



March 22, 2018

VIA ELECTRONIC MAIL

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Re: Compliance with Federal Voting Rights Act

Dear Ms. Eidam and Lansing Board of Trustees:

Campaign Legal Center is writing to you because we have reason to believe that the Village of Lansing'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 black community by diminishing black 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 black community could successfully challenge the at-large election system used to elect the Board of Trustees as a violation of Section 2. Lansing's black population has been steadily growing for the last several decades. As of the 2010 Census, African Americans made up 31.6% of the Village's total population, and as of 2016, 33% of the Citizen Voting Age Population (CVAP).³ Yet, it appears that none of the current Village Trustees are black or candidates of choice 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>

the black community, and it is unclear whether a black candidate has ever been elected to the Village Board. However, the Village's black 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 black voters are the majority by CVAP.

Further, based on our review of demographic and electoral information relating to Village elections, we believe that black 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 black 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 black 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, black candidates run for seats on the Village Board, but regularly fail to win election. In 2013, a mayoral candidate, Donald Sciackitano, ran on a slate with two Trustee candidates of color, and a platform aimed at "appealing to the growing ethnic and racial minority population" of Lansing.⁴ Not only was Sciackitano defeated in the mayoral race, but the Trustee candidates he ran with "got the least number of votes in [2013]'s municipal elections."⁵ Moreover, in the past, Lansing's schools were mired in several racially-charged controversies over anti-black rhetoric and racism, culminating in the school inviting the Department of Justice to help mediate and run racial sensitivity trainings.⁶ Finally, black residents of Lansing disproportionately bear the effects of discrimination in areas such as housing, education, and employment in ways that hinder their ability to participate in the local political process. For example, Lansing has a very high level of black-

⁴ Gregory Tejada, *African-American, Latino Populations On the Rise in Lansing*, THE TIMES (July 14, 2013), http://www.nwitimes.com/news/local/illinois/lansing/african-american-latino-populations-on-the-rise-in-lansing/article_782dfd2d-d52c-5af1-bf1f-ab2834a6a52a.html

⁵ *Id.* In addition, the incumbent mayoral candidate, Norm Abbott, said that the "Dutch-oriented church congregations [in the Village] provide a unifying point for those residents, particularly when coming together as a coalition for election support. 'The Dutch, they're still strong in the community,' Abbott said. 'I found in my relationship with the churches in the community that they can come together to vote.'" *Id.*

⁶ See "Diversity Training" Slated at TF South, THE STAR (Jun. 8, 1997), http://www.lansingpl.org/webfiles/digital_library/1997lsd215001.pdf. The DOJ was invited to the school after an incident where "about 35 white students chanting 'white power' and 'kill the n-----' walked out of Thornton Fractional South High School...following a girl carrying a rebel flag and a boy with a similar flag tied around his head." See Laura Pavlenko Lutton, *White Students Charge Racism*, THE ILLINOIS TIMES (May 10, 1997), http://www.lansingpl.org/webfiles/digital_library/1997lsd215002.pdf. Additionally, Thornton Fractional South High School flew a confederate flag until the mid-1990s. Despite adopting a new school flag, the school kept its name as the "Rebels" and mascot "Ritchie the Rebel" (a confederate soldier), as well as a mural of a confederate flag. See Chris Fry, *South Replaces Confederate Flag*, THE STAR (Feb. 6, 1994), http://www.lansingpl.org/webfiles/digital_library/1994lsd215001.pdf; Maudlyne Iherjrika, *Parents See Remnants of Racism At School*, CHICAGO TRIBUNE (Nov. 14, 2004), https://www.amren.com/news/2004/11/parents_see_reml/.

white housing segregation, as does the surrounding area of Cook County.⁷ And, among those in the workforce age 16 or older, as of 2016 the unemployment rate was 10.3% for whites but 17.5% for African Americans.⁸

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.⁹ 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.¹⁰ 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."¹¹

However, the Village can take proactive steps to avoid possible protracted and costly litigation, and to work towards ensuring that the Village's black 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).¹² 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.¹³

Under the Village's current electoral system, a majority of the Village can vote together to prevent candidates that are the choice of the black 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 blacks and Anglos—and offer an equal opportunity for voters to elect their candidate(s) of choice. IRV is particularly fitting for communities like Lansing, because it allows representation to adjust with changes in demographics and population.

⁷ See, e.g., Maria Krysan, *Racial Residential Segregation and Exclusion in Illinois* 36 (2009), <https://igpa.uillinois.edu/sites/igpa.uillinois.edu/files/reports/IR09-Ch4-Segregation.pdf>.

⁸ *Employment Status: 2012-2016 American Community Survey 5-Year Estimates*, U.S. CENSUS BUREAU, <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

⁹ Order granting attorney's fees, *Moultrie v. Charleston Cty.*, No. 2:01-cv-00562 (D.S.C. Aug. 8, 2005).

¹⁰ 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>.

¹¹ *Id.*

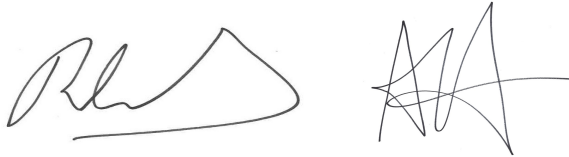
¹² A system utilizing IRV would allow the Village to keep the current at-large system, or switch to multi-member districts.

¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶ Alternatively, community members in the Village could gather signatures to put a question regarding a change to IRV on the ballot.¹⁷

“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 black and white voters to elect their preferred representatives.”¹⁸ These circumstances exist for black 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 black 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,



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¹⁴ Ord. No. 00-027, § 54-156 (“*Municipality* means the Village of Lansing, a home rule unit of local government under Section 6(a) (Powers of Home Rule Units) of Article VII (Local Government) of the state Constitution”), https://library.municode.com/il/lansing/codes/code_of_ordinances?nodeId=PTIILAUSFIBURERE_CH54PLDE_ARTVRE_DIV2TAINFI_S54-156DE

¹⁵ *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

¹⁶ ILL. CONST. art. VII, § 11(a)-(b).

¹⁷ 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).

¹⁸ *Gingles*, 478 U.S. at 47.