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February 4, 2019

Via e-mail

Siegrid Stillman, Board President
Fallbrook Union Elementary School District
321 Iowa Street
Fallbrook, CA 92028

Re: Fallbrook UESD Transition to District Elections

Dear Ms. Stillman:

MALDEF (Mexican American Legal Defense and Educational Fund) adamantly opposes Fallbrook Union Elementary School District's (Fallbrook UESD or District) decision to select Map 103 (Map 103 or the Plan), and urges the District not to adopt Resolution No. 15-18/19 and instead consider other districting plans. The Plan is insufficient to remedy the California Voting Rights Act (CVRA) violation, and may violate federal statutory and constitutional law prohibiting intentional discrimination in voting because, in order to protect incumbents, the Plan delays the election of the only Latino-majority district, District 1, until 2022, and includes a weak Latino-majority district.

Fallbrook UESD is required to comply with the CVRA and with the Federal Voting Rights Act (FVRA), which prohibits intentional discrimination. Resolution No. 06-18/19 reflects the District's unambiguous intent to address their CVRA violation. In the resolution, the District emphasized that it would follow the requirements of the CVRA by tracking language from the statute, California Elections Code § 10010(b): "in determining the final *sequence* of staggered district elections, the Board will give special consideration to the purposes of the [CVRA], and will take into account the preferences expressed by the public." Resolution No. 06-18/19 at 2 (emphasis added). The purpose of the CVRA is to remedy vote dilution as a result of at-large elections, and depriving Latinos in Fallbrook UESD the right to elect a candidate of their choice until 2022 does not remedy that violation. If the District adopts Map 103, voters in District 1 will continue to bear the effects of the discriminatory at-large electoral system for another three and a half years.

The CVRA and FVRA further require the District's map to afford minority voters an equal opportunity to elect their preferred candidates. Map 103 contains a Latino-majority district that is barely at 50% Latino citizen

voting age population (LCVAP), while other draft maps, such as the community map, place LCVAP at 52%. Map 103 does not include an effective Latino-majority district because it does not provide the Latino community with a real opportunity to elect a candidate of its choice.

The District's decision to create a Latino-majority district with a low LCVAP and to delay the District 1 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 United States 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 Board's decision to knowingly perpetuate the discriminatory impact of the District's at-large election system by creating a Latino-majority district with low LCVAP and delaying an election in that district until 2022 is itself evidence of intentional, and unlawful, discrimination.

To the extent that preservation of incumbencies across the districts served as justification of the Fallbrook UESD's ill-considered decision, federal case law offers no protection. In *Garza v. County of Los Angeles*, for example, 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." 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. Cnty. of Los Angeles*, 918 F.2d 763, 771 (9th Cir. 1990). The Board, by its vote, intended to create a weak Latino-majority district and to delay election in the district; in doing so, it will perpetuate longstanding discrimination, and its decision is therefore unlawful even if discrimination may not have been the sole or even the primary goal of the Board. See *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977).

Finally, community members have told MALDEF that the Board informed the public that MALDEF and the NAACP Legal Defense Fund find the goal of incumbency protection acceptable. This is not MALDEF's position, particularly when incumbency protection is the sole goal of the jurisdiction to the detriment of the affected community, as was the case here.

In order to effectively remedy the CVRA violation and to avoid costly litigation and potential liability for intentional discrimination, we urge the Board to reconsider its decision to select Map 103. The next election is not until November 2020. The Board still has time to continue the districting process so that it may consider maps and ultimately adopt a plan that remedies Fallbrook UESD's CVRA violation.

February 4, 2019

Sincerely,



Julia A. Gomez
Staff Attorney
MALDEF

cc: Patty de Jong, Governing Board Vice President
Lisa Masten, Governing Board Clerk
Caron Lieber, Governing Board Member
Susan Liebes, Governing Board Member