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By Email and Overnight Delivery:

The Honorable Gavin Newsom
Governor of California
1021 O Street
Suite 9000
Sacramento, California 95814
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governor@gov.ca.gov

Re: Fatal Flaw with Senate Bills 1050 as Passed by Legislature

Governor Newsom,

I write on behalf of the American Civil Rights Project to draw your attention to a fatal flaw with SBs 1050 as the state legislature has sent it to your desk.

You will remember that, last month, I wrote concerning four bills that had passed the state Senate and were then headed to the Assembly floor for consideration. Those bills included SB 1050, along with SB 1331, SB 1348, and SB 1403.

For current purposes, only the fate of SB 1403 is material to your current situation. You will remember that SB 1403 would have created a California American Freedmen Affairs Agency. Eventually, the Assembly ordered SB 1403 to its inactive file on the final day of its final session. Accordingly, SB 1403 did not pass and there is no California American Freedmen Affairs Agency.

Meanwhile, SB 1050, as sent to your desk, calls for the state to investigate and rectify past examples of “racially motivated eminent domain.” More specifically, it calls for a single state-wide office to undertake such investigation to “determine: (i) The present-day fair market value of the property that was taken ... as a result of racially motivated eminent domain[; and] (ii) Whether issuing

property or just compensation to that dispossessed owner would serve to redress past acts of racial discrimination, prevent future acts of racial discrimination, and benefit the whole of the community and its general welfare.” SB 1050 calls for the investigative authority to “certify that the dispossessed owner is entitled to the return of the taken property if it is still in possession of the public entity that did the taking, other publicly held property of equal value, or financial compensation.” Expressly, it establishes that “[i]f just compensation is warranted, that compensation ... shall be in the amount of the fair market value of the property [at present], minus the amount paid at the time of the taking, adjusted for inflation.” Accordingly, the administrative determinations reached by the legislature’s selected investigative authority will have the potential to bind state and local actors to allocate enormous portions of their public assets and/or budgets for years to come.

Setting aside any and all other concerns with the propriety or wisdom of this plan, I now write to focus, solely, on the investigative authority the legislature tasked with fulfilling this role. SB 1050 assigns these enormous and enormously consequential decisions to a single, specific office: “the Office of Legal Affairs within the California American Freedmen Affairs Agency.” With SB 1403 having died without passage, *there is no California American Freedmen Affairs Agency*. As proposed by the legislature, the task at issue in SB 1050 has been delegated to a sub-part of an agency *that does not exist*.

To the extent these undertakings are worth pursuing, they should be pursued in a thoughtful manner. SB 1050 cannot be described that way. As passed, it presents a nullity if not a cruel joke. California should not declare a task so important that it grants its chosen delegee the authority to bind every other arm of the state government (subject only to judicial review of its actions), while simultaneously delegating that task to a fictitious office, so assuring that the task goes entirely unaccomplished.

Respectfully, you cannot in good faith sign into law a statute that requires a non-existent agency to undertake such wide-sweeping, consequential tasks. You should veto SB 1050 and work with the legislature to assure that, if it still feels next cycle that this task is worth pursuing, it properly drafts legislation to allow its actual pursuit.

Respectfully Yours,

Daniel I. Morenoff
The ACR Project,
Executive Director