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**Goldstein, Borgen,
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March 21, 2023

Certified Mail, Return Receipt Requested

Linda Nemeroff
AC Transit Office of the District Secretary
1600 Franklin Street
Oakland, CA 94612



Re: Notice of California Voting Rights Act Violation

Dear District Secretary Linda Nemeroff:

Goldstein, Borgen, Dardarian & Ho (“GBDH”) represents residents of the AC Transit jurisdiction and registered voters Victor Flores, Alfred Twu, and Cecilia Lunaparra. On behalf of these residents/voters, we write to inform AC Transit that its at-large method of electing members of its Board of Directors violates the California Voting Rights Act (“CVRA”) has diluted the voting power of Asian American and Latine voters due to racially polarized voting.

The CVRA prohibits at-large elections where they impair “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.” Cal. Elec. Code § 14027. An election system that uses a combination of at-large elections and district-based elections, as AC Transit’s current system does, is considered an “at-large method of election” for purposes of the CVRA. Cal. Elec. Code § 14026(a). Asian American and Latine, referring to Latino/a, voters are protected classes within the meaning of the CVRA. See Cal. Elec. Code § 14026(d); Office of Management & Budget, Revisions to the Standards for the Classification of Federal Data on Race & Ethnicity, 62 Fed. Reg. 58782, 58789 (Oct. 30, 1997).

Asians and Asian Americans are approximately 28% of the residents in AC Transit’s jurisdiction, while approximately 26% of the jurisdiction is Latine. Only two of the current members of the Board identify as being Asian American or Latine: Sarah Syed representing Ward 3 and Jovanka Beckles representing Ward 1. No Latine candidates have ever been elected to AC Transit’s two at-large seats, and only one Asian American has ever held an at-large seat, over 20 years ago.

The at-large features of AC Transit’s election system have put the two at-large seats out of reach for Asian American and Latine candidates and their supporters and have made it more difficult for Asian American and Latine candidates to get elected to ward seats by increasing the size of each ward. There have been only a few Asian American and Latine candidates who have been elected to the Board of Directors and almost all have been from wards, despite representing large portions of the eligible voters in the jurisdiction.

A CVRA violation is established if racially polarized voting occurs in elections. Cal. Elec. Code § 14027(a). Racially polarized voting 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.” Cal. Elec. Code § 14026(e). The CVRA instructs that racially polarized voting can be determined by looking at the results of elections “in which at least one candidate is a member of a protected class.” Cal. Elec. Code § 14028(b).

A review of AC Transit’s recent election results confirms that Asian American and Latine candidates for the at-large seats have been unsuccessful in contested races. In the most recent AC Transit election, Alfred Twu lost the race for an at-large seat to Joel Young. In other recent elections for ward seats, Ben Fong, Kewal Singh, and Tony Daysog lost their races. Additionally, when vacancies have occurred, no Asian American or Latine board members were appointed to these open seats, and Asian American and Latine candidates have rarely been endorsed by sitting Board members. *See Yumori Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385 (2020) (affirming trial court’s liability findings where the evidence showed political exclusion, among other things, by way of the fact that Santa Clara City Councilmembers and Mayors rarely publicly endorsed Asian American candidates). We believe that the at-large features of AC Transit’s election system, in combination with racially polarized voting, have caused the inability of Asian American and Latine voters to elect candidates of their choice. AC Transit must change to an all-district based election system to better reflect the choices of Asian American and Latine voters and their interests.


Our client Victor Flores (he/him) is a Latine resident and registered voter in the AC Transit jurisdiction. Victor grew up in the Bay Area and has returned to this district as an adult to live and work. He is an active participant in local issues impacting the Latine community, including transit issues, racial equity, and climate resilience. Our client Alfred Twu (they/them) is an Asian American resident and registered voter in the AC Transit jurisdiction. They are active in local politics and on state and local housing and transit policy. Alfred ran for an at-large seat for the AC Transit Board in November 2022 and lost the election. Our client Cecilia Lunaparra (she/her/they/them) is a Latina resident and registered voter in the AC Transit jurisdiction. Cecilia is an active participant in local politics, particularly around racial equity, housing, and issues related to the University of California, Berkeley.

GBDH has extensive experience representing voters in other jurisdictions across California on challenges to at-large election systems and engaging and educating the public in districting and redistricting processes. GBDH is a civil rights law firm based out of Oakland, California with expertise in class action and complex litigation. GBDH has successfully litigated and/or resolved CVRA cases against other jurisdictions, including the cities of Palmdale, Anaheim, Santa Clara, and Sunnyvale.

We hope that AC Transit carefully considers remedying its CVRA violation, including by transitioning to seven single-member districts, and elects to transition to a fully district-based election system by Board resolution. *See* Elec. Code § 10650.¹ While Elections Code section

¹ The phrase “notwithstanding any other law” indicates that Section 10650, permitting special districts to require district-based elections without submitting the resolution to voters for

10010(e) contains strict deadlines should the Board elect to transition to a different election system, we would like to be clear in our position that we support robust public input during any map-drawing process and are open to stipulations extending the deadlines in section 10010(e) to make time for community education and engagement. Please contact us at your earliest convenience.

Sincerely,

Ginger L. Grimes (she/her)

GLG/kbm

cc: Jill Sprague (Via Certified Mail, Return Receipt Requested)
AC Transit General Counsel
1600 Franklin Street
Oakland, CA 94612

approval, is meant to override contrary law, including Public Utilities Code section 24801 establishing the ward/at-large election system for Directors. *See Arias v. Superior Court*, 46 Cal. 4th 969, 983 (2009) (“The statutory phrase ‘notwithstanding any other provision of law’ has been called a “term of art” that declares the legislative intent to override all contrary law.”) (citation, internal quotations, and emphasis omitted).