS IN**
10 **SUPPORT OF APPLICATION FOR LEAVE TO SUE IN QUO**
11 **WARRANTO TO TRY TITLE TO PUBLIC OFFICE** are true based on my
12 own knowledge, except as to those matters stated on information and belief, and as
13 to those matters I believe them to be true.

14 I declare under penalty of perjury under the laws of the State of California
15 that the foregoing is true and correct.

16
17 Executed on January 11, 2022, at Mission Viejo, California.

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21 Michael Schlesinger
22 Relator
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