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December 3, 2015

Via U.S. Mail

Tom Tait, Mayor
City of Anaheim
City Hall
200 S Anaheim Boulevard
Anaheim, CA 92805

Re: Anaheim's 2016 District Elections

Dear Mr. Tait:

The California League of United Latin American Citizens ("CALULAC") and MALDEF (Mexican American Legal Defense and Educational Fund) adamantly oppose the Anaheim City Council's proposal to delay the election of the only Latino-majority district, District 3, until 2018. The proposal violates federal statutory and constitutional law prohibiting **intentional discrimination** in voting.

The Final Report of the Advisory Committee on Electoral Districts to the Anaheim City Council reflects its unambiguous intent to address potential California Voting Rights Act ("CVRA") violations and to comply with the Federal Voting Rights Act ("FVRA"). Having rejected mapping proposals that included two and three Latino-majority districts, the Committee opted to recommend the current one Latino-majority district plan. The Committee specifically found that the Latino citizen voting age majority in District 3 would give Latino voters an effective opportunity to elect a candidate of choice. Now, voters in District 3, the **only** majority Latino citizen voting age population district to emerge from the Commission's process, will continue to bear the effects of the discriminatory at-large electoral system for another three years.

The Council's decision to delay the District 3 election evinces a discriminatory intent to deprive Latino voters of their ability to elect candidates of their choice, in violation of the Fourteenth Amendment to the U.S. Constitution and the FVRA. The FVRA prohibits the use of any practice that is either intended to, or results in, the denial or abridgement of the right to vote based on race, color, or membership in a language minority. The statute further provides that a violation is established if, based on the totality of circumstances, political processes are not equally open to members of a racial group in that its members have less opportunity than other members of the

electorate to participate in the electoral process and to elect representatives of choice. The Council's decision to knowingly perpetuate the discriminatory impact of the City's at-large election system in the only district in full compliance with the requirements of the FVRA, and the only district explicitly designed to provide relief to Latino voters, is itself evidence of intentional, and unlawful, discrimination.

To the extent that preservation of incumbencies across the districts served as justification of the Council's ill-considered decision, federal case law offers no protection. Twenty five years ago, a federal court held the Los Angeles County Supervisors liable for intentional discrimination even though they "acted primarily on the political instinct of self-preservation." *Garza v. County of Los Angeles*, 756 F. Supp. 1298, 1318 (C.D. Cal. 1990). The Ninth Circuit Court of Appeals affirmed the District Court's conclusion because deprivation of Latino voting rights was "the avenue by which to achieve this self-preservation." *Garza v. County of Los Angeles*, 918 F.2d 763, 771 (9th Cir. 1990).

The Anaheim City Council, by its vote, intended to delay election in the remedial district explicitly designed to cure the voting rights violation; in doing so, it perpetuated longstanding discrimination, and its decision is therefore unlawful even if discrimination may not have been the sole or even the primary goal of the Council. See *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977). The Council may believe it is protected from legal challenge because City Attorney Houston assured the Council during its November 17 meeting that proof of racially polarized voting requires analysis of a number of elections under the new plan. However, that advice is inaccurate, The fallacy in that reassurance is found in the controlling precedent of *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir. 1990), which held that plaintiffs who proved intentional discrimination only needed to show that "Hispanics had *less opportunity . . .* to participate in the political process and to elect legislators of their choice." *Id.* at 771 (emphasis added). No proof of racial polarization is required to support an intentional discrimination claim. Moreover, the *Garza* court held that "the showing of injury in cases involving discriminatory intent need not be as rigorous as in effects cases." *Id.* Rather, the discriminatory purpose of the Council's decision may be inferred from the totality of the circumstances surrounding the decision, including the fact that "the law bears more heavily on one race than another." *Washington v. Davis*, 426 U.S. 229, 242 (1976).

The Council's reliance on the ethnicity of Councilman James Vanderbilt, and the apparent conclusion that Latino voters already have representation because Councilman Vanderbilt currently lives in District 3, are also unavailing. FVRA and Fourteenth Amendment voting rights jurisprudence protect voters, not candidates. There is no evidence that Mr. Vanderbilt is the electoral preference of Latino voters, either in District 3 or citywide. Mr. Vanderbilt was elected at-large, and his residence in District 3 does not cure the discriminatory result, and does not afford Latino voters an equal opportunity

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to participate in the electoral process and to elect representatives of choice, rights guaranteed by federal statutes and by the U.S. Constitution.

Having resolved a claim of violation of the CVRA in its at-large election scheme, Anaheim may not now adopt a plan intended to delay the meaningful remediation of the CVRA violation as long as possible. Yet, that is precisely what the delay of an election in District 3 to 2018 would do. *Garza* is good, well-reasoned, and controlling law. It does not permit any conclusion that intentional discrimination is immune from legal challenge simply because the challenged action is purportedly motivated by the addresses or ethnic origin of any incumbents.

In order to avoid costly litigation and potential liability for **intentional discrimination**, we urge the Council to order that an election be held in District 3 in November 2016.

Sincerely,



Denise Hulett
National Senior Counsel
MALDEF

DH/mg

cc: Lucille Kring, Mayor Pro Tem
Kris Murray, Council Member
Jordan Brandman, Council Member
James Vanderbilt, Council Member
Michael Houston, City Attorney