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VIA ELECTRONIC MAIL

John Skillman
Village President
Village of Carpentersville
1200 L.W. Besinger Drive
Carpentersville, IL 60110
(847) 426-3439
jmskillman@cville.org

Diane Lawrence
Trustee, Village of Carpentersville
dlawrence@cville.org

John O'Sullivan
Trustee, Village of Carpentersville
josullivan@cville.org

Hart M. Passman
Village Attorney
Holland & Knight LLP
131 S. Dearborn, 30th Floor
Chicago, IL 60603
(312) 578-6634
hart.passman@hkllaw.com

Kevin Rehberg
Trustee, Village of Carpentersville
krehberg@cville.org

Paul Humpfer
Trustee, Village of Carpentersville
phumpfer@cville.org

Dan Burroway
Trustee, Village of Carpentersville
dburroway@cville.org

Jeff Frost
Trustee, Village of Carpentersville
jfrost@cville.org

Re: Compliance with Federal Voting Rights Act

Dear Mr. Skillman and Carpentersville Board of Trustees:

Campaign Legal Center is writing to you because we have reason to believe that the Village of Carpentersville's ("Village") use of an at-large system for the election of the Board of Trustees ("Village Board") results in vote dilution of the Village's Latino community by diminishing Latino voters' opportunity to elect candidates of their choice to the Village Board. In particular, after reviewing demographic and electoral information relating to the Village, we think that the electoral scheme currently in use violates Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 ("Section 2"). However, the Village may be able to avoid a challenge to its current at-large election scheme by changing to a system utilizing instant runoff voting (IRV).

The Voting Rights Act was signed into law in 1965 in order to prohibit racial discrimination in voting and to guarantee the rights provided in the Fifteenth

Amendment of the U.S. Constitution. Section 2 prohibits a local government from using any voting practice or procedure, such as an at-large election system, that abridges or denies the right to vote because of race or language minority status. In 1982, Congress amended and reauthorized Section 2 to include a results-based test, which assesses the totality of the circumstances to determine if a practice or procedure results in discrimination in violation of Section 2, irrespective of a discriminatory purpose or intent.

The U.S. Supreme Court has consistently made clear since its decision in *Thornburg v. Gingles*, 478 U.S. 30 (1986), that members of a racial minority group attempting to show a results-based violation of Section 2 must prove that the group is: 1) sufficiently large and geographically compact to constitute a majority in a single-member district; 2) politically cohesive; and 3) that in the absence of special circumstances, bloc voting by the white majority usually defeats the minority group's preferred candidate. *Id.* at 51. Where these preconditions are met, a court then determines whether, "based on the totality of circumstances," the challenged electoral scheme impermissibly impairs the minority group's ability to elect representatives of its choice. *Id.* at 44-45. In assessing the totality of circumstances, courts look to a series of factors, developed by the U.S. Senate Judiciary Committee, relevant to determining whether Section 2 has been violated ("Senate factors").¹ A plaintiff does not need to "prove any particular number or a majority of these factors in order to succeed in a vote dilution claim."²

We believe that the Village's Latino community could successfully challenge the at-large election system used to elect the Board of Trustees as a violation of Section 2. Carpentersville's Latino population has been steadily growing for the last several decades. As of the 2010 Census, Latinos made up 50.1% of the Village's total population, and as of 2016, 30.7% of the Citizen Voting Age Population (CVAP).³ Yet, it appears that none of the current Village Trustees are Latino or candidates of

¹ These factors include, but are not limited to: 1) the history of discrimination in the state or political subdivision that touched the right of members of the minority group to register, to vote, or otherwise participate in the democratic process; 2) the extent of racially polarized voting; 3) the extent to which the political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting procedures that may enhance opportunities for discrimination against the minority group; 4) whether members of the minority group have been excluded from the candidate slating process; 5) the extent to which the minority group bears the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; 6) whether campaigns have used overt or subtle racial appeals; and 7) the extent to which members of the minority group have been elected to public office in the jurisdiction. Additional factors that may have probative value are whether there is a lack of responsiveness on the part of elected officials to the needs of the minority group and whether the policy underlying the voting procedure is tenuous. *Gingles*, 478 U.S. at 36-37 (citing S. REP. NO. 97-417, 2d Sess., at 28-29 (1982), as reprinted in 1982 U.S.C.C.A.N. 177, 206-07. Finally, courts often consider "proportionality," or "whether the number of districts in which the minority constitutes an effective majority is roughly proportional to the minority group's share of the CVAP in the relevant area." See, e.g., *Luna v. County of Kern*, 1:16-cv-00568, at 50 (E.D. Cal. Feb. 23, 2018), <http://electionlawblog.org/wp-content/uploads/latino-kern-decision.pdf>.

² *Section 2 of the Voting Rights Act: Operation of the Amended Section 2*, U.S. DEP'T OF JUST., http://www.justice.gov/crt/about/vot/sec_2/about_sec2.php; see also *Gingles*, 478 U.S. at 45; *Luna*, *supra* note 1 at 51.

³ The 2012-2016 ACS Five-year estimates are the most recent data available for assessing CVAP numbers. See *Redistricting Data: Voting Age Population by Citizenship and Race (CVAP)*, U.S. CENSUS BUREAU (Feb. 1, 2018), <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.2018.html>

choice of the Latino community, and that only one Latino candidate has been elected to the Board in the past thirteen years (in 2005). In addition, the Village's Latino voters are numerous and compact enough that it is possible to draw a redistricting plan containing at least two single-member districts (out of six) where Latino voters are the majority by CVAP.

Further, based on our review of demographic and electoral information relating to Village elections, we believe that Latino voters in the Village are politically cohesive and that racially polarized voting exists among the Village's electorate. We also believe that the Village's white voters tend to vote together as a bloc to defeat the minority group's preferred candidates. These factors work together to diminish the opportunity of Latino voters to elect candidates of their choice to the Village Board.

In addition to the *Gingles* preconditions, the totality of the circumstances demonstrates that the Village's at-large election scheme works with social and historical conditions to impair the ability of Latino voters to participate in the political process. There is ample evidence that an analysis of most, if not all, of the Senate factors would weigh in favor of plaintiffs challenging the Village's current at-large system. For example, Latino candidates regularly run for seats on the Village Board, but almost never win. Further, in the 2007 election for Village Board, a slate of candidates, called the "All-American Team," campaigned on an openly anti-Latino platform, including proposed ordinances aimed at establishing English as the official language of the Village, and "penali[zing] landlords for renting to 'illegals' and businesses for hiring them."⁴ The 2007 Village Board election became so racially charged that the U.S. Department of Justice monitored it.⁵ And, one of the candidates elected on the "All-American Team" slate, Paul Humpfer, still serves on the Village Board today.⁶ Finally, it is clear that Latinos in the Village bear the effects of discrimination in ways that impact their ability to participate in the political process. For instance, the Village's population is highly racially segregated,

⁴ See, e.g., Alex Kotlowitz, *Our Town*, N.Y. TIMES (Aug. 5, 2007), <http://www.nytimes.com/2007/08/05/magazine/05Immigration-t.html?pagewanted=1&r=0&ref=magazine>. The "English-only" ordinance was changed to a non-binding resolution, and passed in June 2007. See Ray Quintanilla, *Carpentersville OKs English-Only Resolution*, Chicago Tribune (Jun. 20, 2007), http://articles.chicagotribune.com/2007-06-20/news/0706191220_1_illegal-immigration-english-only-english-language.

⁵ Kotlowitz, *supra* note 4. In addition, in 2007, the U.S. Department of Justice also filed a complaint against Kane County, where Carpentersville is located, alleging violations of Section 203 of the Voting Rights Act for Spanish-speaking voters. As a result, a federal court ordered the appointment of observers until December 31, 2010. *Cases Raising Claims Under the Language Minority Provisions of the Voting Rights Act*, U.S. DEP'T. OF JUST., <http://www.justice.gov/crt/cases-raising-claims-under-language-minority-provisions-voting-rights-act>. A memorandum of understanding was reached in September of 2007 between the DOJ and Kane County, *Memorandum of Understanding*, U.S. DEP'T OF JUST., https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/kane_moa.pdf.

⁶ *Village of Carpentersville: Board of Trustees*, <http://www.cville.org/Government/Board-of-Trustees.aspx>. Mr. Humpfer also appeared to be aware of a flyer, filled with overt racial appeals, sent out the day before the 2007 election and paid for by a group called "Citizens Fed Up With Illegal Aliens." For partial content of the flyer, see Kotlowitz, *supra* note 4. One resident of the Village stated that "he believed the flyer had less to do with illegal immigrants and more to do with Hispanics, illegal or not. 'I feel like I'm branded because I have dark skin,'" he said. *Id.*

and a recent U.S. Housing and Urban Development report identifies the Village as having a racially concentrated area of poverty (RCAP) with a majority-Hispanic population.⁷

Litigation under Section 2 is costly and resource-intensive. The complex nature of Section 2 cases generally requires that both plaintiffs and defendants hire multiple expert witnesses and proceed with lengthy and time-intensive discovery and trial. Furthermore, prevailing plaintiffs are entitled to recuperate their attorneys' fees and litigation costs from the defendant. Ultimately, many Section 2 cases result in legal costs in the millions of dollars. For example, Charleston County, South Carolina spent over \$2 million in an unsuccessful effort to defend itself from a Section 2 challenge.⁸ More recently, after Latino voters challenged the City of Pasadena, Texas' at-large election scheme for vote dilution in violation of Section 2 and won, the City agreed to settle the case for \$1.1 million.⁹ Pasadena City Councilman Ray Wheeler stated that "In addition to the financial hit, the lawsuit gave the city a black eye in the national spotlight. It cost us progress and it cost us time."¹⁰

However, the Village can take proactive steps to avoid possible protracted and costly litigation, and to work towards ensuring that the Village's Latino voters have the opportunity to elect candidates of their choice. One such option would be for the Village to change its method of electing representatives to the Village Board to a system that utilizes instant runoff voting (IRV).¹¹ IRV allows voters to simply rank candidates for office in order of preference. Once voting is complete, election officials use voters' rankings to determine which candidates won seats on the Village Board. IRV is used in many cities across the country, as well as by military and overseas voters in five states.¹²

Under the Village's current electoral system, a majority of the Village can vote together to prevent candidates that are the choice of the Latino community from getting elected. By contrast, IRV would permit the Village to keep its at-large system, but also allow the entire community to more effectively participate in elections. IRV would account for the intensity and cohesion of all voting blocs—including Latinos and Anglos—and offer an equal opportunity for voters to elect their candidate(s) of choice. IRV is particularly fitting for communities like Carpentersville, because it allows representation to adjust with changes in demographics and population.

⁷ See *Fair Housing and Equity Assessment: Metropolitan Chicago*, CHICAGO AREA FAIR HOUSING ALLIANCE (Nov. 2013), <http://www.cmap.illinois.gov/documents/10180/198094/Chicago%20Region%20FHEA%20November%202013%20HUD%20Submission.pdf/b0c6946e-4425-49fe-8d0a-f336903bc464/>. An RCAP is a "spatially concentrated area demarcated by extremely high poverty and the presence of a majority-minority population." *Id.* "The existence of an RCAP is the most compelling indicator of extreme segregation." *Id.*

⁸ Order granting attorney's fees, *Moultrie v. Charleston Cty.*, No. 2:01-cv-00562 (D.S.C. Aug. 8, 2005).

⁹ Kristi Nix, *Pasadena Council Approves \$1.1M Settlement Agreement of Voting Rights Suit*, Pasadena Citizen (Oct. 3, 2017), <https://www.chron.com/neighborhood/pasadena/news/article/Pasadena-council-agrees-to-settle-suit-12250148.php>.

¹⁰ *Id.*

¹¹ A system utilizing IRV would allow the Village to keep the current at-large system, or switch to multi-member districts.

¹² See, e.g., *Ranked Choice Voting in U.S. Elections*, FAIRVOTE, http://www.fairvote.org/rcv_in_us_elections.

Because the Village is a home rule jurisdiction, under Illinois law the Village may legally choose its form of government, including the method of electing representatives to the local government body.¹³ An Advisory Opinion from the Illinois Attorney General specifically allows for the use of systems such as IRV in local elections, subject to referendum approval.¹⁴ This means that the Village Board could vote to put the question of a new election system utilizing IRV on the ballot, and once on the ballot, the measure would be enacted if approved by a majority of those voting on the question.¹⁵ Alternatively, community members in the Village could gather signatures to put a question regarding a change to IRV on the ballot.¹⁶

“The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [Latino] and white voters to elect their preferred representatives.”¹⁷ These circumstances exist for Latino voters in the Village, and thus we urge the Village to consider its vulnerability to a vote dilution challenge under Section 2. In particular, we believe the Village could avoid potential costly and time-intensive litigation by changing to an election system utilizing IRV, in order to provide Latino voters an opportunity to participate in the political process and elect candidates of their choice. We would be happy to discuss this further with the Village, and/or work with the Village on a change to a system utilizing IRV. Please do not hesitate to contact us according to the contact information provided below.

Sincerely,



Ruth M. Greenwood
Senior Legal Counsel

Annabelle E. Harless
Legal Counsel

Campaign Legal Center
73 W. Monroe St., Ste. 322
Chicago, IL 60603
(312) 561-5508
rgreenwood@campaignlegalcenter.org
aharless@campaignlegalcenter.org

¹³ Ord. 06-30 §1 (part), 2006), §1.04.060 *Home Rule*, https://library.municode.com/il/carpentersville/codes/code_of_ordinances?nodeId=TIT1GEPR_CH1.04GEPR_1.04.060HORU

¹⁴ *Advisory Opinion, File N. 05-007*, OFFICE OF THE ILL. ATT'Y GENERAL (Sept. 2005), http://www.illinoisattorneygeneral.gov/opinions/2005/05-007_2529.pdf

¹⁵ ILL. CONST. art. VII, § 11(a)-(b).

¹⁶ 10 ILL. COMP. STAT. 5/28-7 (the number of signatures required is equal to 8% of the total vote of that jurisdiction in the most recent gubernatorial election).

¹⁷ *Gingles*, 478 U.S. at 47.