

Project on Fair Representation

2200 Wilson Blvd.

Ste. 102-13

Arlington, VA 22201

Projectonfairrepresentation.org

(703) 505-1922

For Immediate Release:

October 4, 2017

Contact: Edward Blum

(703) 505-1922

Lawsuit Challenging Constitutionality of the California Voting Rights Act Filed in Federal Court

CVRA violates the Fourteenth Amendment of the US Constitution

(Washington, DC) Today, the Project on Fair Representation announces the filing of a new lawsuit in California federal court challenging the constitutionality of the California Voting Rights Act (CVRA).

The CVRA was passed by the California Legislature in 2001 in an attempt to overrule and circumvent U.S. Supreme Court decisions that limit the use of race and ethnicity in the creation of election districts. The CVRA has recently been utilized by a handful of attorneys to demand that dozens of California localities to abandon longstanding, at-large forms of voting systems in favor of race-based, single-member districts.

The complaint can be found at Projectonfairrepresentation.org.

The lawsuit asserts that the California Legislature did not follow Supreme Court decisions making clear that race cannot be the predominant factor in redistricting. The complaint emphasizes that the CVRA makes race *the only factor* in redistricting.

A few months ago, the City of Poway, California received a demand letter notifying it that the City would be sued under the CVRA unless it ended its at-large form of city council elections and created race-based, single-member districts instead. Because the City faced the prospect of millions of dollars in legal fees unless it capitulated, on October 3, 2017, the City Council created four single-members election districts. The new districts were racially gerrymandered in order to meet the requirements of the CVRA.

As the Supreme Court has explained: “Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further away from the goal of a political system in which race no longer matters---a goal that the Fourteenth Amendment embodies, and to which the nation continues to aspire.”

The plaintiff in the case is former Poway mayor Don Higginson. He has sued the State of California and the City of Poway.

Higginson said, “It was only because the City of Poway had a proverbial gun to its head that these districts were adopted. Every member of the City Council knew that it would cost Poway millions of taxpayer dollars to fight this in court.”

The complaint notes that on June 7, 2017, Poway received a certified letter from attorney Kevin Shenkman asserting that Poway’s at-large system violates the CVRA because—and only because—of “racially polarized” voting in City Council elections. Shenkman’s letter reminded

Poway that, in the recent past, the City of Palmdale had been forced to pay millions of dollars in legal fees after it lost in court.

Higginson added, “These new districts will compel city council members to only represent the people who live in certain neighborhoods and not consider what’s best for all of Poway. This is not how small communities stay united for the benefit of all citizens, regardless of their race and ethnicity.”

Higginson noted, “Every voter in Poway should feel personally offended by the fact that being forced to go to district elections will eliminate your power to vote for a majority of the Poway City Council. Furthermore, through threat of litigation, scores of other cities and school districts across the State have been—and will continue to be—subject to this same damaging result.”

Higginson concluded, “Unfortunately, the City felt that it had no ability to challenge Mr. Shenkman’s demand, even though the Council members were quite clear that, but for the CVRA, the City would not have switched to by-district elections. Nevertheless, as an affected voter, I do have the ability and felt compelled to challenge the constitutionality of the CVRA under the Equal Protection Clause of the Fourteenth Amendment. I trust that the courts will give this matter the careful attention and review it deserves.”

The Project on Fair Representation (POFR), a nonprofit legal foundation based in Arlington, Virginia, has provided counsel to Mr. Higginson. During the last few years, POFR has provided counsel in a number of voting rights cases heard by the US Supreme Court including *Northwest Austin Municipal Utility District Number One v. Holder*, *Shelby Co. Ala. v. Holder*, and *Evenwel v. Abbott*.

Edward Blum, POFR's president said, "The California Voting Rights Act forces jurisdictions to make race the sole factor in districting. It splits apart multi-ethnic, multi-racial neighborhoods in order to create gerrymandered voting districts. This is bad for all citizens, regardless of their race or ethnicity."

Blum added, "This law is clearly unconstitutional."

Blum encourages other Poway residents who are interested in learning more about the lawsuit to email him at contactpofr@gmail.com.

The law firm of Consovoy McCarthy Park, PLLC of Arlington, Virginia is counsel to Mr. Higginson.