

1 Wilfredo Alberto Trivino-Perez (SBN 219345)
wtpesq@gmail.com
2 **TRIVINO-PEREZ & ASSOCIATES**
10940 Wilshire Blvd., 16th Floor
3 Los Angeles, CA 90024
Phone: (310) 443-4251
4 Fax: (310) 443-4252

5 Attorneys for Plaintiffs Oscar De La Torre and Elias Serna

6

7

8

9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

10

COUNTY OF LOS ANGELES

11 OSCAR DE LA TORRE and ELIAS)
SERNA)

Case No.: 21STCV08597

12 Plaintiffs,)

**PLAINTIFFS' EVIDENCE IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, FOR SUMMARY
ADJUDICATION**

13 v.)

14 CITY OF SANTA MONICA and)
15 DOES 1 through 10, inclusive)

Date: March 24, 2022
Time: 8:30 a.m.
Dept. 15

16 Defendants.)

[Hon. Richard Fruin]

17

18

19

20

21

22

23

24

25

26

27

28

**EVIDENCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR SUMMARY ADJUDICATION**

1 Pursuant to CRC 3.1350(c)(4), Plaintiffs submit the following evidence in support of their
2 motion for summary judgment or, in the alternative, summary adjudication:
3

| Tab | Document |
|------------|---|
| 1 | Declaration of Wilfredo Trivino-Perez (including Exhibit A) |
| 2 | Declaration of Oscar de la Torre (including Exhibits A-G) |
| 3 | Declaration of Kevin Shenkman (including Exhibits A-C) |

10
11
12 Respectfully submitted:

13 DATED: January 5, 2021

TRIVINO-PEREZ & ASSOCIATES

14 By: /s/ Wilfredo Trivino Perez
15 Wilfredo Trivino-Perez
16 Attorneys for Plaintiffs
17
18
19
20
21
22
23
24
25
26
27
28

TAB 1

1 Wilfredo Alberto Trivino-Perez (SBN 219345)
wtpesq@gmail.com
2 **TRIVINO-PEREZ & ASSOCIATES**
10940 Wilshire Blvd., 16th Floor
3 Los Angeles, CA 90024
Phone: (310) 443-4251
4 Fax: (310) 443-4252

5 Attorneys for Plaintiffs Oscar De La Torre and Elias Serna
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

| | | |
|---|---|------------------------------------|
| 11 OSCAR DE LA TORRE and ELIAS SERNA |) | Case No.: 21STCV08597 |
| |) | DECLARATION OF WILFREDO |
| 12 Plaintiffs, |) | TRIVINO-PEREZ IN SUPPORT OF |
| |) | MOTION FOR SUMMARY JUDGMENT |
| 13 v. |) | Dept. 15 |
| 14 CITY OF SANTA MONICA and |) | [Hon. Richard Fruin] |
| 15 DOES 1 through 10, inclusive |) | |
| |) | |
| 16 Defendants. |) | |
| |) | |
| 17 |) | |

18
19
20
21
22
23
24
25
26
27
28

1 I, Wilfredo Trivino-Perez, declare as follows:

2 1. I am counsel of record for the plaintiffs in the above-captioned case. I am
3 over the age of 18 and have personal knowledge of the facts contained in this
4 declaration. If called as a witness, I could and would competently testify as follows:

5 2. Attached hereto as **Exhibit A** is a true and correct copy of the Court's
6 September 30, 2021 Ruling on Defendant's demurrer to the second amended complaint
7 in the above-captioned action. Both the tentative ruling and the minute order adopting
8 the tentative ruling are attached.

9 I declare under penalty of perjury under the laws of the State of California that
10 the foregoing is true and correct.

11 Executed this 5th day of January 2022, at Los Angeles, California.

12
13 /s/Wilfredo Trivino-Perez

14 Wilfredo Trivino-Perez
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

15 TENTATIVE RULING 1:30 p.m., Thursday, September 30, 2021

OSCAR DE LA TORRE v. CITY OF SANTA MONICA, et al. [21STCV08597]

DEMURRER OF DEFENDANT CITY OF SANTA MONICA TO PLAINTIFF'S VERIFIED 2AC

MEET & CONFER: Complies with CCP 430.41

BACKGROUND: Action for declaratory relief; violation of Brown Act

CONT'D TIMELINE:

7/23/21: the Court ruled on moving Defendant's demurrer to the FAC, sustaining w/leave re C/A 1 [decl. relief] and overruling as to C/A 2 [violation of the Brown Act]

8/10/21: Plaintiffs filed their verified 2AC, again asserting 2 C/As:

1) declaratory relief; and

2) violation of the Ralph M. Brown Act - GC 54950

9/3/21: Moving defendant filed these general demurrers to C/As 1-2

RE THE GENERAL DEMURRERS OF DEFENDANT CITY OF SANTA MONICA TO CAUSES OF ACTION 1-2 OF PLAINTIFFS' VERIFIED 2AC, THE COURT RULES AS FOLLOWS:

C/A 1 [DECLARATORY RELIEF]: OVERRULED.

The parties raise the same arguments, somewhat amplified, presented by the demurrer that the Court sustained on July 23, 2021. The Court, however, is of the view that it sustained the earlier demurrer improvidently. In an action seeking declaratory relief, the first issue is whether there is an actual controversy for the court to rule upon. The City, in this case, argues that a city council as a matter of law has the authority to determine if an elected councilmember has a common law conflict of interest with respect to a public issue; and, if it so decides, to disqualify that council member from participating in closed sessions of the city council to consider matters involving that interest. The issue at stake here is CVRA litigation now on appeal in which the City is a defendant. Plaintiff De La Torre does not have a personal stake in that litigation but voices a point of view that is contrary to the majority of the councilmembers. These differing viewpoints are to be resolved in a fair political process. The City's actions to exclude the participation of a councilmember who campaigned in support of the plaintiffs in the CVRA litigation thwarts the political process and raises an actual controversy for judicial determination. The Court will **OVERRULE** the City's demurrer to the first

cause of action.

NOTE: To the extent Defendant argues that Plaintiff SERNA “lacks standing to challenge the disqualification”: The Court declines to rule on this issue. First, the Court finds that the demurrer itself is procedurally improper, as the Notice of Demurrer says nothing about a special demurrer grounded on CCP 430.10(b) [which goes to “lack of legal capacity to sue” but which has been interpreted by our appellate court to mean lack of standing]. Second, Plaintiffs’ argument to the effect that this is essentially a piecemeal demurrer, because the issue could have been raised by the prior demurrer, has merit. The Court does not entertain piecemeal demurrers [see, e.g., CCP 430.41]. The arguments in the Reply, that the issue is never waived and that it could be raised by way of a motion for JOP, are unpersuasive. The Common Cause case, cited in fn.2 of the Reply, states only that the issue may be raised at any time; it doesn’t specify the *manner* in which the issue may be raised. As for Defendant’s argument that having to raise the issue by way of a motion for JOP would cause Defendant to expend unnecessary time and resources, the Court agrees; however, to accept that argument would mean that every late demurrer should simply be accepted without concern as to timeliness. If that were true, there would be no need for the JOP procedure.

C/A 2 [VIOLATION OF THE RALPH M. BROWN ACT - GOV’T CODE 54950]: OVERRULED. As the Court stated in re the prior demurrer, Plaintiff’s 2AC asserts that the Brown Act [Government Code § 54953] requires, with only specified exceptions, that “all persons shall be permitted to attend” meetings of all or a majority of any city council, and that by excluding him from future Council meetings, defendant CITY threatens to violate the Act. Plaintiff cites Gov. Code, § 54960, subdivision (a), for the proposition that “any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of [the Brown Act] by members of the legislative body....”; and §54960.1, subdivision (a), for the proposition that “any interested person” may “commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of [specified sections of the Brown Act] is null and void under this section.”

Re the prior demurrer, Defendant raised only two arguments: a) Plaintiff lacks standing to assert this cause of action; and b) Plaintiff “failed to exhaust all remedies” before bringing his claim. The Court’s ruling addressed those arguments, and Defendant didn’t seek reconsideration or appeal that ruling. Here, Defendant concedes that Plaintiffs’ 2AC isn’t materially different from the FAC; however, Defendant asks the Court to

revisit its prior ruling. The Court declines that invitation.

Re lack of standing to sue: The Court stands by the comments it made re the prior ruling. [Also see above re the issue of Plaintiff Serna's standing – this issue should have been, but wasn't, raised by way of a special demurrer.] In essence, the Court found that Plaintiff qualifies as an "interested person" because he alleges that he has a personal stake in the relief sought; and that there was no exhaustion requirement as to future meetings of the Council. Defendant's argument that Plaintiff isn't an "interested person" is essentially unchanged from the prior demurrer. Defendant doesn't point to anything in the 2AC that would cause the Court to change its position in this regard. Defendant's argument that C/A 2 fails to the extent Plaintiff is challenging the Council's "past action" is unpersuasive, as one cannot demur to part of a cause of action, and Plaintiffs have taken the position that they aren't challenging any past action of the Council. Defendant's argument based on an Attorney General opinion stating that where there is a common law conflict of interest, an official "may not take part either in the discussion nor in a vote on the relevant matter" isn't helpful, as it doesn't say anything about whether the official can attend without participating in the discussion or voting. As for the considerations raised in *Hamilton v Town of Los Gatos* (1989) 213 CA3d 1050 (re not permitting a "financially interested" council member to attend a closed session meeting because it might give rise to an appearance of impropriety, or might have an influence on other council members): Defendant is free to raise that point in a dispositive motion or before the trier of fact; however, it doesn't support a ruling sustaining the demurrer.

MP is to serve notice of ruling. This TR shall be the order of the Court, unless changed at the hearing, and shall by this reference be incorporated into the Minute Order. TR e-mailed to counsel at 1:30 p.m., 9-30-21

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 15

21STCV08597

September 30, 2021

OSCAR DE LA TORRE vs CITY OF SANTA MONICA

9:15 AM

Judge: Honorable Richard L. Fruin

CSR: Kylie Shepherd, CSR # 13756

Judicial Assistant: R. Inostroza

ERM: None

Courtroom Assistant: L. Naphen

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Wilfredo Trivino-Perez (Telephonic)

For Defendant(s): Kirsten R. Galler; Brandon D. Ward (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Demurrer - without Motion to Strike by Deft City of Santa Monica to Plaintiff's 2nd Amended Complaint [905283036604]*; Hearing on Ex Parte Application by Deft City of Santa Monica to Continue Trial and All Related Dates or in the Alt., For Order Shortening Time For Noticed Motion to Continue Trial

Copy of the Court's tentative ruling (TR) was emailed to counsel in advance of the hearing.

237 Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Kylie Shepherd, CSR # 13756, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matter is called for hearing.

Court and counsel confer re matter at issue.

The demurrer is argued as reflected in the notes of the court reporter.

The TR is adopted as the order of the Court filed this date and incorporated herein by reference.

The Demurrer - without Motion to Strike - Defendant City of Santa Monica's Notice of Demurrer to Plaintiff's Second Amended Complaint; Memorandum of Points and Authorities in Support Thereof filed by City of Santa Monica on 09/03/2021 is Overruled.

Counsel to confer re draft of statement of undisputed facts as discussed at the hearing. Counsel to file a memo no later than 10/14/21.

Status Conference re draft statement of undisputed facts is scheduled for 10/19/21 at 09:15 AM in Department 15 at Stanley Mosk Courthouse.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 15

21STCV08597

September 30, 2021

OSCAR DE LA TORRE vs CITY OF SANTA MONICA

9:15 AM

Judge: Honorable Richard L. Fruin

CSR: Kylie Shepherd, CSR # 13756

Judicial Assistant: R. Inostroza

ERM: None

Courtroom Assistant: L. Naphen

Deputy Sheriff: None

On the Court's own motion, the Hearing on Ex Parte Application by Deft City of Santa Monica to Continue Trial and All Related Dates or in the Alt., For Order Shortening Time For Noticed Motion to Continue Trial scheduled for 09/30/2021 is continued to 10/19/21 at 09:15 AM in Department 15 at Stanley Mosk Courthouse.

Notice is waived.

TAB 2

1 Wilfredo Alberto Trivino-Perez (SBN 219345)
wtpesq@gmail.com
2 **TRIVINO-PEREZ & ASSOCIATES**
10940 Wilshire Blvd., 16th Floor
3 Los Angeles, CA 90024
Phone: (310) 443-4251
4 Fax: (310) 443-4252

5 Attorneys for Plaintiffs Oscar De La Torre and Elias Serna

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

| | | |
|--|---|---------------------------------------|
| OSCAR DE LA TORRE and ELIAS SERNA |) | Case No.: 21STCV08597 |
| |) | DECLARATION OF OSCAR DE LA |
| Plaintiffs, |) | TORRE IN SUPPORT OF MOTION FOR |
| |) | SUMMARY JUDGMENT |
| v. |) | Dept. 15 |
| CITY OF SANTA MONICA and DOES 1 through 10, inclusive |) | [Hon. Richard Fruin] |
| |) | |
| Defendants. |) | |

1 I, Oscar de la Torre, declare as follows:

2 1. I am a plaintiff in the above-captioned case. I am over the age of 18 and
3 have personal knowledge of the facts contained in this declaration. If called as a
4 witness, I could and would competently testify as follows:

5
6 **Advocacy for District-Based Elections**

7 2. I have been involved in the Latino civil rights movement since I was a
8 high school student attending Santa Monica High School. Particularly because of their
9 tendency to disadvantage minority voters, at-large elections, like those employed by the
10 City of Santa Monica to elect its city council, are despised within the Latino civil rights
11 community. I first understood the need for district-based elections in Santa Monica
12 when then City Council member Antonio "Tony" Vazquez publicly advocated for a
13 change to the at-large election system in the early 1990's. Council member Vazquez
14 was the first Latino elected to the Santa Monica City Council – indeed, the only Latino
15 elected to the City Council until 2020 – and was a proponent of district-based elections.
16 I understood back then that he took this position because he had seen the impact of the
17 marginalization of the at-large election system and the social neglect that it produced in
18 the Pico Neighborhood. Although Mr. Vazquez did not live in the Pico Neighborhood,
19 he was the first Latino to ever campaign in the Pico Neighborhood and was fully aware
20 of the concentrated poverty, racial segregation, environmental dumping and gang
21 violence that plagued my generation.

22 3. Since moving back to Santa Monica, following my graduate studies in
23 public administration at the University of Texas, I have also consistently worked to
24 improve the Pico Neighborhood – the neighborhood of Santa Monica where I was
25 raised and where Latino and African American residents are concentrated. For
26 example, I founded the Pico Youth and Family Center to combat the endemic gang
27 violence that plagued the Pico Neighborhood. I also have advocated for the residents of
28 the Pico Neighborhood, for example, in my role, dating back to 2005, on the board of
the Pico Neighborhood Association (“PNA”). The Pico Neighborhood is much less

1 wealthy than other parts of the city, and has long been the dumping ground for all the
2 city's undesirable, and even toxic, elements. It is my belief, as it has been for many
3 years and the Los Angeles Superior Court found in the Voting Rights Case, that the at-
4 large system of election has resulted in a lack of representation on the City Council for
5 the Pico Neighborhood, and, in turn, the City Council being unresponsive to the needs
6 of Pico Neighborhood, and especially its minority residents. Accordingly, for several
7 years I have vocally advocated for district-based elections in Santa Monica.

8 4. In 2015, my wife and I were determined to correct this historic wrong, by
9 changing the system of Santa Monica's city council elections. We discussed the matter
10 with the leadership of the PNA and others in Santa Monica, including Elias Serna.
11 Everyone agreed; the discriminatory at-large election system had to go. We held a
12 series of informational and advocacy events concerning Santa Monica's at-large
13 election system, culminating in a rally at the Santa Monica City Hall. At that rally,
14 PNA presented a formal written demand to the then-city-attorney, Marsha Moutrie,
15 explaining that the at-large election system violated both the California Voting Rights
16 Act ("CVRA") and the Equal Protection Clause of the California Constitution.

17 5. Ms. Moutrie promised to respond, but for several months PNA received no
18 substantive response to its formal written demand. Unable to achieve any change
19 through their political advocacy efforts, PNA and Maria Loya proceeded to litigation
20 advocacy and filed a lawsuit against the City of Santa Monica, captioned *Pico*
21 *Neighborhood Association, et al. v. City of Santa Monica*, Los Angeles Superior Court
22 Case No. BC616804 ("the Voting Rights Case") in April 2016. Shortly after the Voting
23 Rights Case was filed, five of the six other Santa Monica neighborhood organizations
24 joined PNA in urging a change to the discriminatory at-large election system.

25 6. Particularly since 2015, the method of electing the Santa Monica City
26 Council, and relatedly the Voting Rights Case, has been a matter of great public
27 concern. It has garnered significant media attention both within and outside of Santa
28 Monica.

1 **The 2020 Election**

2 7. Disturbed by the mismanagement of the City of Santa Monica, and the
3 continued harm inflicted upon the Pico Neighborhood, I decided to enter the 2020
4 election for four city council seats. In order to compete with the incumbent
5 councilmembers, and their vast financial resources, I formed a “slate” with three other
6 candidates – Phil Brock, Christine Parra and Mario Fonda-Bonardi. All of us agreed
7 that the at-large election system should be scrapped. As it was a significant issue in the
8 2020 campaign (and remains so today), we all expressed our support for adopting
9 district-based elections and, relatedly, ending the expensive and misguided fight against
10 the CVRA in the Voting Rights Case. All of the incumbent council members seeking
11 re-election expressed their opposition to district elections. Attached hereto as **Exhibit**
12 **A** is a true and correct copy of an online newspaper posting, showing the position of
13 each candidate on the issue of district-based elections.

14 8. The result of the 2020 election was extraordinary. Christine Parra, Phil
15 Brock and I prevailed, unseating three incumbent council members. In the previous
16 twenty-five years, only two incumbents had lost their bids for re-election to the Santa
17 Monica City Council. Attached hereto as **Exhibit B** is a true and correct copy of the
18 election results for the 2020 election for Santa Monica City Council, retrieved from the
19 Los Angeles County Registrar of Voters’ website.

20 9. When Santa Monica voters elected me, they knew that I support district-
21 based elections, and that I have been very critical of the City’s insistence on spending
22 tens of millions of dollars to fight against the voting rights of its citizens. The voters
23 elected me to stop that waste and to implement district-based elections. I believe my
24 consistent support for district-based elections is one of the reasons I was elected.

25 **The FPPC Opinion, and Defendant’s Exclusion of Me From Council**
26 **Discussions, Meetings and Decisions**

27 10. Upon my election to the Santa Monica City Council, George Cardona
28 (who was then interim city attorney and is now no longer employed by the City of

1 Santa Monica) wrote to the Fair Political Practices Commission (“FPPC”) seeking an
2 opinion on whether I had a conflict of interest that would prevent me from participating
3 in city council meetings, discussions and votes concerning the Voting Rights Case. Mr.
4 Cardona was heavily involved in the defense of the Voting Rights Case, even before he
5 became the interim city attorney. I asked to be involved in the drafting of any letter to
6 the FPPC, and while Mr. Cardona initially agreed that we would draft that letter
7 together, ultimately he did not allow me to participate in his drafting of the letter, which
8 he sent on November 25, 2020. A true and correct copy of Mr. Cardona’s November
9 25, 2020 letter is attached as **Exhibit C**.

10 11. But Mr. Cardona did not wait for the FPPC to respond. Instead, on
11 January 22, 2021, without any advance notice to me, Mr. Cardona placed an item on the
12 agenda for the January 26, 2021 city council meeting – just two business days later –
13 for a council vote to exclude me from all discussions and decisions concerning the
14 Voting Rights Case. A true and correct copy of that agenda is attached as **Exhibit D**.
15 The first I heard that item was on the agenda was on Saturday January 23, 2021 when it
16 was brought to my attention by a board member of PNA.

17 12. The item came on at the January 26, 2021 city council meeting. At that
18 council meeting, some city council members expressed a desire to hear from the FPPC
19 before deciding on any action, but, ultimately, they did not wait for guidance from the
20 FPPC or any court. Rather, 4 of the 7 city councilmembers (including one
21 councilmember who testified at trial for the defense in the Voting Rights Case, and is
22 still participating in discussions and decisions concerning the Voting Rights Case)
23 voted to declare that I have a conflict of interest and to exclude me from all discussions,
24 meetings and decisions concerning the Voting Rights Case. A true and correct copy of
25 the minutes of the January 26, 2021 council meeting is attached as **Exhibit E**.

26 13. On February 4, 2021, the FPPC responded to Mr. Cardona’s letter. The
27 FPPC laid out the relevant facts and law, and concluded that I do not have a conflict of
28 interest that precludes me from participating in meetings, discussions or votes

1 concerning the Voting Rights Case. A true and correct copy of the FPPC’s opinion
2 letter is attached hereto as **Exhibit F**.

3 14. Upon receiving the FPPC opinion, I requested that I not be excluded from
4 council meetings, but Mr. Cardona refused, and refused to even discuss the matter. In
5 July 2021, I decided to nonetheless press the issue with my colleagues on the City
6 Council. Under the Santa Monica City Council rules, any councilmember can place a
7 “13 item” on the agenda of a city council meeting, so that’s what I did. I placed a 13
8 item on the agenda for the July 22, 2021 agenda, seeking to un-exclude me from
9 council meetings. However, when that item was to come up at the meeting, Mr.
10 Cardona instead told the City Council that the item violated the City Council rules
11 because it sought to reverse a previous vote within one year of that vote. By a 4 to 3
12 vote, the City Council refused to allow even consideration of the item. A true and
13 correct copy of the minutes of the July 22, 2021 meeting are attached as **Exhibit G**.

14 **My Position on District-Based Elections and the Voting Rights Case**

15 15. I applaud Ms. Loya and the Pico Neighborhood Association for their
16 decision to pursue the Voting Rights Case; I have supported that decision since they
17 initiated the case in April 2016. They had no choice but to file that case, because the
18 City of Santa Monica ignored their efforts to bring the City’s election system into
19 compliance with the law before they filed that case. Other Santa Monica city
20 councilmembers expressed their opposing views at trial and in the press. For example,
21 Gleam Davis and Terry O’Day (who was defeated in his 2020 bid for re-election) both
22 testified at trial, and Gleam Davis and Ted Winterer (who was also defeated in his 2020
23 bid for re-election) released an op-ed in the Los Angeles Times just a few days before
24 the trial began. In their testimony and op-ed, those councilmembers expressed their
25 view that Santa Monica should keep it’s at-large election system. I don’t begrudge
26 anyone, including my fellow councilmembers, the right to express their views, even
27 when they are opposite to my own strongly held views and beliefs. I wish they would
28 treat me the same.

1 16. I support district-based elections, and, relatedly, the plaintiffs in the Voting
2 Rights Case, not because I would gain some advantage (financial or otherwise) from
3 that case and the district-based elections it seeks. Indeed, I would not gain any such
4 advantage. Rather, I support them because district-based elections will ensure that
5 every community in Santa Monica has fair representation on their city council for
6 decades into the future.

7 17. Neither I, nor my wife, nor the PNA has any financial stake in the Voting
8 Rights Case at all. No monetary relief, other than attorneys' fees and costs, is sought in
9 the Voting Rights Case. Rather, as demonstrated by the Los Angeles Superior Court's
10 Judgment in that case, the relief sought is a change in the election system – a change
11 that will benefit all Santa Monica residents. The attorneys who have prosecuted the
12 Voting Rights Case all agreed to do so *pro bono*, with the understanding that if they are
13 successful they may be awarded attorneys' fees and costs by the Los Angeles Superior
14 Court. My wife and I, and the Pico Neighborhood Association board, all understand
15 that we cannot share in any of those attorneys' fees, because it would be illegal for the
16 attorneys to share their fees with non-attorneys. The arrangement with the attorneys
17 prosecuting the Voting Rights Case has always been that they will be entitled to any
18 award of attorneys' fees and costs, and accordingly they will pay all costs associated
19 with that case – nobody else (including Ms. Loya and the Pico Neighborhood
20 Association) has any potential financial benefit or potential financial loss from the
21 Voting Rights Case.

22 18. Nor do I (nor my wife, nor the PNA) have any personal interest in the
23 Voting Rights Case different than Santa Monica voters generally. If the plaintiffs are
24 successful in the Voting Rights Case, all Santa Monica voters (including me and my
25 wife) will enjoy district-based representation on their city council, and an undiluted
26 vote for who represents them. If the plaintiffs are unsuccessful in the Voting Rights
27 Case, all Santa Monica voters (including me and my wife) will suffer under the at-large
28 election system for years to come. Neither my wife, nor PNA, nor I will receive
anything different than every other Santa Monica voter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Closed Sessions and Confidentiality

19. I have served as a local elected official for nineteen (19) years – as a school board member from 2002 through 2020, and then as a city council member since 2020. In that time, I have attended hundreds of closed session meetings of those local governing boards, and I have never revealed confidential information from any of those closed sessions.

20. I understand that the Brown Act prohibits the disclosure of confidential information, and imposes serious consequences on any official who discloses confidential information from a closed session. I have received training regarding the Brown Act on several occasions in my role as a local elected official.

21. Regardless of the topic, I would never reveal confidential information from a closed session to anyone not authorized to receive that confidential information.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5 day of January 2022, at Santa Monica, California.



Oscar de la Torre

EXHIBIT A

Santa Monica LOOKOUT

Traditional Reporting for A Digital Age



Home Special Reports Archive Links The City Commerce About Contacts Editor Send PR



City Council Candidate Pop Quiz

By Lookout Staff

For the 2020 City Council candidate questionnaire, The Lookout asked 22 "True or False," "Yes or No" and multiple choice questions. Here are the answers from the four incumbents and the challengers endorsed by at least one group that spends money to back Council candidates in the race for four full-term seats November 3.

| CHALLENGERS | INCUMBENTS |
|---------------------|--------------|
| Phil Brock | Gleam Davis |
| Oscar de la Torre | Ana Jara |
| Mario Fonda-Bonardi | Terry O'Day |
| Christine Parra | Ted Winterer |



1900 Pico Boulevard
Santa Monica, CA 90405
(310) 434-4000



copyrightCopyright 1999-2020 surfsantamonica.com. All Rights Reserved. EMAIL Disclosures

Santa Monica LOOKOUT

Traditional Reporting for A Digital Age



Home Special Reports Archive Links The City Commerce About Contacts Editor Send PR

City Council Candidate Questionnaire

Phil Brock

Phil Brock was appointed to the Arts Commission in 2016 after serving on the Recreation and Parks Commission since 2003. In 2010, he was appointed to the State of California Association of Parks & Recreation Commissioners and Board Members, where he continues to serve as a liaison between Santa Monica and other California cities. Brock is endorsed by Santa Monicans for Change and the Santa Monica Coalition for a Livable City (SMCLC). This questionnaire was sent to incumbents and challengers endorsed by at least one group that spends money to back Council candidates.

1. Should Santa Monica try to build the 8,874 new housing units by 2028 mandated by SCAG?

No

2. The Plaza project should be

- a) approved
- b) changed
- c) rejected

Rejected

3. The City needs more major developments to help balance the budget.

No

4. The Council should have delayed voting on the Miramar project until after the election.

True

5. When it comes to hotel developments, the City Council has consistently sided with Unite HERE Local 11.

True

6. Is Santa Monica's City government racist?

No

7. Should the police budget be reduced?

No. Not immediately but extra funds may be found that can be transferred to other police related uses. It is hard to believe that \$98 Million is needed for 222 uniformed officers. I believe there can be a realignment that will allow the return of park rangers and the expansion of West Coast Care and Police HLP Teams. In addition, I



**WE LOVE PROPERTY
MANAGEMENT HEADACHES!**



1900 Pico Boulevard
Santa Monica, CA 90405
(310) 434-4000

believe we can add 6-8 officers on our streets per shift from our existing resources.

8. If coronavirus cases spike, should the City order another economic shutdown?

Yes. The state and county will do that. We need to actively enforce existing laws.

9. Santa Monica is one of the few Southern California cities to issue fines for not wearing a face mask. Do you support that policy?

Yes. Our police force says they are enforcing the mask ordinance but haven't been. I want stricter enforcement.

10. The budget cutbacks forced by the coronavirus shutdown were the inevitable result of the City's decades' long spending spree.

True

11. City workers are paid too much.

True in the case of our at-will supervisors and department heads. Not true for the Teamsters and other "on-the-ground" city workers that care actively for residents.

12. Unions wield too much power over the City Council.

True

13. Do you feel safe in Santa Monica when it comes to crime?

No, we are not safe!

14. The City Council is doing enough to make public parks safer for families.

False. A Terrible Job!

15. Santa Monica is doing a good job addressing homelessness.

False. Doing the same thing over and over is not working!

16. Who is responsible for the Police Department's response to the May 31 riots?

- a) The Police Chief
- b) The City Manager
- c) The City Council
- d) All of the above

All of the above

17. The police used excessive force against protesters.

True

18. Should Santa Monica switch from an at-large election system to districts?

Yes

19. Despite caps on individual contributions, money remains the biggest factor in winning an election.

True. PACs have no limits

20. Do you think Councilmembers are transparent when they disclose their personal and political finances?

Yes

21. Was the \$77 million "uber-Green" City Hall annex a good investment.

No

22. The City spends too much money fighting climate change.

False



copyrightCopyright 1999-2020 surfsantamonica.com. All Rights Reserved. [EMAIL](#) [Disclosures](#)

Santa Monica LOOKOUT

Traditional Reporting for A Digital Age



Home Special Reports Archive Links The City Commerce About Contacts Editor Send PR

City Council Candidate Questionnaire

Oscar de la Torre

Oscar de la Torre was first elected to the Santa Monica-Malibu Unified School District Board in 2002 and was reelected in 2006, 2010, 2014 and 2018. He is backed by Santa Monicans for Change, the Santa Monica Coalition for a Livable City (SMCLC) and TEAMSTERS Local 396. This questionnaire was sent to incumbents and challengers endorsed by at least one group that spends money to back Council candidates.

1. Should Santa Monica try to build the 8,874 new housing units by 2028 mandated by SCAG?

No. Santa Monica should not shoulder the burden for the region and we should push back on over-development.

2. The Plaza project should be

- a) approved
- b) changed
- c) rejected

Rejected. Public land should be for public use. Let the residents decide on the options.

3. The City needs more major developments to help balance the budget?

No. We need responsible development.

4. The Council should have delayed voting on the Miramar project until after the election.

True

5. When it comes to hotel developments, the City Council has consistently sided with Unite HERE Local 11.

True

6. Is Santa Monica's City government racist?

Yes. The current City Council has supported racism. Ignores the racist mural at City Hall, de funded the Pico Youth and Family Center (PYFC), funded the Police Activities League (PAL), ignores methane at Gandara Park, lacks diversity in Commission appointments, has no senior staff of color in the Planning Department, promotes gentrification, spends millions of dollars to fight minority voting rights and uses COINTELPRO tactics to divide POC to silence and marginalize critical voices.



**WE LOVE PROPERTY
MANAGEMENT HEADACHES!**



1900 Pico Boulevard
Santa Monica, CA 90405
(310) 434-4000

7. Should the police budget be reduced?

No. We need a new public safety plan that addresses our current needs. Mobile and interdisciplinary teams of police and social workers are needed.

8. If coronavirus cases spike, should the City order another economic shutdown?

No. Unless our public health professionals order a shutdown but I think we can implement new safety protocols and keep low risk businesses open.

9. Santa Monica is one of the few Southern California cities to issue fines for not wearing a face mask. Do you support that policy?

Yes

10. The budget cutbacks forced by the coronavirus shutdown were the inevitable result of the City's decades' long spending spree.

True. The current City Council incumbents have mismanaged our tax dollars. Child abuse settlements, high salaries and vanity projects.

11. City workers are paid too much.

True. Not the front line workers, but there are too many City Attorneys and top administrators making over \$250k.

12. Unions wield too much power over the City Council.

False. Not all unions are the same. The Police Officers Association (POA) never supported the working class unions.

13. Do you feel safe in Santa Monica when it comes to crime?

No. The current City Councilmembers have damaged our public safety and May 31 cemented the idea that people can get away with crime here.

14. The City Council is doing enough to make public parks safer for families.

False. Families are being pushed out of SM. We need to protect our families.

15. Santa Monica is doing a good job addressing homelessness.

False. A major fail! They have attracted more of the problem and have enabled bad behavior endangering our lives.

16. Who is responsible for the Police Department's response to the May 31 riots?a)

The Police Chief

b) The City Manager

c) The City Council

d) All of the above

All of the above. SM needs new leadership!

17. The police used excessive force against protesters.

True. A few rubber bullets and some tear gas on the looters and we could have saved our City.

18. Should Santa Monica switch from an at-large election system to districts?

Yes. The current al large election scheme protects the legacy of exclusion and hurts our democracy by making it more expensive to run for office.

19. Despite caps on individual contributions, money remains the biggest factor in winning an election.

True. Just look at all the PAC money that developers put into elections.

20. Do you think Councilmembers are transparent when they disclose their personal and political finances?

No. All kinds of conflicts at all levels. It's what happens when you keep re electing people who put profit above people.

21. Was the \$77 million "uber-Green" City Hall annex a good investment?

No. A vanity project for overly paid City staff. We need affordable housing, support for public safety and effective homelessness programs.

22. The City spends too much money fighting climate change.

True. We need to balance our needs better. Right now we have to invest in curing the miserable condition on our streets.



Santa Monica LOOKOUT

Traditional Reporting for A Digital Age



Home Special Reports Archive Links The City Commerce About Contacts Editor Send PR

City Council Candidate Questionnaire

Mario Fonda-Bonardi

Mario Fonda-Bonardi was appointed to the Planning Commission by the City Council in July 2015 and reappointed in June 2019. He is endorsed by Santa Monicans for Changes and the Santa Monica Coalition for a Livable City (SMCLC). This questionnaire was sent to incumbents and challengers endorsed by at least one group that spends money to back Council candidates.

1. Should Santa Monica try to build the 8,874 new housing units by 2028 mandated by SCAG?

No. Sacramento's greatest fraud perpetrated on all of California and particularly SM. Its an unfunded mandate un-needed, un-ecological, wearing a fig leaf of affordability to justify massive expropriation. Must be stooped by statewide resistance.

2. The Plaza project should be

- a) approved
- b) changed
- c) rejected

Rejected. Likewise a fraudulent giveaway of public land to a private developer identical to fraud of the 8,874 units. Unneeded, unecological, disastrous failure to take advantage of a great open space opportunity.

3. The City needs more major developments to help balance the budget.

No. You can't grow your way to affordability. These gigantic projects consume more resources, power, water, transit capacity, and distribute the costs to the residents but keep the profits for developers. The City acts as a dishonest broker between the two.

4. The Council should have delayed voting on the Miramar project until after the election.

True. 460 people wrote against the project, 70 for it. Guess which way the City council voted? The Council always votes against the desires of the residents on important matters.

5. When it comes to hotel developments, the City Council has consistently sided with Unite HERE Local 11.

True. The hotel union makes substantial contributions to incumbents' campaigns. The Council always has to vote the desires of its handlers.



**WE LOVE PROPERTY
MANAGEMENT HEADACHES!**



1900 Pico Boulevard
Santa Monica, CA 90405
(310) 434-4000

6. Is Santa Monica's City government racist?

Yes. Fighting the councilmanic district proposal institutionalizes the racism built into our City's DNA since 1946. Rumor has it it has cost us over \$20M. Who knows the real cost? City won't say.

7. Should the police budget be reduced?

No. Redistributed to differing deployment/staffing types. Defunded is the wrong verb.

8. If coronavirus cases spike, should the City order another economic shutdown?

Yes. We have no choice until a working vaccine: it's the only thing that works.

9. Santa Monica is one of the few Southern California cities to issue fines for not wearing a face mask. Do you support that policy?

Yes

10. The budget cutbacks forced by the coronavirus shutdown were the inevitable result of the City's decades' long spending spree.

True. We have lived way beyond our means. Our pension debt overhang (2018 no new numbers yet) is exactly where it was in 2013. No reduction in 7 years!!

11. City workers are paid too much.

True. We pay about 20% more than market rate particularly at the top, yet do not get 20% better performance.

12. Unions wield too much power over the City Council.

True. In this current election, as of 10/7/20, Unions provided 70% of the incumbents PAC money. Of course Council has to kowtow to the unions.

13. Do you feel safe in Santa Monica when it comes to crime?

No. Can you say May31? No one feels safe in this City if they have a minimal awareness of the real level of crime here. While the City keeps up the facade that crime is down by failure to report crime statistics, to attract tourists, tourists are not deceived and are fleeing in droves.

14. The City Council is doing enough to make public parks safer for families.

False. Reed Park and Tongva Park have been colonized by the homeless. They are scary places for adults much less children.

15. Santa Monica is doing a good job addressing homelessness.

False. The numbers have only gone up over the last ten years. The City's homeless program failure is visible to all. Like the May 31 response, it is an on going disaster.

16. Who is responsible for the Police Department's response to the May 31 riots?

- a) The Police Chief failure to prepare and execute
- b) The City Manager failure to manage resources.
- c) The City Council failure to prepare and budget
- d) All of the above

All of the above. Complete command and control failure.

17. The police used excessive force against protesters.

True. They were more interested in controlling the demonstrators than the looters.

18. Should Santa Monica switch from an at-large election system to districts?

Yes. Council members in SM are unaccountable, because there is no way a common citizen, without union money, can win a citywide election. Switching to districts would allow more capable people to run affordably and break the vested interest's strangle hold on our City.

19. Despite caps on individual contributions, money remains the biggest factor in winning an election.

True. Absolutely, vested interests are outspending independent candidates 8 to one as of 10/5 2020 and will get worse by Nov. 3.

20. Do you think Councilmembers are transparent when they disclose their personal and political finances?

No. It starts always with too much dark campaign money from outside and vested interests and extends to situations where for example Gleam Davis hid her husband's role with Dell/Miramar for 8 years.

21. Was the \$77 million "uber-Green" City Hall annex a good investment?

Yes. Good concept but unfortunately overpriced and poorly executed.

22. The City spends too much money fighting climate change.

False. City does virtually nothing of significance on a sufficient scale to fight climate change. It could do so much more but is wedded to overdevelopment and old failed green washing mantras. Profit always precedes environmental needs in this City.



Santa Monica LOOKOUT

Traditional Reporting for A Digital Age



[Home](#) [Special Reports](#) [Archive](#) [Links](#) [The City](#) [Commerce](#) [About](#) [Contacts](#) [Editor](#) [Send PR](#)

City Council Candidate Questionnaire

Christine Parra

Christine Parra is in charge of emergency services for Culver City. She is her first bid for public office. She is endorsed by Santa Monicans for Change, the Santa Monica Coalition for a Livable City (SMCLC) and the Santa Monica Firefighters Political Activities Committee. This questionnaire was sent to incumbents and challengers endorsed by at least one group that spends money to back Council candidates.

1. Should Santa Monica try to build the 8,874 new housing units by 2028 mandated by SCAG?

No

2. The Plaza project should be

- a) approved
- b) changed
- c) rejected

Rejected

3. The City needs more major developments to help balance the budget.

No

4. The Council should have delayed voting on the Miramar project until after the election.

True

5. When it comes to hotel developments, the City Council has consistently sided with Unite HERE Local 11.

True

6. Is Santa Monica's City government racist?

No

7. Should the police budget be reduced?

No

8. If coronavirus cases spike, should the City order another economic shutdown?

Yes



**WE LOVE PROPERTY
MANAGEMENT HEADACHES!**



1900 Pico Boulevard
Santa Monica, CA 90405
(310) 434-4000

9. Santa Monica is one of the few Southern California cities to issue fines for not wearing a face mask. Do you support that policy?

Yes

10. The budget cutbacks forced by the coronavirus shutdown were the inevitable result of the City's decades' long spending spree.

True

11. City workers are paid too much.

False. This is not true for all city employees.

12. Unions wield too much power over the City Council.

True

13. Do you feel safe in Santa Monica when it comes to crime?

No

14. The City Council is doing enough to make public parks safer for families.

False

15. Santa Monica is doing a good job addressing homelessness.

False

16. Who is responsible for the Police Department's response to the May 31 riots?

- a) The Police Chief
- b) The City Manager
- c) The City Council
- d) All of the above

All of the above

17. The police used excessive force against protesters.

True. Excessive force was used against non-violent protesters.

18. Should Santa Monica switch from an at-large election system to districts?

Yes

19. Despite caps on individual contributions, money remains the biggest factor in winning an election.

True

20. Do you think Councilmembers are transparent when they disclose their personal and political finances?

No

21. Was the \$77 million "uber-Green" City Hall annex a good investment.

No

22. The City spends too much money fighting climate change.

Unsure

Santa Monica LOOKOUT

Traditional Reporting for A Digital Age



Home Special Reports Archive Links The City Commerce About Contacts Editor Send PR

City Council Candidate Questionnaire

Gleam Davis

Gleam Davis was appointed to the Council to fill the seat vacated after Herb Katz died in January 2009. She was elected in 2010 to a two-year term and to four-year terms in 2012 and 2016. Davis is endorsed by Santa Monicans for Renters' Rights (SMRR), Santa Monica Forward, the Coalition of Santa Monica City Employees (CSMCE), the Santa Monica Firefighters Political Activities Committee, the Community for Excellent Public Schools (CEPS) and the Santa Monica Democratic Club, all of which are spending money to back candidates.

1. Should Santa Monica try to build the 8,874 new housing units by 2028 mandated by SCAG?

Yes, because our failure to do so could result in serious consequences for the City. The City does not need to actually build or pay to build the housing. The City's obligation is to identify suitable sites for housing and use zoning and other tools to make it possible for others to build the housing. If the City does not facilitate the construction of sufficient housing, the City could be subject to substantial financial penalties and/or lose local control to review and disapprove or modify housing projects in the City.

2. The Plaza project should be

- a) approved
- b) changed
- c) rejected

I cannot comment on The Plaza because it may come before Council and I cannot prejudge such projects. In addition, it is my understanding that, because the City Council asked for a redesign of the project, it is undergoing significant modifications. Therefore, I do not know what the project currently looks like.

3. The City needs more major developments to help balance the budget.

False. The City should not approve developments of any size for the sole purpose of raising revenue.

4. The Council should have delayed voting on the Miramar project until after the election.

As I recused myself from Council's consideration of the Miramar project, I cannot comment on it one way or the other.

5. When it comes to hotel developments, the City Council has consistently sided with Unite HERE Local 11.



**WE LOVE PROPERTY
MANAGEMENT HEADACHES!**



1900 Pico Boulevard
Santa Monica, CA 90405
(310) 434-4000

False. For example, the City Council voted to approve what is now The Proper Hotel over Unite HERE Local 11's objection. However, I and other councilmembers worked with the hotel developer to establish card check neutrality for the site so that it provides good paying jobs for its employees.

6. Is Santa Monica's City government racist?

No, but the City needs to become more sensitive and responsive to the issues facing historically marginalized groups and develop intentional programs that address past discrimination. That is why the City is supporting the development and implementation of a Black Agenda, is building anti-discrimination programs among city employees, and why I support anti-bias education for City employees as well as residents and businesses in Santa Monica. In addition, I believe that we need to be sure that the City's economic recovery is fair and just.

7. Should the police budget be reduced?

Yes, if you mean that we should rethink policing and redirect funds away from an armed police response to every call for assistance. I anticipate that the recently-created civilian oversight committee will, among other things, evaluate potential alternatives. As part of this effort, we should invest more in services that prevent crime such as mental health and youth diversion programs. Some of these changes may cause funds to be reallocated within the police budget and others may require some divestment from the police budget and investment in other departments' budgets.

8. If coronavirus cases spike, should the City order another economic shutdown?

Yes, if that is the guidance that we get from the Los Angeles Department of Public Health. The decision about what businesses can and cannot remain open and how the open businesses operate resides with the LA County Department of Public Health and the City must comply with its directives. Public health and safety are paramount. If there is a coronavirus spike and the County orders some form of shutdown, the City has set aside funds to help the City get through it.

9. Santa Monica is one of the few Southern California cities to issue fines for not wearing a face mask. Do you support that policy?

Yes, I do.

10. The budget cutbacks forced by the coronavirus shutdown were the inevitable result of the City's decades' long spending spree.

False. In my time on the Council, the City Council has been a responsible steward of the budget which is reflected by the fact that Santa Monica is one of the few cities in the State to consistently earn a AAA bond rating. The budget cutbacks are the result of the pre-pandemic change in retail buying habits and the unexpected, significant loss of revenue caused by the pandemic. Even in these difficult times, the City's financial situation is better than that of many other cities.

11. City workers are paid too much.

False. It is totally inappropriate to attack the salaries paid to City workers. The City recently commissioned a study which showed that City employees' salaries are consistent with those paid in similar neighboring cities. Moreover, in these difficult times, most City employees have agreed to take pay and benefit cuts to help the City balance its budget. We have more employees per resident than

other cities due to the fact that we are responsible for miles of beachfront (which is a regional and international attraction) and operate a Pier, a regional bus service, and an airport.

12. Unions wield too much power over the City Council.

False. If you mean City employee unions, they do not. In my time on the Council, city employees have negotiated very modest annual increases in compensation while contributing larger percentages of their salary to both medical and retirement benefits. These agreements have been fair to employees but certainly are not evidence of any undue union influence over the Council.

13. Do you feel safe in Santa Monica when it comes to crime?

Yes, I feel safe in Santa Monica. Since the beginning of 2019, the City has experienced significant decreases in the number of serious and violent crimes in the City. I understand that this is little comfort to someone who is the victim of such a crime. However, we always are looking for ways to further reduce violent and serious crimes including redeployment of police resources to areas that seem to be the most problematic.

14. The City Council is doing enough to make public parks safer for families.

False. Unfortunately, we have a lot of anti-social behavior in our parks and that makes families feel uncomfortable. We need to do more to change that. For example, I would increase the number of Ambassadors in our parks and expand the number of parks in which they serve. In addition, I would encourage more cooperation between the Ambassadors and SMPD so that they can maximize their effectiveness. I also hope that our recent doubling of the number of Neighborhood Resource Officers will help families feel safer in our parks.

15. Santa Monica is doing a good job addressing homelessness.

True. Although the problem of persons experiencing homelessness is one of the most difficult that our City and region face, Santa Monica continues to do a relatively good job of addressing it. While the number of homeless persons increased in the City and County of Los Angeles last year, Santa Monica was able to reduce its homeless population by 8 percent. But Santa Monica needs to do more. We need to build more permanent supportive housing so that unhoused persons do not have to sleep on our beaches and in our parks. We also must increase the availability of mental health services.

16. Who is responsible for the Police Department's response to the May 31 riots?

- a) The Police Chief
- b) The City Manager
- c) The City Council
- d) All of the above

The Police Chief. Neither the City Manager nor the Council directed the Police Department on May 31. The Chief is the decision maker with regard to strategy and tactics and she was charged with developing the response to the extraordinary events of May 31. It was horrible to see tear gas and rubber bullets used and wanton looting in Santa Monica. I am anxious to see the after-action report and the independent review of May 31 so our community can evaluate the response to the challenges of May 31 and determine how we can do better in the future.

17. The police used excessive force against protesters.

I am committed to allowing peaceful exercise of First Amendment rights in Santa Monica but, as "excessive force" is a term that has a specific legal meaning, I cannot answer this question. Without the after-action report and the complete factual account of the day, it would be irresponsible and inappropriate for me to apply that legal standard to the events of May 31. In any event, I am supportive of police policies that require the use of tactics that de-escalate confrontations between police and civilians and otherwise preserve the right to peaceful protest.

18. Should Santa Monica switch from an at-large election system to districts?

No, because district elections actually would reduce the influence of minority voters in Santa Monica and would allow voters to vote for only once councilmember every four years instead of voting for seven councilmembers over the course of four years.

19. Despite caps on individual contributions, money remains the biggest factor in winning an election.

False. The candidates that raise the most money do not always win elections. Nevertheless, I support public funding of campaigns at all levels of government to reduce the influence of money in elections.

20. Do you think Councilmembers are transparent when they disclose their personal and political finances?

Yes, the Fair Political Practices Commission requires councilmembers as well as candidates, City board members, and commissioners to disclose their sources of income as well as gifts and other financial interests on their annual Form 700. The Form 700 is a publicly available document.

21. Was the \$77 million "uber-Green" City Hall annex a good investment?

Yes, because the consolidation of City functions in a single City-owned building rather than in rented office space spread throughout Santa Monica ultimately will save the City money. In addition, the new building with its energy and water self-sufficiency will save the City money on utility and other costs. Finally, it shows local developers and other cities that a building can be both environmentally and financially prudent.

22. The City spends too much money fighting climate change.

False. Climate change is an existential threat to our City and our world and reduction of local greenhouse gas emissions is a vital component of fighting it. As part of our recent budget cuts, we had to delay implementation of some portions of the City's Climate Action and Adaption Plan. As the City budget recovers, I hope we can reverse some of those budget reductions.



Santa Monica LOOKOUT

Traditional Reporting for A Digital Age



Home Special Reports Archive Links The City Commerce About Contacts Editor Send PR

City Council Candidate Questionnaire

Ana Maria Jara

Ana Maria Jara was appointed in January 2019 to fill the seat vacated by Tony Vazquez after his election to the State Board of Equalization. Jara is endorsed by Santa Monicans for Renters' Rights (SMRR), Santa Monica Forward, the Coalition of Santa Monica City Employees (CSMCE), the Community for Excellent Public Schools (CEPS) and the Santa Monica Democratic Club, all of which are spending money to back candidates.

1. Should Santa Monica try to build the 8,874 new housing units by 2028 mandated by SCAG?

Yes, all cities need to do their fare share

2. The Plaza project should be

- a) approved
- b) changed
- c) rejected

When item comes to Council, I will consider all aspects of it.

3. The City needs more major developments to help balance the budget.

Yes, we had a DCP process that planned the downtown area for 3 major projects, which is 4 percent of the city's land mass. The city would receive much needed revenue.

4. The Council should have delayed voting on the Miramar project until after the election.

No. This project was initially brought forth ten years ago. Major projects like this one take years to complete and start a revenue stream.

5. When it comes to hotel developments, the City Council has consistently sided with Unite HERE Local 11.

True. The unions and council have similar interests in the benefits provided both for labor and the jobs gained by the community.

6. Is Santa Monica's City government racist?

No. But we all have work to do. I urge people to vote YES on Measure AB that will reform our hiring practices.

7. Should the police budget be reduced?



**WE LOVE PROPERTY
MANAGEMENT HEADACHES!**



1900 Pico Boulevard
Santa Monica, CA 90405
(310) 434-4000

We need to look at community needs and priorities and perhaps re-allocate funds to some social services, like mental health.

8. If coronavirus cases spike, should the City order another economic shutdown?

No, it is not the City's decision to make.

9. Santa Monica is one of the few Southern California cities to issue fines for not wearing a face mask. Do you support that policy?

Yes

10. The budget cutbacks forced by the coronavirus shutdown were the inevitable result of the City's decades' long spending spree.

False. The nation -- cities, counties and states -- have faced the same impacts that produced deficits.

11. City workers are paid too much.

False

12. Unions wield too much power over the City Council.

False

13. Do you feel safe in Santa Monica when it comes to crime?

Yes, an example is the Pico Neighborhood, where I live, is now a safer place for all residents.

14. The City Council is doing enough to make public parks safer for families.

False. We continue to work to make things better.

15. Santa Monica is doing a good job addressing homelessness.

True -- but we must continue the trend of reducing homelessness which was down 8 percent while the County's was up. This is a regional challenge and should be addressed on a regional basis.

16. Who is responsible for the Police Department's response to the May 31 riots?

- a) The Police Chief
- b) The City Manager
- c) The City Council
- d) All of the above

The Police Chief

17. The police used excessive force against protesters.

We have hired consultants for an after-action report. Once the report is received, we will know the facts. In addition, the Safety Task Force was created, and they have made recommendations to Council.

18. Should Santa Monica switch from an at-large election system to districts?

No. Voters have spoken in the past and do not support districts and recently, the courts ruled against a local lawsuit that would create districts.

19. Despite caps on individual contributions, money remains the biggest factor in winning an election.

We do not yet have public financing.

Do you think Councilmembers are transparent when they disclose their personal and political finances?

Yes

21. Was the \$77 million "uber-Green" City Hall annex a good investment?

Yes. I was not on Council when the decision was made, and I hope this is a net positive for the City.

22. The City spends too much money fighting climate change?

False



copyrightCopyright 1999-2020 surfsantamonica.com. All Rights Reserved. [EMAIL](#) [Disclosures](#)

Santa Monica LOOKOUT

Traditional Reporting for A Digital Age



Home Special Reports Archive Links The City Commerce About Contacts Editor Send PR

City Council Candidate Questionnaire

Terry O'Day

Terry O'Day was appointed to the Council in 2010 to fill the seat vacated after Ken Genser's death. He was elected in 2010 to a two-year term and to four-year terms in 2012 and 2016. O'Day is endorsed by Santa Monica Forward, the Coalition of Santa Monica City Employees (CSMCE), the Santa Monica Firefighters Political Activities Committee, the Community for Excellent Public Schools (CEPS) and the Santa Monica Democratic Club, all of which are spending money to back candidates.

1. Should Santa Monica try to build the 8,874 new housing units by 2028 mandated by SCAG?

Yes. The state housing crisis imperils our economy, politics, environment and race relations. We should meet our responsibility with integrity.

2. The Plaza project should be

- a) approved
- b) changed
- c) rejected

Changed. We are only in the negotiating phase.

3. The City needs more major developments to help balance the budget.

False

4. The Council should have delayed voting on the Miramar project until after the election.

False. The project has been developed in an active community process for ten years through four elections.

5. When it comes to hotel developments, the City Council has consistently sided with Unite HERE Local 11.

True. Hotel workers deserve safe working conditions and fair wages. Thus we are often aligned with UNITE HERE.

6. Is Santa Monica's City government racist?

No. Racism is endemic in our society and we must use our institutions to root it out.

7. Should the police budget be reduced?



**WE LOVE PROPERTY
MANAGEMENT HEADACHES!**



1900 Pico Boulevard
Santa Monica, CA 90405
(310) 434-4000

Yes. Every department has been reduced and we are still using one-time funds to balance the budget.

8. If coronavirus cases spike, should the City order another economic shutdown?

No. Orders will come from the state and county public health experts. The city will follow them.

9. Santa Monica is one of the few Southern California cities to issue fines for not wearing a face mask. Do you support that policy?

Yes

10. The budget cutbacks forced by the coronavirus shutdown were the inevitable result of the City's decades' long spending spree.

False. This is nonsense. The city's revenue cratered due to Covid and is well managed fiscally.

11. City workers are paid too much.

False. An independent study of compensation practices found the city is in line with comparable cities.

12. Unions wield too much power over the City Council.

False

13. Do you feel safe in Santa Monica when it comes to crime?

Yes. Crime dropped by 10 percent in 2020 versus 2019, which dropped 16 percent versus 2018.

14. The City Council is doing enough to make public parks safer for families.

False. Until every park is safe for every person at every time, we can't do enough.

15. Santa Monica is doing a good job addressing homelessness.

True. We are investing in the best strategies and are getting results, but so much more to do.

16. Who is responsible for the Police Department's response to the May 31 riots?

- a) The Police Chief
- b) The City Manager
- c) The City Council
- d) All of the above

All of the above

17. The police used excessive force against protesters.

I am waiting for the independent report that council commissioned before passing judgment.

18. Should Santa Monica switch from an at-large election system to districts?

No. This would Balkanize the city and produce worse representative outcomes.

19. Despite caps on individual contributions, money remains the biggest factor in winning an election.

False. Walking precincts and learning to listen are the best ways to win.

20. Do you think Councilmembers are transparent when they disclose their personal and political finances?

Yes

21. Was the \$77 million "uber-Green" City Hall annex a good investment?

Yes. It pays for itself with reduced rent payments at offices we lease and is an example to the world.

22. The City spends too much money fighting climate change.

False. We are aligning planned investments in a locally and globally responsible direction.



copyrightCopyright 1999-2020 surfsantamonica.com. All Rights Reserved. [EMAIL](#) [Disclosures](#)

Santa Monica LOOKOUT

Traditional Reporting for A Digital Age



Home Special Reports Archive Links The City Commerce About Contacts Editor Send PR

City Council Candidate Questionnaire

Ted Winterer

Ted Winterer was elected to the City Council in 2012 and was re-elected in 2016. He is endorsed by Santa Monicans for Renters' Rights (SMRR), Santa Monica Forward, the Coalition of Santa Monica City Employees (CSMCE), the Santa Monica Firefighters Political Activities Committee, the Community for Excellent Public Schools (CEPS) and the Santa Monica Democratic Club, all of which are spending money to back candidates.

1. Should Santa Monica try to build the 8,874 new housing units by 2028 mandated by SCAG?

Yes. Always better to box rather than brawl with a stronger opponent and the State is determined to push through these housing targets. So we should create a new Housing Element, required by the State, to show where that housing could potentially be built. Then we should ask the State how the heck we're supposed to fund the 70 percent of the units which are supposed to be affordable to those living below median income levels, since a public subsidy would be required and the State took away our \$75 million per year of redevelopment funding.

2. The Plaza project should be
a) approved
b) changed
c) rejected

Changed. More accessible open space and affordable housing; better revenues to the City; replace office space with housing; reexamine parking demand. FYI a park is not financially feasible and the priority is more playing fields at Memorial and Airport Parks. And parking under 4th/5th and Arizona would only pay for the cost of building the garage, not a park above. Polling on a parks bond two years ago showed voters would not approve it as they are happy with our current parks — unlikely to change in a recession.

3. The City needs more major developments to help balance the budget.

False. One can always balance a budget by reducing services and our budget is currently balanced through June 2021. However, the public input over cuts last spring showed just how much Santa Monicans value our discretionary spending. Since the LUCE fiscal analysis showed that, of all land uses, hotels are the only one which generates revenues way in excess of the costs of providing services, we should continue to evaluate a couple of new hotels to enable restoration of after school programs, library hours, senior services, programs for at-risk youth, etc.



**WE LOVE PROPERTY
MANAGEMENT HEADACHES!**



1900 Pico Boulevard
Santa Monica, CA 90405
(310) 434-4000

4. The Council should have delayed voting on the Miramar project until after the election.

True. I would have preferred to have waited, but it was not my decision to make. The Mayor and the Mayor Pro Tem work with City staff on agenda management. Involvement by other Councilmembers would be a violation of the Brown Act, a State law.

5. When it comes to hotel developments, the City Council has consistently sided with Unite HERE Local 11.

True. However, the common ground is more a result of coinciding interests rather than undue political influence. The union wants the good jobs with benefits provided by the local hiring provisions, as does the Council. And as noted above, the Council seeks the revenues to support essential and discretionary spending.

6. Is Santa Monica's City government racist?

No. But we have work to do to be anti-racist, such as more training on innate bias in all departments including the Council. We have instituted Equity and Inclusion Officers in every department to serve on a Racial Equity Committee and funded a Black Agenda to redress past wrongs. And I urge voters to approve Measure AB to remove from the City Charter language which may require implicit racism in our hiring and promotion processes.

7. Should the police budget be reduced?

Yes. Council will review the SMPD budget to seek savings to be deployed to social services and other community needs without diminishing the efficacy of a department which reduced crime 16 percent in 2019.

8. If coronavirus cases spike, should the City order another economic shutdown?

No. Not the City's decision to make, as we along with 85 other cities in LA County must follow the COVID-19 rules set by the County Department of Public Health, along with any State edicts.

9. Santa Monica is one of the few Southern California cities to issue fines for not wearing a face mask. Do you support that policy?

Yes

10. The budget cutbacks forced by the coronavirus shutdown were the inevitable result of the City's decades' long spending spree.

False. Spending spree? With a balanced budget and AAA bond rating reflecting our prudent fiscal practices? No, our cutbacks were due to the same recessionary impacts facing all states and cities. The LA Times noted that cities in CA face losses of \$6.7B over two years, while state and local governments in the U.S, will face a total deficit of up to \$650B in the next year. So somehow the situation in Santa Monica is different?

11. City workers are paid too much.

False. Our Audit Subcommittee, on which I serve, commissioned a Compensation Study which reviewed our pay scales compared to peer cities in the region. We found that most salary classifications were in line with our neighbors, save that we paid our top management more. So we took steps to hold the line on those salaries. And the recent budget restructuring eliminated a lot of executive positions while reducing pay by as much as 20 percent.

12. Unions wield too much power over the City Council.

False. Plenty of other entities wield just as much influence. And of course our residents have the ultimate power every election.

13. Do you feel safe in Santa Monica when it comes to crime?

Yes, especially with Part 1 crimes down 16 percent in 2019 and another 10 percent so far in 2020. However, I acknowledge that many residents do not feel safe and that we have much more work to do.

14. The City Council is doing enough to make public parks safer for families.

False. Based on what I hear from residents we can do more.

15. Santa Monica is doing a good job addressing homelessness.

True. With our homeless count down 8 percent while the County's went up 13 percent and the City of LA's increased 16 percent, yes we're doing a good job compared to our neighbors and we don't have the tent cities which are commonplace elsewhere. That said, an 8 percent reduction is only a start and we need to do better.

16. Who is responsible for the Police Department's response to the May 31 riots?

- a) The Police Chief
- b) The City Manager
- c) The City Council
- d) All of the above

The Police Chief

17. The police used excessive force against protesters.

I'll admit the optics were not good. But it would be imprudent for anyone seeking to serve on the Council to answer this question in advance of the independent review of the after action report, as we live in a nation where due process is still the law of the land. And "excessive force" has a legal definition which requires an analysis by experts.

18. Should Santa Monica switch from an at-large election system to districts?

No. Prior to 1946, voters in Santa Monica elected three Commissioners, one each for Public Works, Finance and Public Safety. The voters then approved by over 70 percent our current Charter with great support from minority constituents. Proposals to move to district elections have subsequently been rejected twice by our voters. And under our current at-large system Councilmembers are accountable to all residents and the concerns of every neighborhood.

19. Despite caps on individual contributions, money remains the biggest factor in winning an election.

True. It takes money to reach voters and until Citizens United is reversed and we have public financing of elections that will be the case.

20. Do you think Councilmembers are transparent when they disclose their personal and political finances?

Yes. All of my campaign contributions and my annual Form 700 disclosing my personal finances are readily available for the public to review at the City Clerk's website.

21. Was the \$77 million "uber-Green" City Hall annex a good investment?

Yes. The dollars used to rent offices elsewhere in the city are now used to pay the debt for construction, so the taxpayers will own an asset rather than having spent money on rent. It's like renting v. owning a home -- in the former one is subject to payment increases while in the latter payments are fixed, predictable and paid with cheaper dollars in the future. And the green features eliminate all utility bills at a time when costs for energy and water are only going up. Finally, residents can obtain City services in one location.

22. The City spends too much money fighting climate change.

False. Our climate policy is focused as much on prudently adapting to climate change as on reducing our carbon footprint. And in absence of a sane Federal climate agenda, it's incumbent on cities and states to do what they can to keep the U.S. on track for the Paris accords goals. Some mistakenly believe that when we adopted our Climate Action and Adaptation Plan we also approved allocation of City funds towards the plan. Actually, we acknowledged that much of the cost would have to be paid by other sources such as a Federal carbon tax or State cap-and-trade funds.



copyrightCopyright 1999-2020 surfsantamonica.com. All Rights Reserved. [EMAIL](#) [Disclosures](#)

EXHIBIT B



LA COUNTY ELECTION RESULTS

Year Election Contest

General Election November 3, 2020

[View all elections](#)

Ballot Distribution

■ VBM Ballots ■ Vote Center Ballots

3,424,426

913,765

Results as of 11/30/2020 4:50:37 PM. Results are representative of Los Angeles County only. Total number of precincts: 3,383. Total number of registrations: 5,709,853. Ballots cast in Vote by Mail precincts are counted in the first bulletin. These tallied Vote by Mail precincts are reflected in the "Precincts Reporting" figure. There are 874 Vote by Mail precincts. The voter registration figure reflects registrations 29 days before the election. Voters who registered after this date will have their vote counted.

President

PRESIDENT AND VICE PRESIDENT

| | | | |
|---|-----------------------------------|--------|-----------|
| D | JOSEPH R. BIDEN | 71.04% | 3,028,885 |
| R | DONALD J. TRUMP | 26.87% | 1,145,530 |
| L | JO JORGENSEN | 0.83% | 35,452 |
| G | HOWIE HAWKINS | 0.51% | 21,660 |
| A | ROQUE "ROCKY" DE LA FUENTE GUERRA | 0.38% | 15,999 |
| P | GLORIA LA RIVA | 0.37% | 15,917 |

County Measures

COUNTY MEASURE J

COMMUNITY INVESTMENT AND ALTERNATIVES TO INCARCERATION MINIMUM COUNTY BUDGET ALLOCATION. Shall the m...

| | | | |
|---|-----|--------|-----------|
| N | YES | 57.12% | 2,159,690 |
| N | NO | 42.88% | 1,621,198 |

Majority of votes cast

County

DISTRICT ATTORNEY

| | | | |
|---|---------------|--------|-----------|
| N | GEORGE GASCÓN | 53.53% | 2,002,865 |
|---|---------------|--------|-----------|

| | | | |
|---|---------------------|--------|-------|
| N | MARY MENDOZA | 59.43% | 4,595 |
| N | DAVID CHIAPA BERNAL | 40.57% | 3,137 |

SANTA CLARITA CITY GENERAL MUNICIPAL ELECTION Member of the City Council

| | | | |
|---|------------------|--------|--------|
| N | CAMERON M. SMYTH | 31.26% | 56,919 |
| N | JASON GIBBS | 16.19% | 29,474 |
| N | KELVIN DRISCOLL | 14.44% | 26,282 |
| N | CHRIS WERTHE | 11.09% | 20,194 |
| N | TIMBEN BOYDSTON | 9.73% | 17,724 |
| N | AAKASH AHUJA | 7.85% | 14,300 |
| N | SELINA THOMAS | 7.44% | 13,554 |
| N | KENNETH DEAN | 1.51% | 2,750 |
| N | DOUGLAS FRASER | 0.48% | 871 |

Vote for no more than two

SANTA FE SPRINGS CITY GENERAL MUNICIPAL ELECTION Member of the City Council

| | | | |
|---|-----------------------|--------|-------|
| N | JOE ANGEL ZAMORA | 28.90% | 3,711 |
| N | JAY SARNO | 27.93% | 3,587 |
| N | BILL ROUNDS | 26.71% | 3,430 |
| N | BLAKE SULLIVAN CARTER | 16.47% | 2,115 |

Vote for no more than two

SANTA MONICA CITY GENERAL MUNICIPAL ELECTION - MEASURE AB

MEASURE AB: Shall the City Charter be amended to repeal provisions setting rules for appointing cand...

| | | | |
|---|-----|--------|--------|
| N | YES | 60.18% | 27,768 |
| N | NO | 39.82% | 18,371 |

Majority of votes cast

SANTA MONICA CITY GENERAL MUNICIPAL ELECTION - MEASURE SM

MEASURE SM: To protect essential services including addressing homelessness, cleaning beaches/parks,...

| | | | |
|---|-----|--------|--------|
| N | YES | 71.88% | 36,465 |
| N | NO | 28.12% | 14,268 |

Majority of votes cast

| | | | |
|---|-------------------------|--------|--------|
| N | PHIL BROCK | 11.64% | 19,319 |
| N | GLEAM OLIVIA DAVIS | 10.94% | 18,153 |
| N | CHRISTINE PARRA | 10.87% | 18,031 |
| N | OSCAR DE LA TORRE | 10.59% | 17,570 |
| N | TERRY O'DAY | 9.86% | 16,364 |
| N | TED WINTERER | 9.65% | 16,005 |
| N | ANA MARIA JARA | 9.15% | 15,187 |
| N | MARIO FONDA-BONARDI | 7.51% | 12,457 |
| N | MARCUS OWENS | 3.29% | 5,457 |
| N | TOM CISZEK | 2.58% | 4,282 |
| N | ANDREW BROWNING | 2.21% | 3,669 |
| N | CHIP MARTIN | 2.01% | 3,333 |
| N | MERVIENDO ANDIKA | 1.60% | 2,649 |
| N | ZOE MUNTANER | 1.50% | 2,486 |
| N | ANDREW KAMM | 1.49% | 2,465 |
| N | JON MANN | 1.25% | 2,074 |
| N | ANNE-MARIE SLACK | 1.07% | 1,779 |
| N | DOMINIC GOMEZ | 0.97% | 1,608 |
| N | NATHANIEL I. JONES, JR. | 0.74% | 1,227 |
| N | TODD MENTCH | 0.62% | 1,029 |
| N | JOHN PATRICK JEWELL | 0.48% | 795 |

Vote for no more than four

SANTA MONICA CITY GENERAL MUNICIPAL ELECTION Member of the City Council (Unexpired term ending November 8, 2022)

| | | | |
|---|-----------------|--------|--------|
| N | KRISTIN MCCOWAN | 100.0% | 32,440 |
|---|-----------------|--------|--------|

SANTA MONICA CITY GENERAL MUNICIPAL ELECTION Member of the Rent Control Board

| | | | |
|---|------------------|--------|--------|
| N | CAROLINE TOROSIS | 35.98% | 26,555 |
| N | ANASTASIA FOSTER | 34.45% | 25,429 |
| | AISHAH NEWSON | 15.78% | 11,644 |

EXHIBIT C



City Attorney's Office
1685 Main Street, Room 310
Santa Monica, California 90401

VIA EMAIL

November 25, 2020

Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811
Email: advice@fppc.ca.gov

Re: Request for Formal Advice

I am the Interim City Attorney for the City of Santa Monica. I seek advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act") and Government Code Section 1090. My understanding is that the FPPC will not provide advice regarding other conflict-of-interest laws such as common law conflict of interest.

The questions on which we seek advice relate to Oscar de la Torre, who, in an election conducted on November 3, 2020, was elected to serve as a member of the Santa Monica City Council. He will take his oath and assume his duties as Councilmember on December 8, 2020. We seek guidance regarding the ability of Mr. de la Torre to participate in Council decisions relating to pending litigation against the City in which the plaintiffs are Maria Loya (who is Mr. de la Torre's wife) and the Pico Neighborhood Association ("PNA"), a neighborhood organization with which both Mr. de la Torre and Ms. Loya have long-standing ties and have served in official positions, including Mr. de la Torre recently serving as Chair of its board until his resignation from that position on November 19, 2020.

QUESTIONS

1. May Mr. de la Torre participate in governmental decisions relating to the still-pending litigation where that litigation does not seek monetary damages for the plaintiffs, and, while these decisions may affect plaintiffs' pending motions for attorneys' fees and costs, Mr. de la Torre has advised that he, PNA, and Ms. Loya are not obligated to pay attorneys' fees or costs and that there is no arrangement under which any portion of any attorneys' fees or costs would be paid, either directly or indirectly, to him, PNA, or Ms. Loya?
2. While Mr. de la Torre is a Councilmember, may the City participate in negotiations regarding and/or decide to enter into a settlement agreement with plaintiffs that would require no monetary payment by the City other than its payment of some amount of the attorneys' fees and costs sought by plaintiffs' attorneys, where Mr. de la Torre has advised that he, PNA, and Ms. Loya are not obligated to pay attorneys' fees or costs and that there is no arrangement under

which any portion of any attorneys' fees or costs would be paid, either directly or indirectly, to him, PNA, or Ms. Loya?

3. While Mr. de la Torre is a Councilmember, may the City participate in negotiations regarding and/or decide to enter into a settlement agreement with plaintiffs that would require the City to pay, in addition to some amount of the attorneys' fees and costs sought by plaintiffs' attorneys, some other monetary payment that would benefit the PNA and its members?

FACTS

In the election conducted on November 3, 2020, Oscar de la Torre was elected to serve as a member of the Santa Monica City Council. He will take his oath and assume his duties as a Councilmember on December 8, 2020. Prior to being elected to the City Council, Mr. de la Torre served as an elected member of the governing board of the Santa Monica-Malibu Unified School District ("SMMUSD") for approximately 18 years.

The City of Santa Monica ("City") is currently the defendant in pending litigation challenging the City's use of an at-large election system to elect its City Council members.

The original complaint in the litigation was filed on April 12, 2016 by three plaintiffs: PNA, Ms. Loya, and Advocates for Malibu Public School. Identified as attorneys for the plaintiffs were Kevin Shenkman, Mary Hughes, and John Jones of Shenkman & Hughes; R. Rex Parris and Jonathan Douglass of R. Rex Parris Law Firm; Milton Grimes of the Law Offices of Milton C. Grimes; and Robert Rubin of the Law Office of Robert Rubin (collectively "Plaintiffs' Attorneys"). The original complaint alleged that "the provision in the Santa Monica City Charter requiring at-large elections for the city council and the SMMUSD governing board, not only runs afoul of the CVRA [California Voting Rights Act], it also runs afoul of the Equal Protection Clause (Article I, Section 7) of the California Constitution, among other controlling laws." The original complaint did not seek damages, but did seek an award of Plaintiffs' Attorneys' fees, costs, and litigation expenses.

A First Amended Complaint ("FAC") was filed on February 23, 2017. The FAC was filed by two plaintiffs, PNA and Ms. Loya (collectively "Plaintiffs"). The FAC identified Plaintiffs' Attorneys as the attorneys for the plaintiffs. The FAC dropped the allegations regarding at-large elections for the SMMUSD governing board, and alleged only that "the provision in the Santa Monica City Charter requiring at-large elections for the city council, not only runs afoul of the CVRA, it also runs afoul of the Equal Protection Clause (Article I, Section 7) of the California Constitution, among other controlling laws. The FAC did not seek damages, but did seek an award of Plaintiffs' Attorneys' fees, costs, and litigation expenses. The litigation proceeded to trial, judgment, and appeal based on the allegations in the FAC.

During the litigation, Ms. Loya was deposed on May 15, 2018. She testified that she became involved with the PNA and became a board member in either 2002 or 2003, that she left PNA in 2010 for family and work reasons, and that she came back in 2013 and was elected again to be a board member. She testified that at the time of her deposition she was serving as PNA's

treasurer. Ms. Loya was called by plaintiffs as a witness at trial and testified on August 2, 2018. She testified that Mr. de la Torre was the representative for the PNA in this case.

During the litigation, Mr. de la Torre, in his individual capacity, was deposed on May 9, 2018, represented by Mr. Shenkman. Mr. de la Torre, as the person identified by PNA as the person most qualified to testify on behalf of PNA on specified topics, was deposed on May 10, 2018, again represented by Mr. Shenkman. At the time of the deposition, Mr. de la Torre was the co-chair of PNA. He testified that he had been elected to that position in an election held the prior year and that he had previously held the position of chair of the PNA three to four years ago. Mr. de la Torre was also called by plaintiffs as a witness at trial and testified on August 22 and 23, 2018. Mr. de la Torre testified that his mother and father were involved in the founding of PNA in 1979, and “we have a long history of family involvement in the [PNA].” He also testified that he remained the co-chair of PNA, his wife, Ms. Loya, was a member of the PNA board, and his niece, Griselda Garces de la Torre, was the agent for service of process of the PNA. During his recent City Council campaign and as of November 2020, Mr. de la Torre was again serving as chair of the PNA board. Mr. de la Torre has advised that following his election to the City Council, he resigned from his position as chair of the PNA board at a PNA board meeting conducted on November 19, 2020.

Trial on the allegations in the FAC began August 1, 2018, and the presentation of evidence concluded on September 11, 2018. After extensive post-trial briefing, the trial court issued judgment in favor of Plaintiffs on both of their causes of action on February 13, 2019. Following issuance of the trial court’s judgment, on March 28, 2019, Plaintiffs’ Attorneys filed a motion seeking approximately \$902,000 in costs. On April 12, 2019, the City filed a motion to strike/tax those costs to significantly reduce them. On June 3, 2019, Plaintiffs’ Attorneys filed a motion seeking an award of more than \$22 million in attorneys’ fees pursuant to a provision of the CVRA. Pursuant to an agreement between the parties, the City’s response to the fee motion, and the hearings regarding costs and fees have been continued to follow the resolution of proceedings in the Court of Appeal and the California Supreme Court.

The City filed a notice of appeal from the judgment on February 22, 2019. After briefing, the Court of Appeal held oral argument on June 30, 2020. On July 9, 2020, the Court of Appeal issued an opinion holding that the City did not violate either the CVRA or the Equal Protection Clause of the California Constitution. In reaching this holding, the Court of Appeal found it unnecessary to address certain issues raised by City on its appeal. The Court of Appeal reversed the trial court’s judgment, awarded costs to the City, and directed the trial court to enter judgment for the City. Plaintiffs filed for rehearing, which the Court of Appeal denied on August 5, 2020.

On August 18, 2020, Plaintiffs filed a petition seeking review by the California Supreme Court. On October 21, 2020, the California Supreme Court granted review only on a limited question relating to Plaintiffs’ claim under the CVRA, leaving intact the Court of Appeal’s ruling in the City’s favor on the Equal Protection claim.

FPPC

Re: Request for Formal Advice

November 25, 2020

Page 4

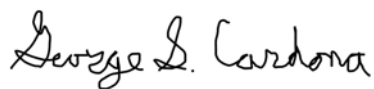
Briefing in the Supreme Court is ongoing, with Plaintiffs' opening brief currently due by December 21, 2020, and the City's answering brief to follow. No date has yet been set for oral argument before the California Supreme Court. Were the California Supreme Court to rule in Plaintiffs' favor on the limited question on which review has been granted, the City would anticipate a remand to the Court of Appeal to resolve the remaining issues relevant to Plaintiffs' CVRA claim that the Court of Appeal found unnecessary to reach because of the basis for its ruling. Were Plaintiffs ultimately to prevail, the City would anticipate returning to the trial court for resolution of the pending fee and cost motions.

Mr. de la Torre has orally advised that there is no obligation on the part of him, Ms. Loya, or PNA to pay any attorneys' fees or costs in connection with the litigation, and that his understanding is that the Plaintiffs' Attorneys would seek to recover fees and costs only from the City. Mr. de la Torre has further orally advised that if Plaintiffs' Attorneys do not recover any fees or costs from the City, the Plaintiffs' Attorneys have no ability to collect costs or fees from him, Ms. Loya, or PNA. Finally, Mr. de la Torre has orally advised that there is no arrangement under which any portion of any recovery from the City of attorneys' fees or costs would flow to him, PNA, or Ms. Loya; any entity controlled, directly or indirectly, by him, PNA, or Ms. Loya; or any entity that employs or would otherwise provide any financial benefit to him or Ms. Loya.

* * *

Thank you for your assistance. We are copying Mr. de la Torre on this request, and we have advised him that he may submit additional information if he chooses to and that the FPPC may request additional information from him. If you have questions, or if you need any additional information that I can provide, please let me know.

Sincerely,



George S. Cardona

Interim City Attorney

Phone: 310-458-8375

Email: george.cardona@smgov.net

cc: Councilmember-elect Oscar de la Torre

EXHIBIT D

Downloads:

 [Agenda](#)  [Agenda Packet](#)

CALL TO ORDER**PLEDGE OF ALLEGIANCE****ROLL CALL**

Roll Call

1. CLOSED SESSIONS

No items

(Please note that Agenda Items may be reordered during the Council meeting at the discretion of the City Council.)

2. SPECIAL AGENDA ITEMS

No items

3. CONSENT CALENDAR

No items

4. STUDY SESSION

No items

5. CONTINUED ITEMS

No items

6. ADMINISTRATIVE PROCEEDINGS

No items

7. ORDINANCES

No items

8. STAFF ADMINISTRATIVE ITEMS

- A. [Pico Neighborhood Association and Maria Loya v. City of Santa Monica - Determination Regarding Common Law Conflict of Interest of Councilmember de la Torre](#)

Recommended Action

With respect to the pending litigation in *Pico Neighborhood Association and Maria Loya v. City of Santa Monica*, Los Angeles Superior Court, Case No. BC 616804, Second District Court of Appeal, Case No. B295935, California Supreme Court, Case No. S263972, in which one plaintiff is an association for which Councilmember de la Torre was, until November 2020, a board member, and the other plaintiff is Councilmember de la Torre's wife, staff recommends that Council determine that, in accordance with the principles set out in AG Opinion 07-807 (Jan. 14, 2009), Councilmember de la Torre has a common law conflict of interest and is therefore disqualified from participating in or attempting to influence discussions or decisions relating to this litigation.

 [Staff Report Printout](#)

- a. [Attachment A--20210122.Board Members - PNA](#)
- b. [Attachment B--AG Opn. 07-807](#)

ADJOURNMENT

EXHIBIT E

CITY OF SANTA MONICA

CITY COUNCIL MINUTES

JANUARY 26, 2021

A special meeting of the Santa Monica City Council was called to order by Mayor Himmelrich at 4:00 p.m., on Tuesday, January 26, 2021, via teleconference pursuant to the Governor's Executive Order N-29-20 at <https://primetime.bluejeans.com/a2m/live-event/tzszchdr>

Roll Call: Present: Mayor Sue Himmelrich
Mayor Pro Tem Kristin McCowan
Councilmember Phil Brock
Councilmember Gleam Davis
Councilmember Oscar de la Torre (*arrived at 4:04 p.m.*)
Councilmember Kevin McKeown
Councilmember Christine Parra

Also Present: Interim City Manager Lane Dilg
Interim City Attorney George Cardona
City Clerk Denise Anderson-Warren

CONVENE

On order of the Mayor, the City Council convened at 4:00 p.m., with all members present except Councilmember De la Torre.

STAFF
ADMINISTRATIVE
ITEMS:

8.A. Pico Neighborhood Association and Maria Loya v. City of Santa Monica – Determination Regarding Common Law Conflict of Interest of Councilmember de la Torre, was presented.

Councilmember De la Torre arrived at 4:04 p.m.

Recommended Action

With respect to the pending litigation in Pico Neighborhood Association and Maria Loya v. City of Santa Monica, Los Angeles Superior Court, Case No. BC 616804, Second District Court of Appeal, Case No. B295935, California Supreme Court, Case No. S263972, in which one plaintiff is an association for which Councilmember de la Torre was, until November 2020, a board member, and the other plaintiff is Councilmember de la Torre's wife, staff recommends that Council determine that, in accordance with the principles set out in AG Opinion 07-807 (Jan. 14, 2009), Councilmember de la Torre has a common law conflict of interest and is therefore disqualified from participating in or attempting to influence discussions or decisions relating to this litigation.

Questions asked and answered of staff included, was there any preliminary opinion from the FPPC; is there a timeframe that we can expect a final

determination; could Council temporarily disqualify Councilmember De la Torre pending a decision from an outside agency; even if the FPPC rules on the financial conflict issues, there still won't be a decision on the common law issue; is it accurate, any decision from the FPPC won't address the common law issue that is being raised tonight; is it correct that this decision is being determined by the City Council, not the City Attorney; if this were a financial conflict, then the FPPC would be the higher power for resolution, but because this is not a financial issue, who is the higher power on this type of matter; what are the penalties if a Councilmember is found to have a conflict; what determines when Attorney-Client privilege is broken, and who decides when it's broken; what is the penalty of privilege being broken; is that correct that the FPPC has not given a determination; who advised the Interim City Attorney to seek a decision from the State Attorney General; has anyone on the dais had conversations about the recusal issues with Attorney Shenkman, who is the legal representative for the CVRA lawsuit; how long would it take to receive a court action from this; and, is there a way to proceed with the prior direction, without addressing issues that would cause Councilmember De la Torre to have to recuse.

Members of the public Stan Epstein, Ann Thanawalla, Denise Barton, Tricia Crane, Bob Selden, and, Olga Zurawska spoke to the recommended action.

Councilmember De la Torre responded to a comment made by a member of the public that he was advocating for the Pico Neighborhood Association to drop the CVRA case, and that is not true. He said, he would prefer that the city drop its appeal.

Considerable discussion ensued on topics including, but not limited to: reasons this is viewed as a conflict of interest because this is about litigation, not a discussion about public policy; it was obvious that Councilmember De la Torre was involved from the beginning of this litigation as the opposition; this is not about the merits of whether or not the city should have district elections, this is about allowing a spouse of a litigant be allowed in the room for a private discussion; Council needs to air on the side of caution and integrity; closed session is a sacred space, so it's better to air on the side of caution and consider this a conflict of interest; and, everybody brings their own bias or opinion, but that is not a conflict of interest, because Councilmember De la Torre is married to the person who brought about the lawsuit against the city, therefore he should not be allowed to sit in on the closed session discussion.

Councilmember De la Torre shared why he should be able to participate, and provided statements to support his opinion, and why he is not planning to recuse.

Motion by Councilmember McKeown, seconded by Councilmember Davis, that the City Council respectfully request Councilmember De la Torre to recuse himself on all matters involving Pico Neighborhood Association and Maria Loya versus the City of Santa Monica, and that should he decline that respectful request, that Council determine that a conflict of interest exists, and he is therefore disqualified from participating in any discussion related to the litigation.

After considerable discussion, as part of the original motion, Councilmember McKeown respectfully requested that Councilmember De la Torre voluntarily recuse himself.

Councilmember De la Torre stated that he would not recuse himself.

Since Councilmember De la Torre refused to recuse himself. The Mayor restated the new motion for clarification that the City Council will determine that Councilmember De la Torre is disqualified because he has a common law conflict of interest, and therefore would be disqualified from participating in, voting, or attempting to influence discussion or decisions relating to this litigation Pico Neighborhood Association and Maria Loya v. City of Santa Monica. The motion was approved by the following vote:


- AYES: Councilmembers Davis, McKeown,
Mayor Pro Tem McCowan, Mayor Himmelrich
- NOES: Councilmembers Parra, De la Torre
- ABSTAIN: Councilmember Brock

ADJOURNMENT

On order of the Mayor, the City Council meeting adjourned at 5:44 p.m.

ATTEST:

APPROVED:

DocuSigned by:

 E2F85B056A714C3...
 Denise Anderson-Warren
 City Clerk

DocuSigned by:

 823148D999FF4F3...
 Sue Himmelrich
 Mayor

EXHIBIT F



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

January 4, 2021

George S. Cardona
Interim City Attorney
City of Santa Monica
City Attorney's Office
1685 Main Street, Room 310
Santa Monica, California 90401

Re: Your Request for Advice
Our File No. A-20-149

Dear Mr. Cardona:

This letter responds to your request for advice regarding the Political Reform Act (the "Act") and Government Code section 1090, et seq.¹ Please note that we are only providing advice under the Act and Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the Los Angeles County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTIONS

1. Do the conflict of interest provisions of the Act or Section 1090 prohibit Santa Monica Councilmember Oscar de la Torre from participating in governmental decisions relating to pending litigation against the City, including a potential settlement agreement, where his spouse is a named plaintiff in the lawsuit?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. Do the conflict of interest provisions of the Act or Section 1090 prohibit Councilmember de la Torre from participating in governmental decisions relating to pending litigation against the City, including a potential settlement agreement, where his spouse is the Communications Officer for a nonprofit organization that is also a named plaintiff in the lawsuit?

CONCLUSIONS

1. No. As explained below, neither the Act nor Section 1090 prohibits Councilmember de la Torre from participating in governmental decisions relating to the City's pending litigation, including a potential settlement agreement, where his spouse is a named plaintiff.

2. No. As explained below, neither the Act nor Section 1090 prohibits Councilmember de la Torre from participating in governmental decisions relating to pending litigation against the City, including a potential settlement agreement, where his spouse is the Communications Officer for a nonprofit organization that is also a named plaintiff.

FACTS AS PRESENTED BY REQUESTER

You are the Interim City Attorney for the City of Santa Monica. In November of 2020, Oscar de la Torre was elected to serve as a member of the Santa Monica City Council and assumed his duties as a Councilmember on December 8, 2020. Prior to being elected to the City Council, Councilmember de la Torre served as an elected member of the governing board of the Santa Monica-Malibu Unified School District ("SMMUSD") for approximately 18 years.

The City of Santa Monica ("City") is currently the defendant in pending litigation challenging the City's use of an at-large election system to elect its City Council members. The original complaint in the litigation was filed on April 12, 2016 by three plaintiffs: Pico Neighborhood Association ("PNA"), Maria Loya (the spouse of Councilmember de la Torre), and Advocates for Malibu Public School.

The original complaint alleging violations of California Voting Rights Act ("CVRA") and California Equal Protection Clause did not seek damages, but did seek an award of attorneys' fees, costs, and litigation expenses. A First Amended Complaint ("FAC"), which again included alleged violations of the CVRA and California Equal Protection Clause, was filed in 2017 by PNA and Ms. Loya. The FAC did not seek damages, but did seek an award of attorneys' fees, costs, and litigation expenses.

The litigation proceeded to trial, judgment, and appeal based on the allegations in the FAC. After the trial, the court issued judgment in favor of plaintiffs on both of their causes of action in 2019. Plaintiffs' attorneys then filed a motion seeking approximately \$902,000 in costs and the City filed a motion to strike/tax those costs to significantly reduce them. Plaintiffs' attorneys also filed a motion seeking an award of more than \$22 million in attorneys' fees pursuant to a provision of the CVRA. Pursuant to an agreement between the parties, the City's response to the fee motion, and the

hearings regarding costs and fees have been continued to follow the resolution of proceedings in the Court of Appeal and the California Supreme Court.²

Councilmember de la Torre has advised that there is no obligation on the part of him, his spouse, or PNA to pay any attorneys' fees or costs in connection with the litigation, and that his understanding is that the plaintiffs' attorneys would seek to recover fees and costs only from the City. Councilmember de la Torre has further advised that if plaintiffs' attorneys do not recover any fees or costs from the City, they have no ability to collect costs or fees from him, his spouse, or PNA. Finally, Councilmember de la Torre has orally advised that there is no arrangement under which any portion of any recovery from the City of attorneys' fees or costs would flow to him, PNA, or his spouse; any entity controlled, directly or indirectly, by him, PNA, or spouse; or any entity that employs or would otherwise provide any financial benefit to him or his spouse.³

PNA raises a small amount of money through modest membership dues, and its annual budget is consistently less than \$5,000. PNA has no employees and engages in no commercial transactions. Rather, PNA's board – usually consisting of about 12 residents who are unpaid volunteers – meets approximately once a month to discuss issues pertinent to the Pico Neighborhood, and advocates for the interests of the Pico Neighborhood residents. According to the PNA website, it was “[e]stablished in 1979, the PNA is a non-profit organization that has been involved in a wide variety of issues – crime & safety, housing, neighborhood conditions, commercial development, City Hall watch, youth activities, parks, and traffic control.”⁴

During his recent City Council campaign and as of November 2020, Mr. de la Torre was serving as chair of the PNA board. However, Mr. de la Torre has advised that following his election to the City Council, he resigned from his position as chair of the PNA board. You stated by email dated January 22, 2021, that the list of Board Members from the PNA website identifies his spouse as the “Communications Officer” for PNA. As Councilmember de la Torre and his spouse have always volunteered, they have never received any compensation from PNA.

ANALYSIS

The Act

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the

² The City appealed and the Court of Appeal reversed the judgment. Plaintiffs filed a Petition seeking review by the California Supreme Court, which granted review in October 2020 only on a limited question relating to the CVRA claim. Should plaintiffs ultimately prevail, the City anticipates returning to the trial court for resolution of the pending fee and cost motions.

³ By letter dated November 30, 2020, Councilmember de la Torre confirmed that he has no financial interest in the outcome of the instant lawsuit. At the outset of the case, his spouse and PNA both agreed that they have no right to any attorneys' fees or costs recovered in that case. Moreover, the attorneys representing his spouse and PNA agreed that they would handle the lawsuit pro bono and pay all associated costs.

⁴ See <https://pnasantamonica.wordpress.com/board-members>

official has a financial interest. Pertinent to your facts, the Act's conflict of interest provisions apply to financial interests based on the following:

- An interest in a business entity⁵ in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- An interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).)
- The official's interest in his or her personal finances and those of immediate family members. (Section 87103.)

According to the facts, neither Councilmember de la Torre nor his spouse has ever received, nor have they been promised, any compensation from PNA, and there are no other facts to suggest PNA is a source of income to them. Additionally, Councilmember de la Torre does not have a business interest in PNA because, as a nonprofit organization, PNA is not a "business entity" as defined by the Act. (Section 82005.) Finally, there are no facts suggesting decisions related to the pending lawsuit will have any financial effect on his or his immediate family's personal finances. Therefore, based on the facts provided, Councilmember de la Torre does not have a disqualifying conflict of interest under the Act in future City Council decisions related to the instant lawsuit.

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended not only to strike at actual impropriety, but also to strike at the appearance of impropriety. (*City of Imperial Beach v. Bailey* (1980) 103Cal.App.3d 191, 197.)

Under Section 1090, the prohibited act is the making of a contract in which the official has a financial interest. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.) Finally, when Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is precluded from entering into the contract. (*Thomson, supra*, at pp. 647- 649; *Stigall, supra*, at p. 569; 86 Ops.Cal.Atty.Gen. 138, 139 (2003); 70 Ops.Cal.Atty.Gen. 45, 48 (1987).)

You have asked whether Councilmember de la Torre may participate in governmental decisions concerning a potential settlement agreement⁶ between plaintiffs and the City. The

⁵ Section 82005 defines a "business entity" as any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

determinative question here is whether he has a financial interest in a potential settlement agreement.

The term “financially interested” contained in Section 1090 has been defined as follows:

The phrase ‘financially interested’ as used in Government Code section 1090 means any financial interest which might interfere with a city officer’s unqualified devotion to his public duty. The interest may be direct or indirect. It includes any monetary or proprietary benefit, or gain of any sort, or the contingent possibility of monetary or proprietary benefits. The interest is direct when the city officer, in his official capacity, does business with himself in his private capacity. The interest is indirect when the city officer, or the board of which he is a member, enters into a contract in his or its official capacity with an individual or business firm, which individual or business firm, by reason of the city officer's relationship to the individual or business firm at the time the contract is entered into, is in a position to render actual or potential pecuniary benefits directly or indirectly to the city officer based on the contract the individual or business firm has received.

(88 Ops.Cal.Atty.Gen. 32, 36.)

Councilmember de la Torre’s spouse

Initially, we note that under Section 1090, an official always has an interest in the community and separate property income of the official’s spouse. (*Thorpe v. Long Beach Community College Dist.* (2000) 83 Cal.App.4th 655; 89 Ops.Cal.Atty.Gen. 69 (2006)). Councilmember de la Torre would therefore have a prohibitive financial interest in any potential settlement agreement resulting in a monetary benefit or liability of his spouse based on her status as a plaintiff in the instant lawsuit. According to the facts, however, neither he nor his spouse has any financial interest, direct or indirect, in the outcome of the lawsuit, including any future settlement agreement. There is no obligation on the part of him or his spouse to pay any attorneys’ fees or costs in connection with the litigation, and no arrangement under which any portion of any recovery from the City of attorneys’ fees or costs would flow to him or his spouse.

Accordingly, Councilmember does not have a financial interest in any potential settlement agreement related to the lawsuit based on his spouse’s status as a plaintiff therein.

PNA

⁶ The litigation against the City may be resolved under a settlement agreement. “A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810-811, citing *Gorman v. Holte* (1985) 164 Cal.App.3d 984, 988; see also 91 Ops.Cal.Atty.Gen. 1 (2008); 86 Ops.Cal.Atty.Gen. 142 (2003) [Section 1090 would prohibit a public official from participating in a settlement agreement in which the official is financially interested, and the body in which the official is a member could not enter the contract].)

In addition to being a plaintiff in the lawsuit, Councilmember de la Torre's spouse is the Communications Officer for the other plaintiff, PNA. You have therefore asked whether Councilmember de la Torre would have a financial interest in any settlement agreement resulting in a monetary payment that would benefit PNA. Importantly, the Legislature has created various statutory exceptions to Section 1090's prohibition where the interest involved is deemed a "remote interest," as defined in Section 1091 or a "noninterest," as defined in Section 1091.5. If a noninterest is present, the public official's abstention is generally not required, and the contract may be made by the agency.

Section 1091.5(a)(8) establishes that an officer is not interested in a contract if his or her interest is:

That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

According to the facts, Councilmember de la Torre's spouse volunteers as the Communications Officer for PNA, a nonprofit organization. In addition, based upon the description of issues it addresses, the primary purpose of dealing with crime & safety, housing, youth activities, parks, and traffic control supports important functions of the City. Therefore, even if a settlement agreement would result in a monetary payment that would benefit PNA, Councilmember de la Torre would have a noninterest in the agreement. However, should Councilmember de la Torre participate in such an agreement, he must disclose his interest in the City Council's official records.

Accordingly, for purposes of the Act, Councilmember does not have a disqualifying conflict of interest in City Council decisions concerning the instant lawsuit against the City. For purposes of Section 1090, he is not financially interested in any future settlement agreement based on his spouse's status as a plaintiff, and he has a noninterest in any future settlement agreement resulting in a monetary payment that would benefit PNA.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

JW:aja

EXHIBIT G

CITY OF SANTA MONICA

CITY COUNCIL MINUTES

JULY 22, 2021

A special meeting of the Santa Monica City Council was called to order by Mayor Himmelrich at 5:00 p.m., on Thursday, July 22, 2021, via teleconference pursuant to the Governor's Executive Order N-29-20 at <https://primetime.bluejeans.com/a2m/live-event/yatpvbsc>.

Roll Call: Present: Mayor Sue Himmelrich
Mayor Pro Tem Kristin McCowan
Councilmember Phil Brock
Councilmember Gleam Davis
Councilmember Lana Negrete
Councilmember Oscar de la Torre
Councilmember Christine Parra

Also Present: Interim City Manager John Jalili
Interim City Attorney George Cardona
City Clerk Denise Anderson-Warren

CONVENE

On order of the Mayor, the City Council convened at 5:00 p.m., with all members present.

CLOSED SESSIONS

There was no public comment on closed sessions.

On order of the Mayor, the City Council recessed at 5:01 p.m., to consider closed sessions and returned at 5:11 p.m., with all members present, to report the following:

1.A. Public Employee Appointment
Title: City Manager

The Interim City Attorney reported the Council is extending an offer of employment to David White, effective start date of October 11, 2021.

Motion by Councilmember Davis, seconded by Mayor Himmelrich, to approve hiring David White as the City Manager. The motion was approved by the following vote:

AYES: Councilmembers de la Torre, Brock, Negrete, Davis, Parra,
Mayor Pro Tem McCowan, Mayor Himmelrich
NOES: None
ABSENT: None

**COUNCILMEMBER
DISCUSSION ITEMS:
REVISIT
DISQUALIFICATION
STATUS**

13.A. Request of Councilmember de la Torre: Consider reversing the Council’s previous determination that Councilmember de la Torre is disqualified from participating in, voting, or attempting to influence discussion or decisions relating to the case captioned Pico Neighborhood Association, et al. v. City of Santa Monica, currently pending in the California Supreme Court – Case No. Case No. S263972, was presented.

Interim City Attorney raised the question of whether or not this item can be reconsidered and is appropriately brought by Councilmember de la Torre under Rule 12(g) of the Council Rules, which state, “A motion by a non-prevailing Councilmember or a request by a member of the public for reconsideration may be made only if one year has passed since the action was taken.”

Mayor Himmelrich, as the Presiding Officer, called the question to order whether this 13-item, which is essentially a motion to reconsider, is appropriately brought by Councilmember de la Torre. The Mayor made a determination that this 13-item was not appropriately brought by Councilmember de la Torre.

Councilmember de la Torre made a motion to appeal the Mayor’s determination and called for a vote to determine if the decision of the Presiding Officer shall be sustained. The decision could be overruled only by a two-thirds vote of the Councilmembers, which would require five or more votes of no on the question.


The Mayor’s determination was upheld by the following vote:

- AYES: Councilmembers Davis, Negrete, Mayor Pro Tem McCowan, Mayor Himmelrich
- NOES: Councilmembers Parra, Brock and de la Torre
- ABSENT: None

ADJOURNMENT

On order of the Mayor, the City Council meeting adjourned at 5:34 p.m.

ATTEST:

DocuSigned by:

 E2F85B056A714C3...
 Denise Anderson-Warren
 City Clerk

APPROVED:

DocuSigned by:

 823148D999FF4F3...
 Sue Himmelrich
 Mayor

TAB 3

1 Wilfredo Alberto Trivino-Perez (SBN 219345)
wtpesq@gmail.com
2 **TRIVINO-PEREZ & ASSOCIATES**
10940 Wilshire Blvd., 16th Floor
3 Los Angeles, CA 90024
Phone: (310) 443-4251
4 Fax: (310) 443-4252

5 Attorneys for Plaintiffs Oscar De La Torre and Elias Serna
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

| | | |
|---|---|--------------------------------------|
| 11 OSCAR DE LA TORRE and ELIAS SERNA |) | Case No.: 21STCV08597 |
| |) | DECLARATION OF KEVIN |
| 12 Plaintiffs, |) | SHENKMAN IN SUPPORT OF MOTION |
| |) | FOR SUMMARY JUDGMENT |
| 13 v. |) | Dept. 15 |
| 14 CITY OF SANTA MONICA and |) | [Hon. Richard Fruin] |
| 15 DOES 1 through 10, inclusive |) | |
| |) | |
| 16 Defendants. |) | |
| |) | |
| 17 |) | |

18 _____

19
20
21
22
23
24
25
26
27
28

1 I, Kevin Shenkman, declare as follows:

2 1. I am one of several attorneys representing the plaintiffs in the case styled
3 *Pico Neighborhood Association, et al. v. City of Santa Monica* (“Voting Rights Case”).
4 I am over the age of 18 and have personal knowledge of the facts contained in this
5 declaration. If called as a witness, I could and would competently testify as follows:

6 2. Since 2012, a significant portion of my practice has focused on voting
7 rights, and more specifically cases involving the California Voting Rights Act
8 (“CVRA”). In 2013, I was lead counsel in the first CVRA case to go to trial – *Jauregui*
9 *v. City of Palmdale*, tried before Hon. Mark Mooney in the Los Angeles Superior
10 Court. Since that time, my law firm, Shenkman & Hughes PC, and the other law firms
11 we work with, have been responsible for the majority of CVRA litigation in California.
12 Since 2013, I have spoken over a hundred times at various events, such as legal
13 conferences and community meetings, regarding voting rights, district-based elections
14 and the CVRA.

15 3. I have represented Maria Loya and the Pico Neighborhood Association
16 (“PNA”) over the past 5+ years in the case styled *Pico Neighborhood Association, et al.*
17 *v. City of Santa Monica*, Los Angeles Superior Court Case No. BC616804 (“Voting
18 Rights Case”). That case was filed in April 2016 and went to trial in August 2018
19 before Hon. Yvette M. Palazuelos. A true and correct copy of the operative complaint
20 in the Voting Rights Case is attached hereto as **Exhibit A**. As demonstrated by the
21 operative complaint, the Voting Rights Case seeks only non-monetary relief – an
22 injunction and declaration from the court, implementing district-based elections for the
23 Santa Monica City Council.

24 4. The Los Angeles Superior Court entered judgment in favor of the plaintiffs
25 in the Voting Rights Case in February 2019. A true and correct copy of that judgment,
26 along with the corresponding Statement of Decision, is attached hereto collectively as
27 **Exhibit B**. Consistent with the relief requested in the operative complaint, the
28 Judgment awards the plaintiffs injunctive and declaratory relief – specifically, the
implementation of district-based elections – but no monetary relief. Division Eight of

1 the Second District Court of Appeal reversed that judgment, but the California Supreme
2 Court granted review and depublished the intermediate appellate court's decision. The
3 Voting Rights Case is currently pending in the California Supreme Court, and has been
4 fully briefed by the parties.

5 5. Litigating CVRA cases requires significant time, effort, knowledge and
6 resources. Some CVRA cases require thousands of hours of work by attorneys, and
7 hundreds of thousands of dollars in expenses, mostly for expert witnesses who testify
8 about topics such as group voting behavior, statistical methods, demographics and
9 alternative election systems. In *Jauregui v. City of Palmdale*, for example, the Los
10 Angeles Superior Court awarded over \$4 million in attorneys' fees and expenses
11 through two disputed fees motions. The CVRA affords standing to "[a]ny voter who is
12 a member of a protected class and who resides in a political subdivision where a
13 violation ... is alleged." Yet, very few voters have millions of dollars available to
14 spend on attorneys and expert witnesses. Moreover, voters who wish to challenge an
15 at-large election system under the CVRA have no prospect of financial gain through
16 such a lawsuit, because the only financial relief available is attorneys' fees and costs,
17 and non-attorneys cannot share in that recovery. Therefore, Shenkman & Hughes and
18 the other law firms with which we associate, handle all CVRA cases on a *pro bono*
19 basis. Our CVRA clients do not pay us or anyone else any money in connection with
20 those cases. They have no prospect for any financial gain or financial loss from those
21 cases. In the Voting Rights Case, this arrangement was memorialized in two
22 documents – the retainer agreement and the clarifying supplement to the retainer
23 agreement – true and correct copies of which are attached collectively as **Exhibit C**.

24 I declare under penalty of perjury under the laws of the State of California that
25 the foregoing is true and correct.

26 Executed this 5th day of January 2022, at Malibu, California.



27 _____
Kevin Shenkman

EXHIBIT A

FEB 23 2017

Sherri R. Carter, Executive Officer/Clerk
By: Charlie L. Coleman, Deputy

1 Kevin I. Shenkman, Esq. (SBN 223315)
2 Mary R. Hughes, Esq. (SBN 222622)
3 John L. Jones, Esq. (SBN 225411)
4 **SHENKMAN & HUGHES PC**
5 28905 Wight Road
6 Malibu, California 90265
7 Telephone: (310) 457-0970

8 R. Rex Parris (SBN 96567)
9 Jonathan Douglass (SBN 289300)
10 **R. REX PARRIS LAW FIRM**
11 43364 10th Street West
12 Lancaster, California 93534
13 Telephone: (661) 949-2595
14 Facsimile: (661) 949-7524

15 Milton Grimes (SBN 59437)
16 **LAW OFFICES OF MILTON C. GRIMES**
17 3774 W 54th St
18 Los Angeles, California 90043
19 Telephone: (323) 295-3023

20 Robert Rubin (SBN 85084)
21 **LAW OFFICE OF ROBERT RUBIN**
22 131 Steuart St., Suite 300
23 San Francisco, California 94105
24 Telephone: (415) 625-8454

25 Attorneys for Plaintiffs

26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
27 **COUNTY OF LOS ANGELES**

28 PICO NEIGHBORHOOD
ASSOCIATION and MARIA LOYA

Plaintiff,

v.

CITY OF SANTA MONICA,
CALIFORNIA; and DOES 1-100,
inclusive,

Defendants.

Case No.: BC616804

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF:**

- 1) CALIFORNIA VOTING RIGHTS ACT
OF 2001; and
- 2) EQUAL PROTECTION CLAUSE OF
CALIFORNIA CONSTITUTION

Dept. 28 – Hon. Yvette Palazuelos

1 COMES NOW Plaintiffs Pico Neighborhood Association (hereinafter "PNA") and Maria
2 Loya (hereinafter "Loya") (collectively "Plaintiffs"), and allege as follows:

3 **NATURE OF THE ACTION**

4 1. This action is brought by Plaintiffs for injunctive relief against the City of Santa
5 Monica, California, for its violation of the California Voting Rights Act of 2001 (hereinafter
6 the "CVRA"), Cal. Elec. Code §§ 14025, et seq., and for declaratory relief that the provision
7 of the Santa Monica City Charter requiring the at-large election of its city council is
8 unconstitutional. The current system of at-large council elections was adopted in 1946,
9 purposefully to prevent non-Anglo Santa Monicans residing primarily around and south of
10 what is now Interstate 10 from achieving representation in their local governments. Since
11 that time, at-large elections have been very successful in achieving that purpose -- the
12 imposition of the City of Santa Monica's at-large method of election has accomplished its
13 nefarious purpose – dilution of Latino voting power and denial of effective political
14 participation in elections to the Santa Monica City Council. The City of Santa Monica's at-
15 large method of election for electing members to its City Council prevents Latino residents
16 from electing candidates of their choice or influencing the outcome of Santa Monica's City
17 Council elections.

18 2. The effects of the City of Santa Monica's at-large method of election are
19 apparent and compelling. Since the adoption of at-large elections in the City of Santa Monica
20 more than sixty years ago, only one Latino has been elected to the City Council, and not a
21 single Latino resident of the Pico Neighborhood, where Latinos are concentrated, has been
22 elected to the Santa Monica City Council. Latino residents of the Pico Neighborhood,
23 including Ms. Loya, have run in several recent elections for the Santa Monica City Council,
24 and though they have often drawn significant support from both voters in the Pico
25 Neighborhood and by Latino voters generally, they have all lost due to the costly and
26 discriminatory at-large system by which Santa Monica elects its city council. Rather, all of
27 the Latino candidates preferred by the Latino electorate were defeated by the bloc voting of
28 the non-Latino electorate against them.

1 3. Santa Monica's at-large method of election violates the CVRA. Plaintiffs bring
2 this action to enjoin the City of Santa Monica's continued abridgment of Latino voting rights.
3 Plaintiffs seek a declaration from this Court that the at-large method of election currently
4 used by the City of Santa Monica violates the CVRA. Plaintiffs seek injunctive relief
5 enjoining the City of Santa Monica from further imposing or applying its current at-large
6 method of election. Further, Plaintiffs seek injunctive relief requiring the City of Santa
7 Monica to implement district based elections or other alternative relief tailored to remedy
8 Santa Monica's violation of the CVRA.

9 4. At-large elections were adopted by Santa Monica with the purpose of
10 discriminating against Santa Monica's ethnic minority population residing in the southern
11 portion of the city. That fact alone – that the adoption of at-large elections was generally
12 motivated by a desire to disenfranchise ethnic minorities – makes the at-large election system
13 unconstitutional today, and requires that this Court remedy the harm caused by the imposition
14 of that discriminatory election system. Specifically, the provision in the Santa Monica City
15 Charter requiring at-large elections for the city council, not only runs afoul of the CVRA, it
16 also runs afoul of the Equal Protection Clause (Article I, Section 7) of the California
17 Constitution, among other controlling laws.

18 5. Plaintiffs, through their counsel, attempted to avoid the need for litigation by
19 engaging in a dialogue with the City of Santa Monica. Specifically, Plaintiffs, through their
20 counsel, brought this CVRA violation to the attention of the City of Santa Monica through
21 correspondence sent nearly four months prior to the filing of the original Complaint in this
22 case. Despite that correspondence, the Santa Monica City Council has taken no action to end
23 its violation of the CVRA, content to continue violating the CVRA and their constituents'
24 voting rights by clinging to a relic of its racist past. In fact, other than an email from Santa
25 Monica's city attorney on December 28, 2015 noting that the matter would be considered by
26 the city council in closed session on January 12, 2016, and promising a substantive response
27 thereafter, Defendant City of Santa Monica has not responded at all.

28

1 **PARTIES**

2 6. Established in 1979, PNA is a non-profit organization dedicated to improving
3 the living conditions and advancing the interests, including those related to the political
4 process, of residents of the Pico Neighborhood of Santa Monica, where Latino residents of
5 Santa Monica are concentrated, and advocating for the interests of Pico Neighborhood
6 residents before the Santa Monica City Council. PNA has dozens of members, including
7 Latino registered voters residing in the City of Santa Monica.

8 7. The Latino residents of Santa Monica whose voting rights are immediately
9 harmed by the City of Santa Monica's adherence to an unlawful at-large system of electing its
10 city council are hindered from protecting their own interests. Many of the Latino citizens of
11 Santa Monica do not recognize that their voting rights are being violated by the City of Santa
12 Monica's adherence to an unlawful at-large system of electing its city council, and still others
13 fear reprisal by the City of Santa Monica if they were to seek redress for the City of Santa
14 Monica imposing its unlawful election system.

15 8. Despite that fear of reprisal, Maria Loya feels compelled to seek redress for the
16 City of Santa Monica's violation of the CVRA and dilution of the Latino vote in Santa
17 Monica. Loya is a member of a "protected class" as that term is defined in the CVRA – she
18 is Latina – and she is registered to vote and resides in the City of Santa Monica.

19 9. At all times herein mentioned, Defendant City of Santa Monica, California
20 (hereinafter "Santa Monica," or "Defendant") is and has been a political subdivision subject
21 to the provisions of the CVRA.

22 10. Plaintiffs are unaware of the true names and capacities, whether individual,
23 corporate, associate, or otherwise, of defendants sued herein as Does 1 through 100,
24 inclusive, and therefore, sues said defendants by such fictitious names and will ask leave of
25 court to amend this complaint to show their true names and capacities when the same have
26 been ascertained. Plaintiffs are informed and believe and thereon allege that defendants Does
27 1 through 100, inclusive, are responsible on the facts and theories herein alleged.

28

1 11. Does 1 through 100, inclusive, are Defendants that have caused Santa Monica
2 to violate the CVRA, failed to prevent Santa Monica's violation of the CVRA, or are
3 otherwise responsible for the acts and omissions alleged herein.

4 12. Plaintiffs are informed and believe and thereon allege that Defendants and each
5 of them are in some manner legally responsible for the acts and omissions alleged herein, and
6 actually and proximately caused and contributed to the various injuries and damages referred
7 to herein.

8 13. Plaintiffs are informed and believe and thereon allege that at all times herein
9 mentioned each of the Defendants was the agent, partner, predecessor in interest, successor in
10 interest, and/or employee of one or more of the other Defendants, and were at all times herein
11 mentioned acting within the course and scope of such agency and/or employment.

12 13 **JURISDICTION AND VENUE**

14 14. All parties hereto are within the unlimited jurisdiction of this Court. The
15 unlawful acts complained of occurred in Los Angeles County. Venue in this Court is proper.

16 17 **FACTS**

18 15. The City of Santa Monica contains approximately 89,736 persons, of whom
19 approximately 13.1% are Hispanic or Latino, based upon the 2010 United States Census.

20 16. The City of Santa Monica is governed by a city council. The Santa Monica
21 City Council serves as the governmental body responsible for the operations of the City of
22 Santa Monica. The City Council is comprised of seven members, including a Mayor elected
23 by and from the members of the City Council.

24 17. The Santa Monica City Council members are elected pursuant to an at-large
25 method of election. Under this method of election, all of the eligible voters of the entire City
26 of Santa Monica elect the members of the City Council.

27 18. Seats on the City Council are filled on a staggered basis; as a result, every two
28 years the city electorate elects either three or four City Council members.

1 19. Upon information and belief, since its adoption of its current system of at-large
2 elections in 1946, only one of Santa Monica's city council members has been Latino, and he
3 was not a resident of the Latino-concentrated Pico Neighborhood.

4 20. Elections conducted within the City of Santa Monica are characterized by
5 racially polarized voting. Racially polarized voting occurs when members of a protected
6 class as defined by the CVRA, Cal. Elec. Code § 14025(d), vote for candidates and electoral
7 choices that are different from the rest of the electorate. Racially polarized voting exists
8 within the City of Santa Monica because there is a difference between the choice of
9 candidates or other electoral choices that are preferred by Latino voters, and the choice of
10 candidates or other electoral choices that are preferred by voters in the rest of the electorate,
11 with the result being that Latino-preferred candidates usually lose.

12 21. For example, in the city council election of 1994, Latino voters cohesively
13 preferred Tony Vazquez – himself a Latino. But, the non-Hispanic white majority of the
14 electorate voted as a bloc against Mr. Vazquez, and thus due to the at-large election system
15 Mr. Vazquez lost. That election was filled with racial hostility in Santa Monica – mainly
16 directed at Mr. Vazquez, the sole Latino candidate. A cartoon was published in the local
17 newspaper, “the Outlook,” depicting Mr. Vazquez as a member of a Latino street gang, and a
18 mailer was distributed attacking Mr. Vazquez for purportedly seeking to allow “illegal”
19 Latino immigrants to vote. After his loss, the ordinarily calm and collected Mr. Vazquez
20 explained the reason for his loss – “the racism that still exists in our city. ... The racism that
21 came out in this campaign was just unbelievable.” In the end, while the candidate preferred
22 by the Latino voters – Mr. Vazquez – was not elected, the first, second and third preferences
23 of the non-Latino electorate (Bob Holbrook, Pam O’Connor and Ruth Ebner) were all
24 elected.

25 22. By way of further example, in the city council election of 2002, Latino voters
26 cohesively preferred Josefina Aranda – herself a Latina. But, the non-Hispanic white
27 majority of the electorate voted as a bloc against Ms. Aranda, and thus due to the at-large
28 election system Ms. Aranda lost. During the campaign, Ms. Aranda lamented the lack of

1 representation of Latinos and the Pico Neighborhood on the City Council: “[T]here is such a
2 huge need for more representation from groups that are currently disenfranchised. I am from
3 the Pico Neighborhood. I am a woman, I am a Latina. I believe I could bring a voice to a lot
4 of people who currently are not heard. ... Currently, the City Council does not represent the
5 diversity of the City of Santa Monica. The Pico neighborhood is underrepresented.” While
6 the candidate preferred by the Latino voters – Ms. Aranda – was not elected, the first, second
7 and third preferences of the non-Latino electorate (Bob Holbrook, Pam O’Connor and Kevin
8 McKeown) were all elected, continuing the exact problem that Ms. Aranda had identified.

9 23. A still further example of racially polarized voting in the City of Santa
10 Monica’s at-large elections, is the 2004 election for Defendant’s city council. In that
11 election, Latino voters cohesively preferred Maria Loya – herself a Latina. But, the non-
12 Hispanic white majority of the electorate voted as a bloc against Ms. Loya, and thus due to
13 the at-large election system Ms. Loya lost. The demonstration of racially polarized voting
14 and the dilutive effect of Santa Monica’s system of at-large elections is particularly striking in
15 the 2004 election. Bobby Shriver, a member of the Kennedy family, came in first place
16 among several candidates by a wide margin in the citywide vote count. In fact, except for the
17 Pico Neighborhood, where Santa Monica’s Latino community is concentrated, Mr. Shriver
18 came in first place in every one of the seven recognized neighborhoods that make up the City
19 of Santa Monica, beating the other candidates in their own neighborhoods. In the Pico
20 Neighborhood, where Ms. Loya resided (and still resides), Ms. Loya came in first, garnering
21 significantly more votes than any other candidate, even Bobby Shriver. But, because
22 Defendant utilized an at-large method of election, rather than a district-based election, the
23 fact that Ms. Loya was strongly preferred by voters in the region where she resided, and
24 Latinos more generally throughout the city, made no difference to the outcome of the
25 election. In the end, while the candidate preferred by the Latino voters – Ms. Loya – was not
26 elected, the first, second and third preferences of the non-Latino electorate (Bobby Shriver,
27 Richard Bloom and Herb Katz) were all elected.

28

1 24. This pattern of racially polarized voting has not ended. For example, in even
2 the most recent election – in November 2016 – the election for the City of Santa Monica’s
3 council again exhibited the same sort of racially polarized voting. In that election, Latino
4 voters cohesively preferred Oscar de la Torre – himself a Latino. But, the non-Hispanic
5 white majority of the electorate voted as a bloc against Mr. de la Torre, and thus due to the at-
6 large election system Mr. de la Torre lost. There were two candidates residing in the Pico
7 Neighborhood in the 2016 election – Terry O’Day and Oscar de la Torre (the candidate
8 preferred by Latino voters). In the four precincts that lie entirely within the Pico
9 Neighborhood, Mr. O’Day received 1238 votes and Mr. de la Torre received 1317 votes. So,
10 if Defendant utilized a district-based election system Mr. de la Torre would likely have
11 prevailed; but, in Defendant’s plurality at-large system, Mr. O’Day won a seat on the council
12 and Mr. de la Torre did not. In fact, taking those four precincts, Mr. de la Torre received
13 more votes than any other candidate. Still, despite his strong support in the Pico
14 Neighborhood, and being the preferred candidate of Latino voters, Mr. de la Torre lost in
15 Defendant’s at-large election. In the end, while the candidate preferred by the Latino voters –
16 Mr. de la Torre – was not elected, the first, second and third preferences of the non-Latino
17 electorate (Ted Winterer, Glean Davis and Terry O’Day) were all elected.

18 25. Racially polarized voting in Santa Monica has not been limited to the elections
19 discussed in the preceding paragraphs; rather those elections are intended only to be
20 exemplary, and the discussion of each is not exhaustive.

21 26. Historical, economic and social factors also contribute to Latino voters’
22 inability to elect candidates of their choice or influence the outcome of elections for the Santa
23 Monica City Council in the current at-large election system. Santa Monica has a long history
24 of racial discrimination against Latinos and other racial minorities. For example, the city’s
25 population was segregated by race in housing, public accommodations and schools – Latinos
26 and African Americans were prohibited from purchasing homes in the more desirable
27 northern portion of the City by deed restrictions; public beaches were reserved for only non-
28 Hispanic whites, with one small beach area designated by Defendant for “colored use”

1 according to its Shoreline Plan Map; and Latinos and African Americans were relegated to
2 the lower-funded lower-performing public schools in the southern portion of the city. That
3 historical discrimination, some of which continues to the present, has resulted in Latinos
4 having less wealth, less education, a lower literacy rate, worse health, a higher unemployment
5 rate, and a lower median household income than non-Hispanic white residents of Santa
6 Monica.

7 27. Latinos are concentrated in the Pico Neighborhood of Santa Monica, an area the
8 residents have coined the “toxic triangle” for the environmental hazards Defendant has
9 dumped in that neighborhood. According to a June 2016 report by Defendant’s Planning
10 Commission, the proportions of Latinos and African Americans are three times as high in the
11 Pico Neighborhood as they are in the City of Santa Monica as a whole – 39% Latino and 12%
12 African American in the Pico Neighborhood compared to 13% Latino and 4% African
13 American in the City as a whole. That report confirms that:

- 14 • among the neighborhoods of Santa Monica, Pico Neighborhood residents have
15 the highest unemployment rate, lowest median household income, and highest
16 rate of economic worry;
- 17 • Pico Neighborhood residents have the lowest health score of any neighborhood
18 in Santa Monica;
- 19 • Pico Neighborhood residents have the lowest early literacy rates and lowest
20 performance in mathematics in Santa Monica; and
- 21 • Pico Neighborhood residents have the lowest rates in the City of: life
22 satisfaction, flourishing, having time to do things they enjoy, time and effort put
23 into the community, trust in neighbors, sense of belonging in their community,
24 pride in Santa Monica, feeling Santa Monica is beautiful, sense that they have
25 access to all that is needed in Santa Monica, use of outdoor space, time spent at
26 community places, and satisfaction with their housing.

27 28. The at-large elections for Defendant’s city council are extraordinarily
28 expensive. While a successful campaign in an at-large election for a city council seat in a

1 California city the size of Santa Monica would typically require less than \$50,000, several
2 hundreds of thousands of dollars are routinely spent on each city council election in Santa
3 Monica. Of course, district election campaigns are much less expensive, as there are fewer
4 voters a candidate must reach and they all live in a smaller geographic area, making less
5 expensive campaign tactics, such as walking door to door, more effective. Even the relatively
6 expensive campaigning method of distributing campaign literature by mail, which has
7 become a primary means of campaigning for many city council candidates in Santa Monica,
8 is much less costly in a district-based election system, and thus more feasible for candidates
9 with limited funds. Latino and African American candidates typically do not have
10 comparable access to the large sums of money that non-Hispanic white residents of Santa
11 Monica spend on local political campaigns, and the Latino and African American
12 communities do not have even close to the same sort of disposable money and resources that
13 the non-Hispanic white community has to spend on getting its preferred candidates elected in
14 Santa Monica's at-large elections for its city council.

15 29. The slating of candidates that is common in Santa Monica's at-large city
16 council elections further exacerbates the dilutive effect of those at-large elections. Municipal
17 law limits contributions to the campaign of a city council candidate to just a little more than
18 \$300, yet hundreds of thousands of dollars are spent advocating for/against city council
19 candidates. Those hundreds of thousands of dollars are, therefore, necessarily pooled and
20 spent by political action committees that support a slate of candidates; it is not reasonably
21 possible for a single candidate's campaign to raise that amount of money. Latino-preferred
22 candidates are frequently excluded from those slates, making it even more difficult for those
23 candidates to succeed in the ridiculously expensive at-large elections for the Santa Monica
24 City Council.

25 30. Racially polarized voting is legally significant in Santa Monica's City Council
26 elections because it dilutes the opportunity of Latino voters to elect candidates of their choice.

27 31. Patterns of racially polarized voting have the effect of impeding opportunities
28 for Latino voters to elect candidates of their choice to the at-large city council positions in the

1 City of Santa Monica, where the non-Latino populace dominates elections. For several years,
2 Latino voters have been harmed by racially polarized voting.

3 32. The at-large method of election and repeated racially polarized voting has
4 caused Latino vote dilution within the City of Santa Monica. Where Latinos and the rest of
5 the electorate express different preferences on candidates and other electoral choices, non-
6 Latinos by virtue of their overall numerical majority among voters, defeat the preferences of
7 Latino voters.

8 33. The obstacles posed by the City of Santa Monica's at-large method of election,
9 together with racially polarized voting, impair the ability of people of certain races, color or
10 language minority groups, such as Latino voters, to elect candidates of their choice or to
11 influence the outcome of elections conducted in the City of Santa Monica.

12 34. An alternative method of election, such as, but not limited to, district-based
13 elections, exists that will provide an opportunity for the members of the CVRA-protected
14 classes to elect candidates of their choice or to influence the outcome of the Santa Monica
15 City Council elections.

16 35. It is no accident that at-large elections have diluted the vote of ethnic minorities
17 in elections for Santa Monica's city council – that was a significant motivation and purpose
18 of adopting at-large elections, instead of the district-based elections previously employed in
19 Santa Monica for electing members to the city council. The charter provision establishing at-
20 large elections for selection of Defendant's city council, which is still in effect today, was
21 adopted in 1946. A Board of Freeholders was established with fifteen members, all Anglo,
22 and all of whom resided in the northern area of Santa Monica subject to restrictive deed
23 covenants, referred to as "Caucasian Clauses," preventing African Americans and Latinos
24 from residing in the area. Throughout the deliberations of the Board of Freeholders, the
25 method of electing a city council – at-large or through district elections – was the most
26 controversial issue. At first, the Board of Freeholders, noting that public opinion was divided
27 on this issue, passed a measure to allow voters to choose between a council with seven
28 members all elected at-large, and a council with three members elected at-large and four

1 members elected by districts. But then the Board of Freeholders reversed course and
2 rescinded their previous measure, opting instead to place on the ballot only the option to have
3 a council all elected at-large. That ballot measure passed.

4 36. It is rare that proponents of a law proclaim their intent to discriminate against
5 any racial group. Even policies and laws that are today regarded as constituting blatant racial
6 discrimination, have been defended by their proponents as having more legitimate goals, and
7 the proponents of such laws are often careful to avoid disclosing their racially discriminatory
8 motives. But in this case, proponents of at-large elections *did* proclaim their intent to exclude
9 racial minorities. The Santa Monica Outlook – the principal local newspaper at the time –
10 addressing the city’s growing racial diversity and the desire of racial minorities to have
11 district elections to provide them an opportunity to have representation in the city
12 government, argued in 1946 that Santa Monica should adopt at-large elections, not district
13 elections, in order that Santa Monica “can and should develop into a remarkably
14 homogeneous community,” and belittled the “cry [of proponents of district elections] that
15 ‘minorities must be represented.’”

16 37. Even without such a blunt statement of the proponents’ intent as exists in this
17 case, the purposes of a law or policy can be revealed by the circumstances contemporaneous
18 to the enactment of the law or policy, contemporaneous knowledge of the likely disparate
19 impact of the law or policy on a racial minority group, the racially disparate impact that
20 results from the law or policy, and the background and other decisions of those enacting the
21 law or policy.

22 38. In the 1940s, when the current at-large system of electing Defendant’s city
23 council was adopted, the racial demographics of Santa Monica were rapidly changing.
24 During the Second World War, the nonwhite population of Santa Monica rose by 69%. This
25 pronounced growth in the nonwhite population of Santa Monica in the years leading up to
26 Defendant’s adoption of at-large elections in 1946, combined with the other indicators
27 discussed herein, demonstrates a racially discriminatory purpose. This demographic change
28

1 also explains the unease of the Outlook when it advocated for at-large elections because Santa
2 Monica "can and should develop into a remarkably homogeneous community."

3 39. Racial tensions were high in Santa Monica in 1946, and racial stereotypes and
4 openly biased attitudes were widespread among the electorate and the leaders who
5 spearheaded the adoption of at-large elections. The local newspaper unashamedly published
6 derogatory and racially stereotypical images of people of color, including a recurring cartoon
7 character known as "The Little Savage" with exaggeratedly thick lips, and even depicting
8 African Americans as monkeys in cartoons that glorified the "necktie party" – a disturbing
9 euphemism for the lynchings that were still commonplace. Racial tensions were so high in
10 Santa Monica in the mid-1940s that the establishment of the Interracial Progress Committee
11 was deemed necessary to address topics such as "The Roots of Intergroup Tensions in This
12 Community."

13 40. At-large elections have long been well known to dilute minority vote. The
14 Board of Freeholders and the electorate of Santa Monica understood well that minority vote
15 dilution would be the result of at-large elections when they adopted at-large elections in 1946.
16 In one advertisement, calling for the rejection of at-large elections in 1946, the "Anti-Charter
17 Committee" decried:

18 MINORITY GROUPS AND THE PROPOSED CHARTER

19 The lot of a member of a minority group, whether it be in a location of
20 not-so-fine homes, or one of race, creed or color, is never too happy
21 under the best of conditions.

22 But consider what life would be like under a dictatorship type of
23 government as proposed under the charter.

24 With seven councilmen elected AT LARGE (and history shows they
25 will mostly originate from NORTH OF MONTANA), and a city
26 manager responsible to the seven councilmen plus a dictatorship that
27 has so long ruled Santa Monica (without regard to minorities) where
28 will these people be?

1 The proposed ruling groups control the chief of police – and through
2 him the police force – and the city attorney, the personnel director, the
3 health officer, etc.

4 Where will the laboring man go? Where will the Jewish, colored or
5 Mexican go for aid in his special problems?

6 Where will the resident of Ocean Park, Douglas district, the Lincoln-
7 Pico and other districts go when he needs help?

8 The proposed charter is not fair – it is not democratic.

9 It is a power grab – and we plead with all citizens of Santa Monica to
10 protect their interests (vote no) and convince your neighbors to vote NO

11 ON THE PROPOSED CHARTER.

12 Opponents of at-large elections warned that “the largest population centers south of Santa
13 Monica Blvd. [where racial minorities reside] will not be represented” unless the Council was
14 elected by districts. Another Anti-Charter advertisement published in the Outlook on
15 November 4, 1946, just one day prior to the election, argued that the proposed at-large
16 elections would “starve out minority groups.” It was not just opponents of the charter
17 measure that recognized that at-large elections would prevent racial minorities from achieving
18 representation on the Santa Monica City Council, proponents acknowledged it too. For
19 example, the secretary of the Board of Freeholders acknowledged in a meeting of the local
20 chapter of the NAACP, that at-large elections provided less opportunity than the alternative
21 district elections for racial minorities to achieve representation on the city council.

22 41. At-large elections have accomplished exactly what proponents hoped for – and
23 opponents feared – in 1946: the dilution of the vote of racial and ethnic minorities, as well as
24 the residents of less privileged neighborhoods in the southern portion of Santa Monica. In the
25 more than seventy years since the adoption of at-large elections for Defendant’s city council,
26 there have been 71 individuals elected to the city council. The vast majority have resided in
27 the northern portion of the city, which was subject to restrictive deed covenants preventing
28 Latinos and African Americans from purchasing homes in that area. Of those 71 individuals

1 elected to the city council, only one has been Latino. Certainly, there is no reason that a non-
2 Latino cannot be preferred by Latino voters. But, as the elections discussed above indicate,
3 when a Latino candidate is perceived as having even a remote chance of winning a city
4 council election in Santa Monica, the Latino electorate votes cohesively for that Latino
5 candidate. So, the disproportionate historical absence of Latinos being elected to Defendant's
6 city council is telling.

7 42. The racially-tinged contemporaneous actions of proponents of at-large elections
8 in 1946 are also indicative of a racially discriminatory motive. At the same time as the
9 charter provision adopting at-large elections for Defendant's city council was on the ballot, so
10 too was Proposition 11, which sought to create a state Fair Employment Practices
11 Commission (FEPC) and officially ban discrimination based on race, religion, color, or
12 national origin in the workplace. Proposition 11 was championed by Augustus Hawkins (the
13 only African American in the California Assembly at the time), the NAACP, the Urban
14 League, the American Council on Race Relations, the California Federation for Civic Unity,
15 as well as union organizations like the CIO. Proposition 11 therefore presented a clean issue
16 – should racial discrimination in employment be prohibited? Proposition 11 was defeated by
17 a large margin among the electorate in Santa Monica. More importantly, accepted statistical
18 methods utilized by courts in voting rights cases estimate a stunningly high correlation
19 between voters' choices on Proposition 11 and the at-large election system charter measure.
20 Specifically, focusing on the 102 precincts (out of 109 total) that opposed Proposition 11, in
21 order to gauge the attitudes of non-Hispanic white residents of Santa Monica, 93% of voters
22 who opposed Proposition 11 also favored the at-large election charter measure, while
23 virtually 100% of voters who favored Proposition 11 also opposed the at-large election
24 charter measure. While this correlation does not, in itself, prove that whites supported the at-
25 large election charter measure *because* of their racial attitudes, the extent of the correlation is
26 one more piece of evidence in an overall pattern that, taken together, shows that the at-large
27 election system was chosen over a district election system or hybrid system, at least in part,
28

1 because of a desire to deny racial minorities a fair opportunity to elect candidates of their
2 choice to the Santa Monica City Council.

3 43. Taken together, the proclamation by proponents of at-large elections of their
4 racially discriminatory motive, the circumstances contemporaneous to the enactment of the
5 at-large election charter provision, contemporaneous knowledge (by both proponents and
6 opponents) of the likely disparate impact of at-large elections on a racial minority group, the
7 racially disparate impact that has resulted from at-large elections, and the background and
8 other decisions of those supporting at-large elections, all demonstrate that the adoption of the
9 current at-large election system was intended, at least in part, to discriminate against racial
10 minorities. The evidence of intent enumerated above in the preceding paragraphs is only
11 exemplary, and the discussion herein is not exhaustive.

12 44. Defendant's unlawful election system must not be allowed to stand, both
13 because it was intended to disenfranchise minority voters when it was enacted, and because it
14 has done exactly that and therefore violates the CVRA.

15 45. Indeed, in or around 1992 Defendant was made aware of the fact that its at-
16 large method of electing its city council diluted the vote of the city's racial minorities, and
17 that the at-large method of election was intended to do exactly that. Specifically, in 1990,
18 Defendant established a Charter Review Commission, and in 1991 fifteen members were
19 appointed to the Charter Review Commission. The Charter Review Commission was asked
20 to consider, among other things, whether the at-large method of electing the Santa Monica
21 City Council should be changed. As part of that charge, the Charter Review Commission
22 sought a study of whether the at-large method of election was adopted with the purpose of
23 discriminating against racial minorities. According to the Charter Review Commission's
24 report to Defendant's city council, that report "offers substantial evidence that the current
25 Charter was, from a voting discrimination point of view, suspect. Though Defendant's City
26 Attorney's Office gave the Charter Review Commission erroneous legal advice to soften the
27 impact of the "substantial evidence" in that report, ultimately the Charter Review
28 Commission recommended that the method of electing Defendant's city council be changed.

1 In fact, according to the Charter Review Commission's July 1992 Report, "[the] Commission
2 almost unanimously (14 to 1) recommended [a change from the plurality at-large election
3 system]." The Charter Review Commission explained its rationale as follows:

4 In our near-consensus for recommending a shift from the at-large
5 plurality system currently in use, we were guided in large part by a
6 desire to distribute empowerment more broadly in Santa Monica,
7 particularly to ethnic groups but to neighborhoods and issue groups as
8 well. A move away from the current system, we believe, should
9 enhance the responsiveness of representatives and make the electoral
10 process more open to new ideas and new participants.

11 The Charter Review Commission recognized that "the at-large system is generally considered
12 an obstacle to ethnic empowerment" that "tend[s] toward homogeneity of views, rather than
13 diversity," and noted the at-large system had done exactly that in Santa Monica, specifically
14 citing the "over-representation from the North of Montana area...[and] some areas – notably
15 the Pico neighborhood – [that] have never been represented on City Council." The Charter
16 Review Commission went on to report that was the principal reason for its near-unanimous
17 recommendation that the discriminatory at-large system be scrapped:

18 The central issue, in the Commission's view, is not one of having
19 Council members who are ethnic, but of empowering ethnic
20 communities to choose Council members, and on this criterion, the at-
21 large system is felt to be inadequate

22 46. Even the report of the Charter Review Commission impaneled by Defendant's
23 City Council was not sufficient to convince the majority of that city council to correct its
24 racially discriminatory election system. After reviewing the Charter Review Commission's
25 report, in July 1992, four self-interested council members (out of seven) rejected any change
26 to the plurality at-large election system. But self-interested council members are not entitled
27 to maintain a discriminatory election system simply because it is the method that elected
28 them. With Defendant's city council (then and now) apparently unwilling to respect the

1 voting rights of their minority constituents, it falls on this Court to correct the racially
2 discriminatory and unlawful election system for the Santa Monica City Council.

3
4 **FIRST CAUSE OF ACTION**

5 **(Violation of California Voting Rights Act of 2001)**

6 **(Against All Defendants)**

7 47. Plaintiff incorporates by this reference paragraphs 1 through 46 as though fully
8 set forth herein.

9 48. Defendant City of Santa Monica is a political subdivision within the State of
10 California. Defendant is a charter city.

11 49. Defendant City of Santa Monica employs an at-large method of election, where
12 voters of its entire jurisdiction elect members to its City Council.

13 50. Racially polarized voting has occurred, and continues to occur, in elections for
14 members of the City Council for the City of Santa Monica and in elections incorporating
15 other electoral choices by voters of the City of Santa Monica, California. As a result, the City
16 of Santa Monica's at-large method of election is imposed in a manner that impairs the ability
17 of protected classes as defined by the CVRA to elect candidates of their choice or influence
18 the outcome of elections.

19 51. An alternative method of election, such as, but not limited to, district-based
20 elections, exists that will provide an opportunity for Latinos to elect candidates of their choice
21 or to influence the outcome of the Santa Monica City Council elections.

22 52. An actual controversy has arisen and now exists between the parties relating to
23 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a
24 declaration of rights.

25 53. Defendants' wrongful conduct has caused and, unless enjoined by this Court,
26 will continue to cause, immediate and irreparable injury to Plaintiffs, and all residents of the
27 City of Santa Monica.

28

1 54. Plaintiffs, and the residents of the City of Santa Monica, have no adequate
2 remedy at law for the injuries they currently suffer and will otherwise continue to suffer.

3
4 **SECOND CAUSE OF ACTION**

5 **(Violation of California Equal Protection Clause)**

6 **(Against All Defendants)**

7 55. Plaintiff incorporates by this reference paragraphs 1 through 54 as though fully
8 set forth herein.

9 56. Defendant City of Santa Monica's rejection of district-based elections and
10 adoption of at-large elections were motivated by the desire to deny local government
11 representation to racial and ethnic minorities.

12 57. As a direct consequence of the decades-old racially-motivated decisions to
13 reject district-based elections and adopt at-large elections, Defendant City of Santa Monica
14 still employs an at-large method of election, where voters of its entire jurisdiction elect
15 members to its City Council.

16 58. Those intentionally discriminatory decisions are enshrined in what is now
17 sections 600 and 900 of the Santa Monica City Charter.

18 59. Because the rejection of district-based elections and the adoption of at-large
19 elections were motivated by a desire to discriminate against the non-Anglo residents of Santa
20 Monica, those enactments - sections 600 and 900 of the Santa Monica City Charter - are
21 invalid as they violate, among other laws, the Equal Protection Clause of the California
22 Constitution (Article I Section 7).

23 60. An actual controversy has arisen and now exists between the parties relating to
24 the legal rights and duties of Plaintiffs and Defendants, for which Plaintiffs desire a
25 declaration of rights.

26 61. A declaration by this Court regarding the invalidity of Defendant's at-large
27 election system, and specifically sections 600 and 900 of the Santa Monica City Charter, is
28

1 necessary to prevent Defendant from continuing to employ that intentionally-discriminatory
2 election system.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
5 follows:

6 1. For a decree that the City of Santa Monica's current at-large method of election
7 for the City Council violates the California Voting Rights Act of 2001;

8 2. For a decree that the City of Santa Monica's current at-large method of election
9 for the City Council, and specifically sections 600 and/or 900 of the Santa Monica City
10 Charter, was adopted with the purpose of discriminating against, and denying effective
11 representation to, non-Anglo residents of Santa Monica, and therefore those provisions are
12 invalid.

13 3. For preliminary and permanent injunctive relief enjoining the City of Santa
14 Monica from imposing or applying its current at-large method of election;

15 4. For injunctive relief mandating the City of Santa Monica to implement district-
16 based elections, as defined by the California Voting Rights Act of 2001, or other alternative
17 relief tailored to remedy the City of Santa Monica's violation of the California Voting Rights
18 Act of 2001;

19 5. For injunctive relief mandating the prompt election of council members through
20 district-based elections, or another election method tailored to remedy Defendant's violation
21 of the California Voting Rights Act of 2001;

22 6. Other relief tailored to remedy the City of Santa Monica's violation of the
23 California Voting Rights Act of 2001;

24 7. Other relief tailored to remedy the City of Santa Monica's violation of the
25 Equal Protection Clause of the California Constitution;

26 8. For an award of Plaintiffs' attorneys' fees, costs, litigation expenses and
27 prejudgment interest pursuant to the CVRA, Cal. Elec. Code § 14030 and other applicable
28 law; and

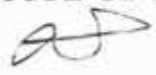
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. For such further relief as the Court deems just and proper.

Respectfully submitted:

DATED: February 22, 2017

**SHENKMAN & HUGHES,
R. REX PARRIS LAW FIRM, and
LAW OFFICES OF MILTON C. GRIMES
LAW OFFICE OF ROBERT RUBIN**



By: _____
Kevin Shenkman
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 28905 Wight Rd., Malibu, California 90265.

On February 23, 2017, I served true copies of the following document(s) described as
FIRST AMENDED COMPLAINT

on the interested parties in this action as follows:

George Brown, William Thomson and Tiuania Bedell
Gibson Dunn & Crutcher LLP
333 S. Grand Ave.
50th Floor
Los Angeles, CA 90071

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shenkman & Hughes' practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 23, 2017 at Malibu, California.



Kevin Shenkman

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED
Superior Court of California
County of Los Angeles

FEB 13 2019

Sherri R. Carter, Executive Officer/Clerk
By: Neil M. Faya Deputy
Neil M. Faya

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION,) Case No.: BC616804
et al.)
)
Plaintiffs,) JUDGMENT; ATTACHMENT
)
vs.)
)
CITY OF SANTA MONICA,)
)
Defendant.)
)
)
)

The Court finds as follows:

Plaintiff Maria Loya is registered to vote, and resides in the City of Santa Monica, California. She is a member of a "protected class" as that term is defined in California Elections Code Section 14026. Plaintiff Pico Neighborhood Association is an organization with members who, like Maria Loya, reside in Santa Monica, are registered to vote, and are

02/14/19

1 members of a protected class. Plaintiff Pico Neighborhood
2 Association's organizational mission is germane to the subject
3 of this case - namely, advocating for the interests of Pico
4 Neighborhood residents, including to the city government, where
5 Latinos are concentrated in Santa Monica.

6 Defendant is a political subdivision as that term is
7 defined in California Elections Code Section 14026. The
8 governing body of Defendant is the City Council of Santa Monica,
9 California. The City Council of Santa Monica, California is
10 elected by an "at large method of election" as that term is
11 defined in California Elections Code Section 14026.
12

13 Plaintiffs have demonstrated that elections in Santa
14 Monica, namely elections for Defendant's city council involving
15 at least one Latino candidate, are consistently and
16 significantly characterized by "racially-polarized voting" as
17 that term is defined in California Elections Code Section 14026.

18 • Analyzing elections over the past twenty-four years, a
19 consistent pattern of racially-polarized voting emerges. In
20 most elections where the choice is available, Latino voters
21 strongly prefer a Latino candidate running for Defendant's city
22 council, but, despite that support, the preferred Latino
23 candidate loses. As a result, though Latino candidates are
24 generally preferred by the Latino electorate in Santa Monica,
25 only one Latino has been elected to the Santa Monica City

02/14/19

1 Council in the 72 years of the current election system - 1 out
2 of 71 to serve on the city council.

3 • Though not necessary to show a CVRA violation,
4 Plaintiffs have also demonstrated other factors supporting the
5 finding of a violation of the CVRA, pursuant to Elections Code
6 section 14028(e), including a history of discrimination in Santa
7 Monica; the use of electoral devices or other voting practices
8 or procedures that may enhance the dilutive effects of at-large
9 elections; that Latinos in Santa Monica bear the effects of past
10 discrimination in areas such as education, employment, and
11 health, which hinder their ability to participate effectively in
12 the political process; the use of overt or subtle racial appeals
13 in political campaigns; and a lack of responsiveness by the
14 Santa Monica city government to the Latino community
15 concentrated in the Pico Neighborhood.
16

17 In the face of racially polarized voting patterns of the
18 Santa Monica electorate, Defendant has imposed an at-large
19 method of election in a manner that impairs the ability of
20 Latinos to elect candidates of their choice or influence the
21 outcome of elections, as a result of the dilution or the
22 abridgment of the rights of Latino voters.
23

24 The City of Santa Monica amended its charter in 1946,
25 adopting its current council-manager form of government and
current at-large election system. The precise terms of that

02/14/19

1 charter amendment, and specifically the form of elections to be
2 employed, were decided upon by a Board of Freeholders. In 1992,
3 Defendant's city council rejected the recommendation of the
4 Charter Review Committee to scrap the at-large election system.
5 In each instance, the adoption and/or maintenance of at-large
6 elections was done with a discriminatory purpose, and has had a
7 discriminatory impact.

8
9 The CVRA does not require the imposition of district-based
10 elections. The Court considered cumulative voting, limited
11 voting and ranked choice voting as potential remedies to
12 Defendant's violation of the CVRA. Plaintiffs presented these
13 at-large alternatives for the Court's consideration, but both
14 Plaintiffs and Defendant agreed that the most appropriate remedy
15 would be a district-based remedy. While the Court finds that
16 each of these alternatives would improve Latino voting power in
17 Santa Monica, the Court finds that the imposition of district-
18 based elections is an appropriate remedy to address the effects
19 of the established history of racially-polarized voting.

20
21 During the trial, Plaintiffs' expert presented a district
22 plan. That district plan included a district principally
23 composed of the Pico Neighborhood, where Santa Monica's Latino
24 community is concentrated. Districts drawn to remedy a
25 violation of the CVRA should be nearly equal in population, and
should not be drawn in a manner that may violate the federal

02/14/19

1 Voting Rights Act. Other factors may also be considered -- the
2 topography, geography and communities of interest of the city
3 should be respected, and the districts should be cohesive,
4 contiguous and compact. Elections Code Section 21620.

5 Districts drawn to remedy a violation of the CVRA should not be
6 drawn to protect current incumbents. Incumbency protection is
7 generally disfavored in California. California Constitution
8 Art. XXI Section 2(e). The place of residence of incumbents or
9 political candidates is not one of the considerations listed in
10 Section 21620 of the Elections Code. Race should not be a
11 predominant consideration in drawing districts unless necessary
12 to remedy past violation of voting rights. The district plan
13 presented by Plaintiffs' expert properly takes into
14 consideration the factors of topography, geography,
15 cohesiveness, contiguity and compactness of territory, and
16 community of interest of the districts, and race was not a
17 predominant consideration.
18

19 The current members of the Santa Monica City Council were
20 elected through unlawful elections. The residents of the City
21 of Santa Monica deserve to have a lawfully elected city council
22 as soon as is practical. The residents of the City of Santa
23 Monica are entitled to have a council that truly represents all
24 members of the community. Latino residents of Santa Monica,
25 like all other residents of Santa Monica, deserve to have their

02/14/19

1 voices heard in the operation of their city. This can only be
2 accomplished if all members of the city council are lawfully
3 elected. To permit some members of the council to remain who
4 obtained their office through an unlawful election may be a
5 necessary and appropriate interim remedy but will not cure the
6 clear violation of the CVRA and Equal Protection Clause.

7
8 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

9 1. Defendant violated the California Voting Rights Act,
10 California Elections Code Sections 14025 - 14032;

11 2. Defendant's plurality at-large elections for its City
12 Council violate Elections Code Sections 14027 and 14028;

13 3. Defendant violated the Equal Protection Clause of the
14 California Constitution, California Constitution, Article I
15 Section 7;

16 4. Defendant's plurality at-large elections for its City
17 Council violate the Equal Protection Clause of the California
18 Constitution;

19 5. Defendant is permanently enjoined from imposing,
20 applying, holding, tabulating, and/or certifying any further at-
21 large elections, and/or the results thereof, for any positions
22 on its City Council;

23 6. Defendant is permanently enjoined from imposing,
24 applying, holding, tabulating, and/or certifying any elections,
25

02/14/19

1 and/or the results thereof, for any positions on its City
2 Council, except an election in conformity with this Judgment;

3 7. All further elections, from the date of entry of this
4 Judgment for any seats on the Santa Monica City Council, shall
5 be district-based elections, as defined by the California Voting
6 Rights Act, in accordance with the map attached hereto. The
7 metes and bounds of each district, as depicted in the map are
8 described using TIGER line segments (used to define census block
9 geography) as follows:

10
11 District #1

12 The region bounded and described as follows:

13 Beginning at the point of intersection of Alley between
14 Princeton and Harvard and Broadway, and proceeding southerly
15 along Alley between Princeton and Harvard to Colorado Ave, and
16 proceeding northerly along Colorado Ave to Stewart St, and
17 proceeding southerly along Stewart St to Olympic Blvd, and
18 proceeding easterly along Olympic Blvd to City Boundary, and
19 proceeding easterly along City Boundary to Pico Blvd, and
20 proceeding westerly along Pico Blvd to 22nd St, and proceeding
21 southerly along 22nd St to Alley south of Pico Blvd, and
22 proceeding westerly along Alley south of Pico Blvd to 20th St,
23 and proceeding northerly along 20th St to Pico Blvd, and
24 proceeding westerly along Pico Blvd to Lincoln Blvd, and
25 proceeding northerly along Lincoln Blvd to Broadway, and

02/14/19

1 proceeding easterly along Broadway to Alley between 9th and 10th
2 St, and proceeding northerly along Alley between 9th and 10th St
3 to Santa Monica Blvd, and proceeding easterly along Santa Monica
4 Blvd to 16th St, and proceeding southerly along 16th St to
5 Broadway, and proceeding easterly along Broadway to Alley
6 between 17th and 18th St, and proceeding southerly along Alley
7 between 17th and 18th St to Colorado Ave, and proceeding
8 northerly along Colorado Ave to Alley between 19th and 20th St,
9 and proceeding northerly along Alley between 19th and 20th St to
10 Broadway, and proceeding northerly along Broadway to the point
11 of beginning.
12

13 District #2

14 The region bounded and described as follows:

15 Beginning at the point of intersection of City Boundary and
16 Pico Blvd, and proceeding southerly along City Boundary to NE
17 boundary of Census Block 060377022021010, and proceeding
18 westerly along NE boundary of Census Block 060377022021010 to
19 11th St, and proceeding northerly along 11th St to Marine Pl N,
20 and proceeding westerly along Marine Pl N to Alley east of
21 Lincoln Blvd, and proceeding westerly along Alley east of
22 Lincoln Blvd to Pier Ave, and proceeding westerly along Pier Ave
23 to Lincoln Blvd, and proceeding westerly along Lincoln Blvd to
24 Hill Pl N, and proceeding easterly along Hill Pl N to 11th St,
25 and proceeding northerly along 11th St to Pico Blvd, and

02/14/19

1 proceeding easterly along Pico Blvd to 20th St, and proceeding
2 southerly along 20th St to Alley south of Pico Blvd, and
3 proceeding easterly along Alley south of Pico Blvd to 22nd St,
4 and proceeding northerly along 22nd St to Pico Blvd, and
5 proceeding easterly along Pico Blvd to the point of beginning.

6 District #3

7 The region bounded and described as follows:

8 Beginning at the northmost point of City Boundary, and
9 proceeding southeasterly along City Boundary to Montana Ave, and
10 proceeding westerly along Montana Ave to 20th St, and proceeding
11 southerly along 20th St to Idaho Ave, and proceeding westerly
12 along Idaho Ave to 9th St, and proceeding northerly along 9th St
13 to Montana Ave, and proceeding westerly along Montana Ave to
14 Montana Ave Extension, and proceeding southerly along Montana
15 Ave Extension to City Boundary, and proceeding northerly along
16 City Boundary to the point of beginning.

17 District #4

18 The region bounded and described as follows:

19 Beginning at the City Boundary at the intersection of
20 Montana Ave and 26th St, and proceeding easterly along City
21 Boundary to Olympic Blvd, and proceeding westerly along Olympic
22 Blvd to Stewart St, and proceeding westerly along Stewart St to
23 Colorado Ave, and proceeding westerly along Colorado Ave to
24 Alley between Princeton and Harvard, and proceeding northerly
25

02/14/19

1 along Alley between Princeton and Harvard to Broadway, and
2 proceeding westerly along Broadway to Princeton St, and
3 proceeding northerly along Princeton St to Santa Monica Blvd,
4 and proceeding westerly along Santa Monica Blvd to Chelsea Ave,
5 and proceeding northerly along Chelsea Ave to Wilshire Blvd, and
6 proceeding westerly along Wilshire Blvd to 17th St, and
7 proceeding northerly along 17th St to Idaho Ave, and proceeding
8 easterly along Idaho Ave to 20th St, and proceeding northerly
9 along 20th St to Montana Ave, and proceeding easterly along
10 Montana Ave to Unlabeled, and proceeding northerly along
11 Unlabeled to Montana Ave, and proceeding easterly along Montana
12 Ave to the point of beginning.
13

14 District #5

15 The region bounded and described as follows:

16 Beginning at the point of intersection of Chelsea Ave and
17 Wilshire Blvd, and proceeding easterly along Chelsea Ave to
18 Santa Monica Blvd, and proceeding easterly along Santa Monica
19 Blvd to Princeton St, and proceeding southerly along Princeton
20 St to Broadway, and proceeding westerly along Broadway to Alley
21 between 19th and 20th St, and proceeding southerly along Alley
22 between 19th and 20th St to Colorado Ave, and proceeding
23 westerly along Colorado Ave to Alley between 17th and 18th St,
24 and proceeding northerly along Alley between 17th and 18th St to
25 Broadway, and proceeding westerly along Broadway to 16th St, and

1 proceeding northerly along 16th St to Santa Monica Blvd, and
2 proceeding southerly along Santa Monica Blvd to Alley between
3 9th and 10th St, and proceeding southerly along Alley between
4 9th and 10th St to Broadway, and proceeding westerly along
5 Broadway to 7th St, and proceeding northerly along 7th St to
6 Wilshire Blvd, and proceeding easterly along Wilshire Blvd to
7 Lincoln Blvd, and proceeding westerly along Lincoln Blvd to
8 Montana Ave, and proceeding easterly along Montana Ave to 9th
9 St, and proceeding southerly along 9th St to Idaho Ave, and
10 proceeding easterly along Idaho Ave to 17th St, and proceeding
11 easterly along 17th St to Wilshire Blvd, and proceeding easterly
12 along Wilshire Blvd to the point of beginning.

14 District #6

15 The region bounded and described as follows:

16 Beginning at the point of intersection of Lincoln Blvd and
17 Montana Ave, and proceeding southerly along Lincoln Blvd to
18 Wilshire Blvd, and proceeding westerly along Wilshire Blvd to
19 7th St, and proceeding southerly along 7th St to Broadway, and
20 proceeding easterly along Broadway to Lincoln Blvd, and
21 proceeding southerly along Lincoln Blvd to Bay St, and
22 proceeding westerly along Bay St to Ocean Front Walk, and
23 proceeding northerly along Ocean Front Walk to Pico Blvd
24 Extension, and proceeding westerly along Pico Blvd Extension to
25 City Boundary, and proceeding westerly along City Boundary to

02/14/19

1 Montana Ave Extension, and proceeding easterly along Montana Ave
2 Extension to Montana Ave, and proceeding northerly along Montana
3 Ave to Unlabeled, and proceeding easterly along Unlabeled to
4 Montana Ave, and proceeding easterly along Montana Ave to the
5 point of beginning.

6 District #7

7 The region bounded and described as follows:

8 Beginning at the point of intersection of 11th St and Pico
9 Blvd, and proceeding southerly along 11th St to Hill Pl N, and
10 proceeding westerly along Hill Pl N to Lincoln Blvd, and
11 proceeding easterly along Lincoln Blvd to Pier Ave, and
12 proceeding easterly along Pier Ave to Alley east of Lincoln
13 Blvd, and proceeding easterly along Alley east of Lincoln Blvd
14 to Marine Pl N, and proceeding easterly along Marine Pl N to
15 11th St, and proceeding southerly along 11th St to NE boundary
16 of Census Block 060377022021010, and proceeding easterly along
17 NE boundary of Census Block 060377022021010 to City Boundary,
18 and proceeding westerly along City Boundary to Unlabeled, and
19 proceeding westerly along Unlabeled to City Boundary, and
20 proceeding westerly along City Boundary to Pico Blvd Extension,
21 and proceeding easterly along Pico Blvd Extension to Ocean Front
22 Walk, and proceeding southerly along Ocean Front Walk to Bay St,
23 and proceeding easterly along Bay St to Lincoln Blvd, and
24
25

02/14/19

1 proceeding northerly along Lincoln Blvd to Pico Blvd, and
2 proceeding easterly along Pico Blvd to the point of beginning;

3 8. Defendant shall hold a district-based special
4 election, consistent with the district map attached hereto on
5 July 2, 2019 for each of the seven seats on the Santa Monica
6 City Council, and the results of said special election shall be
7 tabulated and certified in compliance with applicable sections
8 of the Elections Code;

9
10 9. Any person, other than a person who has been duly
11 elected to the Santa Monica City Council through a district-
12 based election in conformity with this Judgment, is prohibited
13 from serving on the Santa Monica City Council after August 15,
14 2019;


15 10. The Court retains jurisdiction to interpret and
16 enforce this Judgment and to adjudicate any disputes regarding
17 implementation or interpretation of this Judgment;

18 11. Pursuant to Elections Code Section 14030 and Code of
19 Civil Procedure Section 1021.5, Plaintiffs are the prevailing
20 and successful parties and are entitled to recover reasonable
21 attorneys' fees and costs, including expert witness fees and
22 expenses, in an amount to be determined by noticed motion for an
23 award of attorneys' fees and a memorandum of costs for an award
24 of costs, including expert witness fees and expenses.
25

//

1 DATED: February 13, 2019

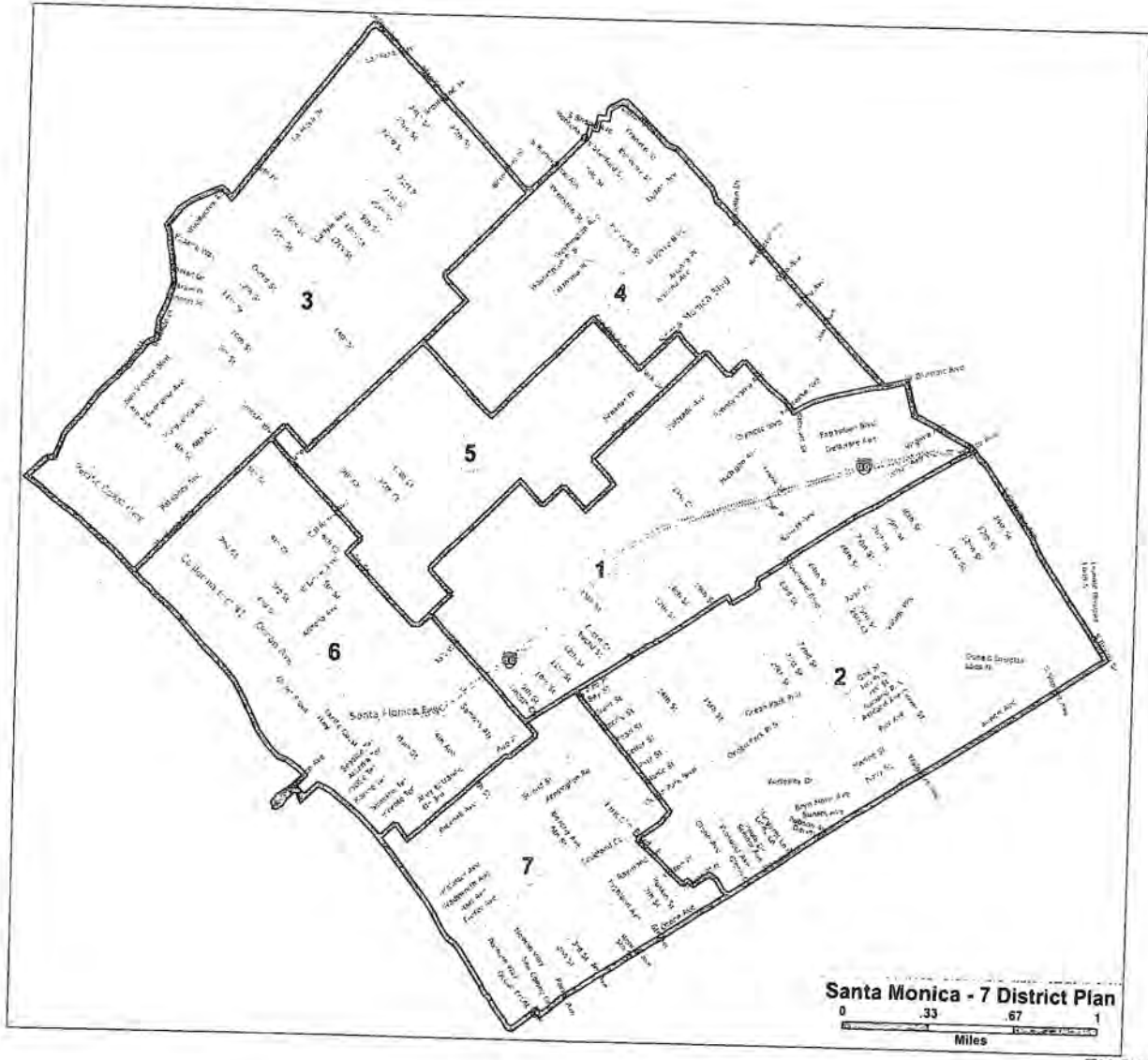
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


INETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

02/14/19

02/14/19

ATTACHMENT



EX.261-1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED
Superior Court of California
County of Los Angeles

FEB 13 2019

Sherri R. Carter, Executive Officer/Clerk
By Neil M. Raya Deputy
Neil M. Raya

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION,) Case No.: BC616804
et al.)
)
Plaintiffs,) STATEMENT OF DECISION
)
vs.)
)
CITY OF SANTA MONICA,)
)
Defendant.)
)
)
)

Pursuant to CCP §632, the Court issues the following
Statement of Decision in support of its Judgment after court
trial:

INTRODUCTION

1. Plaintiffs' Pico Neighborhood Association ("PNA"), Maria Loya ("Loya"), filed a First Amended Complaint alleging two causes of action: 1) Violation of the California Voting Rights

02/14/19

1 Act of 2001 ("CVRA"); and 2) Violation of the Equal Protection
2 Clause of the California Constitution ("Equal Protection
3 Clause").

4 2. Defendants answered the Complaint denying each of the
5 foregoing allegations and raising certain affirmative defenses.

6 3. The action was tried before the Court on August 1, 2018
7 through September 13, 2018. After considering written closing
8 briefs, the Court issued its Tentative Decision on November 8,
9 2018; finding in favor of Plaintiffs on both causes of action.

10 4. On November 15, 2018, Defendant requested a statement of
11 decision.

12 5. The parties submitted further briefing regarding proposed
13 remedies, and on December 7, 2018 a hearing was held on the
14 issue of remedies. On December 12, 2018 the Court issued its
15 Amended Tentative Decision again finding in favor of Plaintiffs
16 on both causes of action. Defendant again requested a statement
17 of decision.
18

19 **THE CALIFORNIA VOTING RIGHTS ACT**

20 6. "At-large" voting is an election method that permits voters
21 of an entire jurisdiction to elect candidates to the seats of
22 its governing board and which permits a plurality of voters to
23 capture all of the available seats. Sanchez v. City of Modesto
24 (2006) 145 Cal.App.4th 660. The U.S. Supreme Court "has long
25 recognized that multi-member districts and at-large voting

02/14/19

1 schemes may operate to minimize or cancel out the voting
2 strength" of minorities. Thornburg v. Gingles (1986) 478 U.S.
3 30, 46-47; see also id. at 48, n. 14 (at-large elections may
4 also cause elected officials to "ignore [minority] interests
5 without fear of political consequences"), citing Rogers v. Lodge
6 (1982) 458 U.S. 613, 623; White v. Regester (1973) 412 U.S. 755,
7 769. In at-large elections, "the majority, by virtue of its
8 numerical superiority, will regularly defeat the choices of
9 minority voters." Gingles, supra, at 47.

10
11 7. Section 2 of the federal Voting Rights Act ("FVRA"), 52
12 U.S.C. § 10101, et seq., targets, among other things,
13 discriminatory at-large election schemes. Gingles, supra, 478
14 U.S. at 37. By enacting the CVRA, the California "Legislature
15 intended to expand protections against vote dilution over those
16 provided by the federal Voting Rights Act of 1965." Jauregui v.
17 City of Palmdale (2014) 226 Cal.App.4th 781, 808. The CVRA "was
18 enacted to implement the equal protection and voting guarantees
19 of article I, section 7, subdivision (a) and article II, section
20 2" of the California Constitution. Id. at 793, citing § 14031¹.

21 8. "Section 14027 [of the CVRA] sets forth the circumstances
22 where an at-large electoral system may not be imposed ...: 'An at-
23 large method of election may not be imposed or applied in a
24

25 ¹ Statutory citations are to the California Elections Code, unless otherwise indicated.

1 manner that impairs the ability of a protected class to elect
2 candidates of its choice or its ability to influence the outcome
3 of an election, as a result of the dilution or the abridgment of
4 the rights of voters who are members of a protected class, as
5 defined pursuant to Section 14026.'" Id., citing Sanchez,
6 supra, 145 Cal.App.4th at 669. Section 14028 of the CVRA
7 provides more clarity on how a violation of the CVRA is
8 established: "A violation of Section 14027 is established if it
9 is shown that racially polarized voting occurs in elections for
10 members of the governing body of the political subdivision or in
11 elections incorporating other electoral choices by the voters of
12 the political subdivision."
13

14 9. "Section 14026, subdivision (e) defines racially polarized
15 voting thusly: 'Racially polarized voting means voting in which
16 there is a difference, as defined in case law regarding
17 enforcement of the federal Voting Rights Act ([52 U.S.C. Sec.
18 10301 et seq.]), in the choice of candidates or other electoral
19 choices that are preferred by voters in a protected class, and
20 in the choice of candidates and electoral choices that are
21 preferred by voters in the rest of the electorate.'" Jauregui,
22 supra, 226 Cal.App.4th at 793.

23 10. "Proof of racially polarized voting patterns are
24 established by examining voting results of elections where at
25 least one candidate is a member of a protected class; elections

02/14/19

1 involving ballot measures; or other 'electoral choices that
2 affect the rights and privileges' of protected class members."
3 Jauregui, supra, 226 Cal.App.4th at 793 citing § 14028 subd.

4 (b). Racially polarized voting can be shown through
5 quantitative statistical evidence, using the methods approved in
6 federal Voting Rights Act cases. Id. at 794, quoting § 14026,
7 subd. (e). ("The methodologies for estimating group voting
8 behavior as approved in applicable federal cases to enforce the
9 federal Voting Rights Act [52 U.S.C. Sec. 10301 et seq.] to
10 establish racially polarized voting may be used for purposes of
11 this section to prove that elections are characterized by
12 racially polarized voting.") Additionally, "[t]here are a
13 variety of [other] factors a court may consider in determining
14 whether an at-large electoral system impairs a protected class's
15 ability to elect candidates or otherwise dilute their voting
16 power," including "the extent to which candidates who are
17 members of a protected class and who are preferred by voters of
18 the protected class, as determined by an analysis of voting
19 behavior, have been elected to the governing body of a political
20 subdivision that is the subject of an action" (§ 14028, subd.
21 (b)) and the qualitative factors listed in Section 14028 subd.
22
23
24
25

02/14/19

1 (e) which "are probative, but not necessary factors to establish
2 a violation of [the CVRA]".² Ibid. at 794.

3 11. Equally important to an understanding of the CVRA is what
4 the CVRA directs the Court to consider in acknowledging what
5 need not be shown to establish a violation of the CVRA. While
6 the CVRA is similar to the FVRA in several respects, it is also
7 different in several key respects, as the Legislature sought to
8 remedy what it considered "restrictive interpretations given to
9 the federal act." Assem. Com. on Judiciary, Analysis of Sen.
10 Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, at
11 2. For example: a) Unlike the FVRA, to establish a violation
12 of the CVRA, plaintiffs need not show that a "majority-minority"
13 district can be drawn. § 14028, subd. (c); Sanchez, supra, 145
14 Cal.App.4th at 669; b) Likewise, the factors enumerated in
15 section 14028 subd. (e), which are modeled on, but also differ
16 from, the FVRA's "Senate factors," are "not necessary [] to
17 establish a violation." § 14028, subd. (e); and c) "[P]roof of
18 an intent to discriminate is [also] not an element of a
19
20
21

22 ² Section 14028 subd. (e) provides: "Other factors such as the history of
23 discrimination, the use of electoral devices or other voting practices or
24 procedures that may enhance the dilutive effects of at-large elections,
25 denial of access to those processes determining which groups of candidates
will receive financial or other support in a given election, the extent to
which members of a protected class bear the effects of past discrimination in
areas such as education, employment, and health, which hinder their ability
to participate effectively in the political process, and the use of overt or
subtle racial appeals in political campaigns are probative, but not necessary
factors to establish a violation of Section 14027 and this section."

1 violation of [the CVRA]." Jauregui, supra, 226 Cal.App.4th at
2 794, citing § 14028, subd. (d).

3 12. The appellate courts that have addressed the CVRA have
4 noted that showing racially polarized voting establishes the at-
5 large election system dilutes minority votes and therefore
6 violates the CVRA. Rey v. Madera Unified School Dist. (2012)
7 203 Cal.App.4th 1223, 1229 ("To prove a CVRA violation, the
8 plaintiffs must show that the voting was racially polarized.
9 However, they do not need to either show that members of a
10 protected class live in a geographically compact area or
11 demonstrate a discriminatory intent on the part of voters or
12 officials."); Jauregui, supra, 226 Cal.App.4th at 798 ("The
13 trial court's unquestioned findings [concerning racially
14 polarized voting] demonstrate that defendant's at-large system
15 dilutes the votes of Latino and African American voters."); see
16 also Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976
17 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, at 2 (The CVRA
18 "addresses the problem of racial block voting, which is
19 particularly harmful to a state like California due to its
20 diversity."
21 diversity.")

22 13. The key element under the CVRA—"racially polarized voting"—
23 consists of two interrelated elements: (1) "the minority group .
24 . . is politically cohesive[;]" and (2) "the White majority
25 votes sufficiently as a bloc to enable it—in the absence of

02/14/19

1 special circumstances—usually to defeat the minority's preferred
2 candidate." Gomez v. City of Watsonville (9th Cir. 1988) 863
3 F.2d 1407, 1413, quoting Gingles, supra, 478 U.S. at 50-51. It
4 is the combination of plurality-winner at-large elections and
5 racially polarized voting that yields the harm the CVRA is
6 intended to combat. Jauregui, supra, 226 Cal.App.4th at 789
7 (describing how vote dilution is proven in FVRA cases and how
8 vote dilution is differently proven in CVRA cases). To an even
9 greater extent than the FVRA, the CVRA expressly directs the
10 courts, in analyzing "elections for members of the governing
11 body of the [defendant]" to focus on those "elections in which
12 at least one candidate is a member of a protected class." §
13 14028, subds. (a), (b).

14 14. Once liability is established under the CVRA, the Court has
15 a broad range of remedies from which to choose in order to
16 provide greater electoral opportunity, including both district
17 and non-district solutions. § 14029; Sanchez, supra, 145
18 Cal.App.4th at 670; Jauregui, supra, 226 Cal.App.4th at 808
19 ("The Legislature intended to expand protections against vote
20 dilution over those provided by the federal Voting Rights Act.
21 It is incongruous to intend this expansion of vote dilution
22 liability but then constrict the available remedies in the
23 electoral context to less than those in the Voting Rights Act.
24 The Legislature did not intend such an odd result.")
25

02/14/19

1 15. In light of the broad range of remedies available to the
2 Court, a plaintiff need not demonstrate the desirability of any
3 particular remedy to establish a violation of the CVRA. §
4 14028, subd. (a); Assem. Com. on Judiciary, Analysis of Sen.
5 Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p.
6 3 ("Thus, this bill puts the voting rights horse (the
7 discrimination issue) back where it sensibly belongs in front of
8 the cart (what type of remedy is appropriate once racially
9 polarized voting has been shown.")

11 Defendant's "At Large" Elections³ Are Consistently Plagued By
12 Racially Polarized Voting

13 16. The CVRA defines "racially polarized voting" as "voting in
14 which there is a difference, as defined in case law regarding
15 enforcement of the federal Voting Rights Act (42 U.S.C. § 1973
16 et seq.), in the choice of candidates or other electoral choices
17 that are preferred by voters in a protected class, and in the
18 choice of candidates and electoral choices that are preferred by
19 voters in the rest of the electorate." § 14026, subd. (e).

21 _____
22
23 ³ The CVRA defines "[a]t-large method of election" as including any method
24 in which the voters of the entire jurisdiction elect the members to the
25 governing body." § 14026 subd. (a). Though the parties did not stipulate to
this element, Defendant has never disputed that it employs an at-large method
of electing its city council. The CVRA explicitly grants standing to "any
voter who is a member of a protected class and who resides in a political
subdivision where a violation of [the CVRA] is alleged." (§ 14032). Though
the parties did not stipulate to this element, Defendant has never disputed
that Plaintiffs Maria Loya and Pico Neighborhood Association have standing.

1 17. The federal jurisprudence regarding "racially polarized
2 voting" over the past thirty-two years finds its roots in
3 Justice Brennan's decision in Gingles, and in particular, the
4 second and third "Gingles factors." Justice Brennan explained
5 that racially polarized voting is tested by two criteria: (1)
6 the minority group is politically cohesive; and (2) the majority
7 group votes sufficiently as a bloc to enable it to usually
8 defeat the minority group's preferred candidates. Gingles,
9 supra, 478 U.S. at 30, 51.

10
11 18. A minority group is politically cohesive where it supports
12 its preferred choices to a significantly greater degree than the
13 majority group supports those same choices; in elections for
14 office (as opposed to ballot measures), the CVRA focuses on
15 elections in which at least one candidate is a member of the
16 protected class of interest (§ 14028(b)), because those
17 elections usually offer the most probative test of whether
18 voting patterns are racially polarized. Gomez, supra, 863 F. 2d
19 at 1416 ("The district court expressly found that predominantly
20 Hispanic sections of Watsonville have, in actual elections,
21 demonstrated near unanimous support for Hispanic candidates.
22 This establishes the requisite political cohesion of the
23 minority group.") The extent of majority "bloc voting"
24 sufficient to show racially polarized voting is that which
25

02/14/19

1 allows the White majority to "usually defeat the minority
2 group's preferred candidate." Ibid.

3 19. As Justice Brennan explained, it is through establishment
4 of this element that impairment is shown—i.e. that the "at-large
5 method of election [is] imposed or applied in a manner that
6 impairs the ability of a protected class to elect candidates of
7 its choice or its ability to influence the outcome of an
8 election." § 14027; Gingles, supra, 478 U.S. at 51 ("In
9 establishing this last circumstance, the minority group
10 demonstrates that submergence in a white multimember district
11 impedes its ability to elect its chosen representatives.")

12
13 20. Gingles also set forth appropriate methods of identifying
14 racially polarized voting; since individual ballots are not
15 identified by race, race must be imputed through ecological
16 demographic and political data. The long-approved method of
17 ecological regression ("ER") yields statistical power to
18 determine if there is racially polarized voting if there are not
19 a sufficient number of racially homogenous precincts (90% or
20 more of the precinct is of one particular ethnicity). Benavidez
21 v. City of Irving (N.D. Tex. 2009) 638 F.Supp.2d 709, 723 ("HPA
22 [homogenous precinct analysis] and ER [ecological regression]
23 were both approved in Gingles and have been utilized by numerous
24 courts in Voting Rights Act cases.") The CVRA expressly adopts
25 methods like ER that have been used in federal Voting Rights Act

02/14/19

1 cases to demonstrate racially polarized voting. § 14026, subd.
2 (e) ("The methodologies for estimating group voting behavior as
3 approved in applicable federal cases to enforce the federal
4 Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to
5 establish racially polarized voting may be used for purposes of
6 this section to prove that elections are characterized by
7 racially polarized voting.")

8
9 21. At trial, Plaintiffs and Defendant offered the statistical
10 analyses of their respective experts - Dr. J. Morgan Kousser and
11 Dr. Jeffrey Lewis, respectively. Though the details and methods
12 of their respective analyses differed in minor ways, the
13 analyses by Plaintiffs' and Defendant's experts reveal the same
14 thing - Santa Monica elections that are legally relevant under
15 the CVRA are racially polarized.⁴ Analyzing elections over the
16 past twenty-four years, a consistent pattern of racially-
17 polarized voting emerges. In most elections where the choice is
18 available, Latino voters strongly prefer a Latino candidate
19 running for Defendant's city council, but, despite that support,
20 the preferred Latino candidate loses. As a result, though

21
22
23 ⁴ Dr. Kousser opined that his analysis demonstrates racially polarized voting.
24 Though he had done so in other cases, Dr. Lewis reached no conclusions about
25 racially polarized voting in this case, and declined to opine about whether
his analysis demonstrated racially polarized voting. Another of Plaintiffs'
experts, Justin Levitt, evaluated the results of Dr. Lewis' statistical
analyses, and concluded, like Dr. Kousser, that all of the relevant elections
evaluated by Dr. Lewis exhibit racially polarized voting, including in some
instances racial polarization that is so "stark" that it is similar to the
polarization "in the late '60s in the Deep South."

02/14/19

1 Latino candidates are generally preferred by the Latino
2 electorate in Santa Monica, only one Latino has been elected to
3 the Santa Monica City Council in the 72 years of the current
4 election system - 1 out of 71 to serve on the city council.

5 22. Dr. Kousser, a Caltech professor who has testified in many
6 voting rights cases spanning more than 40 years, analyzed the
7 elections specified by the CVRA: "elections for members of the
8 governing body of the political subdivision . . . in which at
9 least one candidate is a member of a protected class." § 14028
10 subds. (a), (b). The CVRA's focus on elections involving
11 minority candidates is consistent with the view of a majority of
12 federal circuit courts that racially-contested elections are
13 most probative of an electorate's tendencies with respect to
14 racially polarized voting.⁵

17 ⁵ U.S. v. Blaine Cty., Mont. (9th Cir. 2004) 363 F.3d 897, 911 (rejecting
18 defendant's argument that trial court must give weight to elections involving
19 no minority candidates); Ruiz v. City of Santa Maria (9th Cir. 1998) 160 F.3d
20 543, 553 ("minority v. non-minority election is more probative of racially
21 polarized voting than a non-minority v. non-minority election" because "[t]he
22 Act means more than securing minority voters' opportunity to elect whites.");
23 Westwego Citizens for Better Gov't v. City of Westwego (5th Cir.1991) 946
24 F.2d 1109, 1119, n. 15 ("[T]he evidence most probative of racially polarized
25 voting must be drawn from elections including both black and white
candidates."); League of United Latin Am. Citizens, Council No. 4434 v.
Clements (5th Cir. en banc 1993) 999 F.2d 831, 864 ("This court has
consistently held that elections between white candidates are generally less
probative in examining the success of minority-preferred candidates . . .
."); Citizens for a Better Gretna v. City of Gretna, La. (5th Cir.1987) 834
F.2d 496, 502 ("That blacks also support white candidates acceptable to the
majority does not negate instances in which white votes defeat a black
preference [for a black candidate]."); Jenkins v. Red Clay Consol. School
Dist. Bd. of Educ. (3d Cir. 1993) 4 F.3d 1103, 1128-1129 ("The defendants
also argue that the plaintiffs may not selectively choose which elections to
analyze, but rather must analyze all the elections, including those involving
only white candidates. It is only on the basis of such a comprehensive

1 23. In those elections, Dr. Kousser focused on the level of
2 support for minority candidates from minority voters and
3 majority voters respectively, just as the Court in Gingles, and
4 many lower courts since then, have done. Gingles, supra, 478
5 U.S. at 58-61 ("We conclude that the District Court's approach,
6 which tested data derived from three election years in each
7 district, and which revealed that blacks strongly supported
8 black candidates, while, to the black candidates' usual
9 detriment, whites rarely did, satisfactorily addresses each
10 facet of the proper legal standard."); Id. at 81 (Appendix A -
11 providing Dr. Grofman's ecological regression estimates for
12 support for Black candidates from, respectively, White and Black
13 voters); see also, e.g., Garza v. Cnty. of Los Angeles (C.D.
14 Cal. 1990) 756 F. Supp. 1298, 1335-37, aff'd, 918 F.2d 763 (9th
15 Cir. 1990) (summarizing the bases on which the court found
16 racially polarized voting: "The results of the ecological
17 regression analyses demonstrated that for all elections
18 analyzed, Hispanic voters generally preferred Hispanic
19 candidates over non-Hispanic candidates. ... Of the elections
20 analyzed by plaintiffs' experts non-Hispanic voters provided
21 majority support for the Hispanic candidates in only three
22 elections, all partisan general election contests in which party
23
24

25 analysis, the defendants submit, that the court is able to evaluate whether
or not there is a pattern of white bloc voting that usually defeats the
minority voters' candidate of choice. We disagree.")

1 affiliation often influences the behavior of voters"); Benavidez
2 v. Irving Indep. Sch. Dist. (N.D. Tex. 2014) 2014 WL 4055366,
3 *11-12 (finding racially polarized voting based on Dr.
4 Engstrom's analysis which the court described as follows: "Dr.
5 Engstrom then conducted a statistical analysis ... to estimate the
6 percentage of Hispanic and non-Hispanic voters who voted for the
7 Hispanic candidate in each election. ... Based on this analysis,
8 Dr. Engstrom opined that voting in Irving ISD trustee elections
9 is racially polarized.")

10
11 24. In its closing brief, Defendant argued that the Supreme
12 Court in Gingles held that the race of a candidate is
13 "irrelevant," but what Defendant fails to recognize is that the
14 portion of Gingles it relies upon did not command a majority of
15 the Court, and Defendant's reading of Gingles has been rejected
16 by federal circuit courts in favor of a more practical race-
17 sensitive analysis. Ruiz v. City of Santa Maria, supra, 160
18 F.3d at 550-53 (collecting other cases rejecting Defendant's
19 view and noting that "non-minority elections do not provide
20 minority voters with the choice of a minority candidate and thus
21 do not fully demonstrate the degree of racially polarized voting
22 in the community.") To the extent there is any doubt about
23 whether the race of a candidate impacts the analysis in FVRA
24 cases, there can be no doubt under the CVRA; the statutory
25 language mandates a focus on elections involving minority

02/14/19

1 candidates. §14028 subd. (b) ("The occurrence of racially
2 polarized voting shall be determined from examining results of
3 elections in which at least one candidate is a member of a
4 protected class ... One circumstance that may be considered ... is
5 the extent to which candidates who are members of a protected
6 class and who are preferred by voters of the protected class ...
7 have been elected to the governing body of the political
8 subdivision that is the subject of an action ..."). In this
9 analysis, it is not that minority support for minority
10 candidates is presumed; to the contrary, it must be
11 demonstrated. But both the CVRA and federal case law recognize
12 that the most probative test for minority voter support and
13 cohesion usually involves an election with the option of a
14 minority candidate.
15

16 25. Dr. Kousser provided the details of his analysis, and
17 concluded those elections demonstrate legally significant
18 racially polarized voting.⁶ Specifically, Dr. Kousser evaluated
19 the 7 elections for Santa Monica City Council between 1994 and
20 2016 that involved at least one Spanish-surnamed candidate⁷ and
21

22
23 ⁶ Dr. Kousser presented his analyses using unweighted ER, weighted ER and
24 ecological inference ("EI"). Dr. Kousser explained that, of these three
25 statistical methods, weighted ER is preferable in this case. Dr. Kousser's
conclusions were the same for each of these three methods, so, for the sake
of brevity, only his weighted ER analysis is duplicated here.

⁷ One of Defendant's city council members, Gleam Davis, testified that she
considers herself Latina because her biological father was of Hispanic
descent (she was adopted at an early age by non-Hispanic white parents).

1 provided both the point estimates of group support for each
 2 candidate as well as the corresponding statistical errors (in
 3 parentheses in the charts below):

4 Weighted Ecological Regression⁸

| 5 Year | 6 Latino Candidate(s) | 7 % Latino Support | 8 % Non- Hispanic White Support | Polarized | Won? |
|---------|--------------------------|-----------------------|---------------------------------------|-----------|------|
| 9 1994 | Vazquez | 145.5 (28.0) | 34.9 (1.9) | Yes | No |
| 11 1996 | Alvarez | 22.2 (12.9) | 15.8 (1.1) | No | No |
| 13 2002 | Aranda | 82.6 (12.6) | 16.5 (1.3) | Yes | No |
| 15 2004 | Loya | 106.0 (12.3) | 21.2 (2.0) | Yes | No |
| 17 2008 | Piera-Avila | 33.3 (5.2) | 5.7 (0.8) | Yes | No |

21 Though that may be true, the Santa Monica electorate does not recognize her
 22 as Latina, as demonstrated by the telephone survey of registered voters
 23 conducted by Jonathan Brown; even her fellow council members did not realize
 24 she considered herself to be Latina until after the present case was filed.
 Consistent with the purpose of considering the race of a candidate in
 assessing racially polarized voting, it is the electorate's perception that
 matters, not the unknown self-identification of a candidate. Paragraph 24
 herein.

25 ⁸ Because each voter could cast votes for up to three or four candidates in a
 particular election, Prof. Kousser estimated the portion of voters, from each
 ethnic group, who cast at least one vote for each candidate.

02/14/19
 61761720

| | | | | | | |
|----|------|-------------|-------|------------|-----|-----|
| 1 | 2012 | Vazquez | 92.7 | 19.1 (2.0) | Yes | Yes |
| 2 | | Gomez | (9.0) | 2.9 (0.7) | Yes | No |
| 3 | | Duron | 30.4 | 4.4 (0.6) | No | No |
| 4 | | | (3.3) | | | |
| 5 | | | 5.0 | | | |
| 6 | | | (2.6) | | | |
| 7 | | | | | | |
| 8 | 2016 | de la Torre | 88.0 | 12.9 (1.5) | Yes | No |
| 9 | | Vazquez | (6.0) | 36.6 (2.3) | Yes | Yes |
| 10 | | | 78.3 | | | |
| 11 | | | (9.0) | | | |

12 26. Non-Hispanic Whites voted statistically significantly
13 differently from Latinos in 6 of the 7 elections. The
14 ecological regression analyses of these elections also reveals
15 that when Latino candidates run for the Santa Monica City
16 Council, Latino voters cohesively support those Latino
17 candidates - in all but one of those six elections, a Latino
18 candidate received the most Latino votes, often by a large
19 margin. And in all but one of those six elections, the Latino
20 candidate most favored by Latino voters lost, making the
21 racially polarized voting legally significant. Gingles, supra,
22 478 U.S. at 56 ("in general, a white bloc vote that normally
23 will defeat the combined strength of minority support plus white
24 'crossover' votes rises to the level of legally significant
25 white bloc voting.") Even in that one instance (2012 - Tony

02/14/19

1 Vazquez), the Latino candidate who won came in fourth in a four-
2 seat race in that unusual election, in which none of the
3 incumbents who had won four years earlier sought re-election.
4 Id. at 57, fn. 26 ("Furthermore, the success of a minority
5 candidate in a particular election does not necessarily prove
6 that the district did not experience polarized voting in that
7 election; special circumstances, such as the absence of an
8 opponent, incumbency, or the utilization of bullet voting, may
9 explain minority electoral success in a polarized contest. This
10 list of special circumstances is illustrative, not exclusive.")

11
12 27. In summary, Dr. Kousser's analysis revealed:

- 13 • In 1994, Latino voters heavily favored the lone Latino
14 candidate - Tony Vazquez - but he lost.
- 15 • In 2002, the lone Latina candidate and resident of the Pico
16 Neighborhood - Josefina Aranda - was heavily favored by Latino
17 voters, but she lost.
- 18 • In 2004, the lone Latina candidate and resident of the Pico
19 Neighborhood - Maria Loya - was heavily favored by Latino
20 voters, but she lost.

21
22
23
24
25
02/14/19

1 • In 2008, the lone Latina candidate and resident of the Pico
2 Neighborhood - Linda Piera-Avila - received significant support
3 from Latino voters.⁹

4 • In 2012, two incumbents - Richard Bloom and Bobby Shriver -
5 decided not to run for re-election, and the two other incumbents
6 who had prevailed in 2008 - Ken Genser and Herb Katz - died
7 during their 2008-12 terms. The leading Latino candidate - Tony
8 Vazquez - was heavily favored by Latino voters but did not
9 receive nearly as much support from non-Hispanic White voters.
10 He was able to eke out a victory, coming in fourth place in this
11 four-seat race.
12

13 • Finally, in 2016, a race for four city council positions,
14 Oscar de la Torre - a Latino resident of the Pico Neighborhood -
15 was heavily favored by Latinos, but lost. In 2016, Mr. de la
16 Torre received more support from Latinos than did Mr. Vazquez.
17 This is the prototypical illustration of legally significant
18 racially polarized voting - Latino voters favor Latino
19 candidates, but non-Latino voters vote against those candidates,
20 and therefore the favored candidates of the Latino community
21

22
23 ⁹ At trial, Dr. Kousser explained that even though Ms. Piera-Avila did not
24 receive support from a majority of Latinos, the contrast between the levels
25 of support she received from Latinos and non-Hispanic whites, respectively,
nonetheless demonstrate racially polarized voting, just as the Gingles court
found very similar levels of support for Mr. Norman in the 1978 and 1980
North Carolina House races to likewise be consistent with a finding of
racially polarized voting. Gingles, supra, 478 U.S. at 81, Appx. A.

02/14/19

1 lose. Gingles, supra, 478 U.S. at 58-61 ("We conclude that the
2 District Court's approach, which tested data derived from three
3 election years in each district, and which revealed that blacks
4 strongly supported black candidates, while, to the black
5 candidates' usual detriment, whites rarely did, satisfactorily
6 addresses each facet of the proper legal standard.")

7
8 28. Defendant argues that the Court should disregard Mr. de la
9 Torre's 2016 candidacy because, according to Defendant, Mr. de
10 la Torre intentionally lost that election. But Defendant
11 presented no evidence that Mr. de la Torre did not try to win
12 that election, and Mr. de la Torre unequivocally denied that he
13 deliberately attempted to lose that election. And, the ER
14 analysis by Dr. Lewis further undermines Defendant's assertion -
15 Mr. de la Torre received essentially the same level of support
16 from Latino voters in the 2016 council election as he did in his
17 2014 election for school board, an odd result if Mr. de la Torre
18 had tried to win one election and lose the other.

19 29. All of this led Dr. Kousser to conclude: "[b]etween 1994
20 and 2016 [] Santa Monica city council elections exhibit legally
21 significant racially polarized voting" and "the at-large
22 election system in Santa Monica result[s] in Latinos having less
23 opportunity than non-Latinos to elect representatives of their
24 choice" to the city council. This Court agrees.
25

02/14/19

30. Defendant's expert, Dr. Lewis, did not disagree. In fact, he confirmed all of the indicia of racially polarized voting in all of the Santa Monica City Council elections he analyzed involving at least one Latino candidate, as well as in other elections. Specifically, Dr. Lewis confirmed that his ER and EI results demonstrate: (1) that the Latino candidates for city council generally received the most votes from Latino voters; (2) that those Latino candidates received far less support from non-Hispanic Whites; and (3) the difference in levels of support between Latino and non-Hispanic White voters were statistically significant applying even a 95% confidence level (with the lone exception of Steve Duron):

| Year | Latino Candidate(s) | % Latino Support | % Non-Hispanic White Support |
|------|---------------------|------------------|------------------------------|
| 2002 | Aranda | 69 (10) | 16 (1) |
| 2004 | Loya | 106 (14) | 21 (2) |
| 2008 | Piera-Avila | 32 (4) | 6 (1) |
| 2012 | Vazquez | 90 (6) | 20 (1) |
| | Gomez | 29 (2) | 3 (1) |
| | Duron | 5 (2) | 4 (0) |
| 2016 | de la Torre | 87 (4) | 14 (1) |
| | Vazquez | 65 (7) | 34 (2) |

02/14/19

1 31. Dr. Lewis also analyzed elections for other local offices
2 (e.g. school board and college board) and ballot measures such
3 as Propositions 187 (1994), 209 (1996) and 227 (1998). The
4 instant case concerns legal challenges to the election structure
5 for the Santa Monica City Council; where there exist legally
6 relevant election results concerning the Santa Monica City
7 Council, those elections will necessarily be most probative.
8 Consistent with FVRA cases that have addressed the relevance and
9 weight of "exogenous" elections, this Court gives exogenous
10 elections less weight than the endogenous elections discussed
11 above. Bone Shirt v. Hazeltine (8th Cir. 2006) 461 F.3d 1011
12 (acknowledging that exogenous elections are of much less
13 probative value than endogenous elections, some federal courts
14 have relied upon exogenous elections involving minority
15 candidates to further support evidence of racially polarized
16 voting in endogenous elections); Jenkins, supra, 4 F.3d at 1128-
17 1129 (same); Rodriguez v. Harris Cnty, Texas (2013) 964
18 F.Supp.2d 686 (same); Citizens for a Better Gretna, supra, 834
19 F.2d at 502-503 ("Although exogenous elections alone could not
20 prove racially polarized voting in Gretna aldermanic elections,
21 the district court properly considered them as additional
22 evidence of bloc voting - particularly in light of the sparsity
23 of available data."); Clay v. Board of Educ. of City of St.
24 Louis (8th Cir. 1996) 90 F.3d 1357, 1362 (exogenous elections
25

02/14/19

1 "should be used only to supplement the analysis of" endogenous
2 elections); Westwego Citizens for Better Gov't, supra, 946 F.2d
3 at 1109 (analysis of exogenous elections appropriate because no
4 minority candidates had ever run for the governing board of the
5 defendant).

6 32. The focus on endogenous elections is particularly
7 appropriate in this case because, as several witnesses
8 confirmed, the political reality of Defendant's city council
9 elections is very different than that of elections for other
10 governing boards with more circumscribed powers, such as school
11 board and rent board. Dr. Lewis' ER and EI analyses show that
12 non-Hispanic White voters in Santa Monica will support Latino
13 candidates for offices other than city council. For example,
14 according to Dr. Lewis, Mr. de la Torre received votes from 88%
15 of Latino voters and 33% of non-Hispanic White voters in his
16 school board race in 2014, and when he ran for city council just
17 two years later he received essentially the same level of
18 support from Latino voters (87%) but much less support from non-
19 Hispanic Whites (14%) than he had received in the school board
20 race.
21

22 33. Regardless of the weight given to exogenous elections, they
23 may not be used to undermine a finding of racially polarized
24 voting in endogenous elections. Bone Shirt, supra, 461 F.3d at
25 1020-1021 ("Endogenous and interracial elections are the best

02/14/19

1 indicators of whether the white majority usually defeats the
 2 minority candidate... Although they are not as probative as
 3 endogenous elections, exogenous elections hold some probative
 4 value."); Rural West Tenn. African American Affairs Council v.
 5 Sundquist (W.D. Tenn. 1998) 29 F.Supp.2d 448, 457 ("Certainly,
 6 the voting patterns in exogenous elections cannot defeat
 7 evidence, statistical or otherwise, about endogenous
 8 elections."), quoting Cofield v. City of LaGrange, Ga.
 9 (N.D.Ga.1997) 969 F.Supp. 749, 773. To hold otherwise would
 10 only serve to perpetuate the sort of glass ceiling that the CVRA
 11 and FVRA are intended to eliminate.
 12

13 34. Nonetheless, exogenous elections in Santa Monica further
 14 support the conclusion that the levels of support for Latino
 15 candidates from Latino and non-Hispanic White voters,
 16 respectively, is always statistically significantly different,
 17 with non-Hispanic White voters consistently voting against the
 18 Latino candidates who are overwhelmingly supported by Latino
 19 voters.
 20

| Election | Latino Candidate(s) | % Latino Support | % Non-Hispanic White Support |
|------------------------|------------------------|---------------------|---------------------------------|
| 2002 - school board | de la Torre | 107 (13) | 34 (2) |
| 2004 - school | Jara | 113 (13) | 37 (2) |

02/14/19

02/14/19

| | | | | |
|----|----------------|----------------|---------|--------|
| 1 | board | Leon-Vazquez | 98 (9) | 44 (2) |
| 2 | | Escarce | 74 (8) | 44 (1) |
| 3 | 2004 - college | Quinones-Perez | 55 (5) | 21 (1) |
| 4 | board | | | |
| 5 | 2006 - school | de la Torre | 95 (12) | 40 (1) |
| 6 | board | | | |
| 7 | | | | |
| 8 | 2008 - school | Leon-Vazquez | 101 (8) | 40 (1) |
| 9 | board | Escarce | 68 (6) | 36 (1) |
| 10 | 2008 - college | Quinones-Perez | 58 (6) | 35 (1) |
| 11 | board | | | |
| 12 | 2010 - school | de la Torre | 94 (8) | 33 (1) |
| 13 | board | | | |
| 14 | 2012 - school | Leon-Vazquez | 92 (7) | 32 (1) |
| 15 | board | Escarce | 62 (6) | 29 (1) |
| 16 | 2014 - school | de la Torre | 88 (7) | 33 (1) |
| 17 | board | | | |
| 18 | 2014 - college | Loya | 84 (3) | 27 (1) |
| 19 | board | | | |
| 20 | | | | |
| 21 | 2014 - rent | Duron | 46 (8) | 23 (1) |
| 22 | board | | | |
| 23 | 2016 - college | Quinones-Perez | 85 (5) | 36 (1) |
| 24 | board | | | |

25 35. While he provided his estimates based on ER and EI, Dr. Lewis also questioned the propriety of using those methods. Dr.

1 Lewis showed that the "neighborhood model" yields different
2 estimates, but the neighborhood model does not fit real-world
3 patterns of voting behavior for particular candidates and the
4 use of the neighborhood model to undermine ER has been rejected
5 by other courts. Garza, supra, 756 F.Supp. at 1334. Dr. Lewis
6 claimed that the lack of data from predominantly Hispanic
7 precincts in Santa Monica renders the ER and EI estimates
8 unreliable, but that argument too has been rejected by the
9 courts. Fabela v. City of Farmers Branch, Tex. (N.D. Tex. Aug.
10 2, 2012) 2012 WL 3135545, *10-11, n. 25, n. 33 (relying on EI
11 despite the absence of "precincts with a high concentration of
12 Hispanic voters"); Benavidez, supra, 638 F.Supp.2d at 724-25
13 (approving use of ER and EI where the precincts analyzed all had
14 "less than 35%" Spanish-surnamed registered voters); Perez v.
15 Pasadena Indep. Sch. Dist. (S.D. Tex. 1997) 958 F.Supp. 1196,
16 1205, 1220-21, 1229, aff'd (5th Cir. 1999) 165 F.3d 368 (relying
17 on ER to show racially polarized voting where the polling place
18 with the highest Latino population was 35% Latino). To
19 disregard ER and EI estimates because of a lack of predominantly
20 minority precincts would also be contrary to the intent of the
21 Legislature in expressly disavowing a requirement that the
22 minority group is concentrated. § 14028 subd. (c) ("[t]he fact
23 that members of a protected class are not geographically compact
24
25

02/14/19

1 or concentrated may not preclude a finding of racially polarized
2 voting.”)

3 36. Moreover, the comparably low percentage of Latinos among
4 the actual voters in Santa Monica precincts is due in part to
5 the reduced rates of voter registration and turnout among
6 eligible Latino voters. Where limitations in the data derive
7 from reduced political participation by members of the protected
8 class, it would be inappropriate to discard the ER results on
9 that basis, because to do so “would allow voting rights cases to
10 be defeated at the outset by the very barriers to political
11 participation that Congress has sought to remove.” Perez,
12 supra, 958 F.Supp. at 1221 quoting Clark v. Calhoun Cty. (5th
13 Cir. 1996) 88 F.3d 1393, 1398.

15 37. Dr. Lewis argued that using Spanish-surname matching to
16 estimate the Latino proportion of voting precincts causes a
17 “skew,” but he also acknowledged that Spanish surname matching
18 is the best method for estimating the Latino proportion of each
19 precinct, and the conclusion of racially polarized voting in
20 this case would not change even if the estimates were adjusted
21 to account for any skew. Finally, Dr. Lewis showed that ER and
22 EI do not produce accurate estimates of Democratic Party
23 registration among Latinos in Santa Monica, but that does not
24 undermine the validity or propriety of ER and EI to estimate
25

02/14/19

1 voting behavior in this case. Luna v. Cnty. of Kern (E.D. Cal.
2 2018) 291 F.Supp.3d 1088, 1123-25 (rejecting the same argument).
3 38. Most importantly, the CVRA directs the Court to credit the
4 statistical methods accepted by federal courts in FVRA cases,
5 including ER and EI, and Dr. Lewis did not suggest or employ any
6 method that could more accurately estimate group voting behavior
7 in Santa Monica. § 14026 subd. (e) ("The methodologies for
8 estimating group voting behavior as approved in applicable
9 federal cases to enforce the federal Voting Rights Act of 1965
10 [52 U.S.C. Sec. 10301 et seq.] to establish racially polarized
11 voting may be used for purposes of this section to prove that
12 elections are characterized by racially polarized voting.")
13
14 39. In its closing brief, Defendant argues that there is no
15 racially polarized voting because at least half of what
16 Defendant calls "Latino-preferred" candidacies have been
17 successful in Santa Monica. But that mechanical approach
18 suggested by Defendant - treating a Latino candidate who
19 receives the most votes from Latino voters (and loses, based on
20 the opposition of the non-Hispanic White electorate) the same as
21 a White candidate who receives the second, third or fourth-most
22 votes from Latino voters (and wins, based on the support of the
23 non-Hispanic White electorate) - has been expressly rejected by
24 the courts. Ruiz, supra, 160 F.3d at 554 (rejecting the
25 district court's "mechanical approach" that viewed the victory

02/14/19

1 of a White candidate who was the second-choice of Latinos in a
2 multi-seat race as undermining a finding of racially polarized
3 voting where Latinos' first choice was a Latino candidate who
4 lost: "The defeat of Hispanic-preferred Hispanic candidates,
5 however, is more probative of racially polarized voting and is
6 entitled to more evidentiary weight. The district court should
7 also consider the order of preference non-Hispanics and
8 Hispanics assigned Hispanic-preferred Hispanic candidates as
9 well as the order of overall finish of these candidates."); see
10 also id. at 553 ("But the Act's guarantee of equal opportunity
11 is not met when . . . [c]andidates favored by [minorities] can
12 win, but only if the candidates are white." (citations and
13 internal quotations omitted)]; Smith v. Clinton (E.D. Ark. 1988)
14 687 F.Supp. 1310, 1318, aff'd, 488 U.S. 988 (1988) (it is not
15 enough to avoid liability under the FVRA that "candidates
16 favored by blacks can win, but only if the candidates are
17 white."); Clarke v. City of Cincinnati (6th Cir. 1994) 40 F.3d
18 807, 812 (voting rights laws' "guarantee of equal opportunity is
19 not met when [] candidates favored by [minority voters] can win,
20 but only if the candidates are white.")

21
22 40. An approach that accounts for the political realities of
23 the jurisdiction is required, particularly in light of purpose
24 of the CVRA. Jauregui, supra, 226 Cal.App.4th at 807 ("Thus,
25 the Legislature intended to expand the protections against vote

02/14/19

1 dilution provided by the federal Voting Rights Act of 1965.");
2 Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-
3 2002 Reg. Sess.) as amended Apr. 9, 2002, at 2 (the Legislature
4 sought to remedy what it considered "restrictive interpretations
5 given to the federal act."); Cf. Gingles, supra, 478 U.S. at 62-
6 63 ("appellants' theory of racially polarized voting would
7 thwart the goals Congress sought to achieve when it amended § 2,
8 and would prevent courts from performing the 'functional'
9 analysis of the political process, and the 'searching practical
10 evaluation of the past and present reality'"). To disregard or
11 discount both the order of preference of minority voters and the
12 demonstrated salience of the races of the candidates, as
13 Defendant suggests, would actually exculpate discriminatory at-
14 large election systems where there is a paucity of minority
15 candidates willing to run in the at-large system - itself a
16 symptom of the discriminatory election system. Westwego
17 Citizens for Better Government, supra, 872 F. 2d at 1208-1209,
18 n. 9 ("it is precisely this concern that underpins the refusal
19 of this court and of the Supreme Court to preclude vote dilution
20 claims where few or no black candidates have sought offices in
21 the challenged electoral system. To hold otherwise would allow
22 voting rights cases to be defeated at the outset by the very
23 barriers to political participation that Congress has sought to
24 remove.")
25

02/14/19

1 41. No doubt, a minority group can prefer a non-minority
2 candidate and, in a multi-seat plurality at-large election, can
3 prefer more than one candidate, perhaps to varying degrees, but
4 that does not mean that this Court should blind itself to the
5 races of the candidates, the order of preference of minority
6 voters, and the political realities of Defendant's elections.
7
8 When Latino candidates have run for Santa Monica's city council,
9 they have been overwhelmingly supported by Latino voters,
10 receiving more votes from Latino voters than any other
11 candidates. And absent unusual circumstances, because the
12 remainder of the electorate votes against the candidates
13 receiving overwhelming support from Latino voters, those
14 candidates generally still lose. That demonstrates legally
15 relevant racially polarized voting under the CVRA. Gingles,
16 supra, 478 U.S. at 58-61 ("We conclude that the District Court's
17 approach, which tested data derived from three election years in
18 each district, and which revealed that blacks strongly supported
19 black candidates, while, to the black candidates' usual
20 detriment, whites rarely did, satisfactorily addresses each
21 facet of the proper legal standard.")

22 The Qualitative Factors Further Support a Finding of Racially
23 Polarized Voting and a Violation of the CVRA
24

25 42. Section 14028(e) allows plaintiffs to supplement their
statistical evidence with other evidence that is "probative, but

02/14/19

1 not necessary [] to establish a violation" of the CVRA. That
2 section provides in relevant part that: "[a] history of
3 discrimination, the use of electoral devices or other voting.
4 practices or procedures that may enhance the dilutive effects of
5 at-large elections, denial of access to those processes
6 determining which groups of candidates will receive financial or
7 other support in a given election, the extent to which members
8 of a protected class bear the effects of past discrimination in
9 areas such as education, employment, and health, which hinder
10 their ability to participate effectively in the political
11 process, and the use of overt or subtle racial appeals in
12 political campaigns." See also, Assembly Committee Analysis of
13 SB 976 (Apr. 2, 2002). These "probative, but not necessary"
14 factors further support a finding of racially polarized voting
15 in Santa Monica and a violation of the CVRA.

17 History Of Discrimination.

18 43. In Garza, supra, 756 F.Supp. at 1339-1340, the court
19 detailed how "[t]he Hispanic community in Los Angeles County has
20 borne the effects of a history of discrimination." The court
21 described the many sources of discrimination endured by Latinos
22 in Los Angeles County: "restrictive real estate covenants
23 [that] have created limited housing opportunities for the
24 Mexican-origin population"; the "repatriation" program in which
25 "many legal resident aliens and American citizens of Mexican

02/14/19

1 descent were forced or coerced out of the country"; segregation
2 in public schools; exclusion of Latinos from "the use of public
3 facilities" such as public swimming facilities; and "English
4 language literacy [being] a prerequisite for voting" until 1970.
5 Id. at 1340-41. Since Santa Monica is within Los Angeles
6 County, Plaintiffs do not need to re-prove this history of
7 discrimination in this case. Clinton, supra, 687 F.Supp. at
8 1317 ("We do not believe that this history of discrimination,
9 which affects the exercise of the right to vote in all elections
10 under state law, must be proved anew in each case under the
11 Voting Rights Act.")
12

13 44. Nonetheless, at trial Plaintiffs presented evidence that
14 this same sort of discrimination was perpetuated specifically
15 against Latinos in Santa Monica - e.g. restrictive real estate
16 covenants, and approximately 70% of Santa Monica voters voting
17 in favor of Proposition 14 in 1964 to repeal the Rumford Fair
18 Housing Act and therefore again allow racial discrimination in
19 housing; segregation in the use of public swimming facilities;
20 repatriation and voting restrictions applicable to all of
21 California, including Santa Monica.

22 //

23 //

24 //

25

02/14/19

1 The Use Of Electoral Devices Or Other Voting Practices Or
2 Procedures That May Enhance The Dilutive Effects Of At-Large
3 Elections

4 45. Defendant stresses that its elections are free of many
5 devices that dilute (or have diluted) minority votes in other
6 jurisdictions, such as numbered posts and majority vote
7 requirements. Nevertheless, the staggering of Defendant's city
8 council elections enhances the dilutive effect of its at-large
9 election system. City of Lockhart v. U.S. (1983) 460 U.S. 125,
10 135 ("The use of staggered terms also may have a discriminatory
11 effect under some circumstances, since it . . . might reduce the
12 opportunity for single-shot voting or tend to highlight
13 individual races.")

15 The Extent To Which Members Of A Protected Class Bear The
16 Effects Of Past Discrimination In Areas Such As Education,
17 Employment, And Health, Which Hinder Their Ability To
18 Participate Effectively In The Political Process.

19 46. "Courts have [generally] recognized that political
20 participation by minorities tends to be depressed where minority
21 groups suffer effects of prior discrimination such as inferior
22 education, poor employment opportunities and low incomes."
23 Garza, supra, 756 F.Supp. at 1347, citing Gingles, supra, 478
24 U.S. at 69. Where a minority group has less education and
25 wealth than the majority group, that disparity "necessarily

02/14/19

1 inhibits full participation in the political process" by the
2 minority. Clinton, supra, 687 F.Supp. at 1317.

3 47. As revealed by the most recent Census, Whites enjoy
4 significantly higher income levels than their Hispanic and
5 African American neighbors in Santa Monica - a difference far
6 greater than the national disparity. This is particularly
7 problematic for Latinos in Santa Monica's at-large elections
8 because of how expensive those elections have become - more than
9 one million dollars was spent in pursuit of the city council
10 seats available in 2012, for example. There is also a severe
11 achievement gap between White students and their African
12 American and Hispanic peers in Santa Monica's schools that may
13 further contribute to lingering turnout disparities..

14
15 The Use Of Overt Or Subtle Racial Appeals In Political
16 Campaigns.

17 48. In 1994, after opponents of Tony Vazquez advertised that he
18 had voted to allow "Illegal Aliens to Vote" and characterized
19 him as the leader of a Latino gang, causing Mr. Vazquez to lose
20 that election, he let his feelings be known to the Los Angeles
21 Times: "Vazquez blamed his loss on 'the racism that still
22 exists in our city. ... The racism that came out in this
23 campaign was just unbelievable.'" 24

25 49. More recent racial appeals, though less overt, have been
used to defeat other Latino candidates for Santa Monica's city

1 council. For example, when Maria Loya ran in 2004, she was
2 frequently asked whether she could represent all Santa Monica
3 residents or just "her people" - a question that non-Hispanic
4 White candidates were not asked. These sorts of racial appeals
5 are particularly caustic to minority success, because they not
6 only make it more difficult for minority candidates to win, but
7 they also discourage minority candidates from even running.

8 Lack Of Responsiveness To The Latino Community.

9
10 50. Although not listed in section 14028(e), the
11 unresponsiveness of Defendant to the needs of the Latino
12 community is a factor probative of impaired voting rights.
13 Gingles, supra, 478 U.S. at 37, 45; §14028 subd.(e) (indicating
14 that list of factors is not exhaustive - "Other factors such as
15 the history of discrimination ...") (emphasis added)). That
16 unresponsiveness is a natural, perhaps inevitable, consequence
17 of the at-large election system that tends to cause elected
18 officials to "ignore [minority] interests without fear of
19 political consequences." Gingles, supra, 478 U.S. at 48, n. 14.

20
21 51. The elements of the city that most residents would want to
22 put at a distance - the freeway, the trash facility, the city's
23 maintenance yard, a park that continues to emit poisonous
24 methane gas, hazardous waste collection and storage, and, most
25 recently, the train maintenance yard - have all been placed in
the Latino-concentrated Pico Neighborhood. Some of these

02/14/19

1 undesirable elements - e.g., the 10-freeway and train
2 maintenance yard - were placed in the Pico Neighborhood at the
3 direction, or with the agreement, of Defendant or members of its
4 city council.

5 52. Defendant's various commissions (planning commission, arts
6 commission, parks and recreation commission, etc.), the members
7 of which are appointed by Defendant's city council, are nearly
8 devoid of Latino members, in sharp contrast to the significant
9 proportion (16%) of Santa Monica residents who are Latino. That
10 near absence of Latinos on those commissions is important not
11 only in city planning but also for political advancement: in
12 the past 25 years there have been 2 appointments to the Santa
13 Monica City Council, and both of the appointees had served on
14 the planning commission.
15

16 The At-Large Election System Dilutes the Latino Vote in Santa
17 Monica City Council Elections.

18 53. Defendant argues that, in addition to racially polarized
19 voting, "dilution" is a separate element of a violation of the
20 CVRA. Even if "dilution" were an element of a CVRA claim,
21 separate and apart from a showing of racially polarized voting,
22 the evidence still demonstrates dilution by the standard
23 proposed by Defendant in its closing brief - "that some
24 alternative method of election would enhance Latino voting
25 power." At trial, Plaintiffs presented several available

02/14/19

1 remedies (district-based elections, cumulative voting, limited
2 voting and ranked choice voting), each of which would enhance
3 Latino voting power over the current at-large system.

4 54. While it is impossible to predict with certainty the
5 results of future elections, the Court considered the national,
6 state and local experiences with district elections,
7 particularly those involving districts in which the minority
8 group is not a majority of the eligible voters, other available
9 remedial systems replacing at-large elections, and the precinct-
10 level election results in past elections for Santa Monica's city
11 council. Based on that evidence, the Court finds that the
12 district map developed by Mr. Ely, and adopted by this Court as
13 an appropriate remedy, will likely be effective, improving
14 Latinos' ability to elect their preferred candidate or influence
15 the outcome of such an election.

17 The CVRA Is Not Unconstitutional

18 55. Defendant argues that the CVRA is unconstitutional,
19 pursuant to a line of cases beginning with Shaw, supra, 509 U.S.
20 630. As the court in Sanchez held, the CVRA is not
21 unconstitutional; Shaw is simply not applicable. Sanchez,
22 supra, 145 Cal.App.4th at 680-682.

23 56. Defendant's argument that the CVRA is unconstitutional
24 begins with the already-rejected notion that the CVRA is subject
25 to strict scrutiny because it employs a racial classification.

1 The court in Sanchez rejected that very argument. Sanchez,
2 supra, 145 Cal.App.4th at 680-682. Rather, although "the CVRA
3 involves race and voting, ... it does not allocate benefits or
4 burdens on the basis of race"; it is race-neutral in that it
5 neither singles out members of any one race nor advantages or
6 disadvantages members of any one race. Id. at 680.

7 Accordingly, the CVRA is not subject to strict scrutiny; it is
8 subject to the more permissive rational basis test, which the
9 Sanchez court held it easily passes. Ibid.

10
11 57. Defendant seems to suggest that even though the CVRA was
12 not subject to strict scrutiny in Sanchez, it must be subject to
13 strict scrutiny in Santa Monica under Shaw, because any remedy
14 in Santa Monica will inevitably be based predominantly on race.
15 But, as discussed below, the remedy selected by this Court was
16 not based predominantly on race - the district map was drawn
17 based on the non-racial criteria enumerated in Elections Code
18 section 21620. Moreover, Shaw and its progeny do not require
19 strict scrutiny every time that race is pertinent in electoral
20 proceedings. Instead, the Shaw line of cases, which focus on
21 the expressive harm to voters conveyed by particular district
22 lines, require strict scrutiny when "race was the predominant
23 factor motivating the legislature's decision to place a
24 significant number of voters within or without a particular
25 district[.]" Ala. Legislative Black Caucus v. Ala. (2015) 135

02/14/19

1 S. Ct. 1257, 1267, quoting Miller v. Johnson (1995) 515 U.S.
2 900, 916. This standard does not govern liability under the
3 CVRA, and does not govern the imposition of a remedy in the
4 abstract (e.g., whether district lines should be drawn or an
5 alternative voting system imposed), but rather it governs the
6 imposition of particular lines in particular places affecting
7 particular voters.

8 58. The CVRA is silent on how district lines must be drawn, or
9 even if districts are necessarily the appropriate remedy.

10 Sanchez, supra, 145 Cal.App.4th at 687 ("Upon a finding of
11 liability, [the CVRA] calls only for appropriate remedies, not
12 for any particular, let alone any improper, use of race.") The
13 Court is unaware of any applicable case, finding a Shaw
14 violation based on the adoption of district elections, as
15 opposed to where lines are drawn (and as explained below, the
16 appropriate remedial lines in this case were not drawn
17 predominantly based on race). That is precisely why the Sanchez
18 court rejected the City of Modesto's similar reliance on Shaw in
19 that case. Id. at 682-683.

20
21 59. The State of California has a legitimate—indeed compelling—
22 interest in preventing race discrimination in voting and in
23 particular curing demonstrated vote dilution. This interest is
24 consistent with and reflects the purposes of the California
25 Constitution as well as the Fourteenth and Fifteenth Amendments

02/14/19

1 to the United States Constitution. § 14027 (identifying the
2 abridgment of voting rights as the end to be prohibited); §
3 14031 (indicating that the CVRA was "enacted to implement the
4 guarantees of Section 7 of Article I and of Section 2 of Article
5 II of the California Constitution"); Cal. Const., Art. I, § 7
6 (guaranteeing, among other rights, the right to equal protection
7 of the laws); id. Art. II, § 2 (guaranteeing the right to vote);
8 Sanchez at 680 (identifying "[c]uring vote dilution" as a
9 purpose of the CVRA.) The CVRA, which provides a private right
10 of action to seek remedies for vote dilution, is rationally
11 related to the State's interest in curing vote dilution,
12 protecting the right to vote, protecting the right to equal
13 protection of the laws, and protecting the integrity of the
14 electoral process. Jauregui, supra, 226 Cal.App.4th at 799-801;
15 Sanchez, supra, 145 Cal.App.4th at 680.

16
17 60. As discussed above, Defendant's election system has
18 resulted in vote dilution - the very injury that the CVRA is
19 intended to prevent and remedy - and, though not required by the
20 CVRA, the evidence explored below even indicates that the
21 dilution remedied in this case was the product of intentional
22 discrimination. And, as discussed below, there are several
23 remedial options to effectively remedy that vote dilution in
24 this case. Accordingly, the CVRA is constitutional and easily
25

02/14/19

1 satisfies the rational basis test, on its face and in its
2 specific application to Defendant.

3 61. Even if strict scrutiny were found to apply to the CVRA,
4 the CVRA is narrowly tailored to achieve a compelling state
5 interest and therefore also satisfies that test. First,
6 California has compelling interests in protecting all of its
7 citizens' rights to vote and to participate equally in the
8 political process, protecting the integrity of the electoral
9 process, and in ensuring that its laws and those of its
10 subdivisions do not result in vote dilution in violation of its
11 robust commitment to equal protection of the laws. Cal. Const.,
12 Art. I, § 7, Art. II, § 2; Elec. Code §§ 14027, 14031; Jauregui,
13 supra, 226 Cal.App.4th at 799-801; Sanchez, supra, 145
14 Cal.App.4th at 680.

15
16 62. Second, the CVRA is narrowly tailored to achieve its
17 compelling interests in preventing the abridgment of the right
18 to vote. The CVRA requires a person to demonstrate the
19 existence of racially polarized voting to prove a violation. §
20 14028 subd. (a). Where racially polarized voting does not
21 exist, the CVRA will not require a remedy. As with the FVRA,
22 both the findings of liability and the establishment of a remedy
23 under the CVRA do not rely on assumptions about race, but rather
24 on factual patterns specific to particular communities in
25 particular geographic regions, based on electoral evidence.

02/14/19

1 Compare, Shaw, supra, 509 U.S. at 647-648 (unconstitutional
2 racial gerrymandering is based on the assumption that "members
3 of the same racial group—regardless of their age, education,
4 economic status, or the community in which they live—think
5 alike, share the same political interests, and will prefer the
6 same candidates at the polls") with id. at 653 (distinguishing
7 the Voting Rights Act, in which "racial bloc voting and
8 minority-group political cohesion never can be assumed, but
9 specifically must be proved in each case" based on evidence of
10 group voting behavior.) And though federal cases have not
11 considered the CVRA specifically in this regard, the Supreme
12 Court has repeatedly implied that remedies narrowly drawn to
13 combat racially polarized voting and discriminatory vote
14 dilution will survive strict scrutiny.¹⁰ As a result, the CVRA
15 sweeps no wider than necessary to equitably secure for
16 Californians their rights to vote and to participate in the
17 political process. Jauregui, supra, 226 Cal.App.4th at 802.

21 ¹⁰ League of United Latin Am. Citizens v. Perry (2006) 548 U.S. 399, 475, n.12
22 (Stevens, J., joined by Breyer, J., concurring in part and dissenting in
23 part); id. at 518-519 (Scalia, J., joined by Thomas, J., Alito, J., and
24 Roberts, C.J., concurring in the judgment in part and dissenting in part);
25 Bush v. Vera (1996) 517 U.S. 952, 990, 994 (O'Connor, J., concurring); Shaw,
supra, 509 U.S. at 653-54. Indeed, just last year, in Bethune-Hill v. Va.
State Bd. of Elections (2017) 137 S. Ct. 788, the Supreme Court upheld a
Virginia state Senate district against challenge on the theory that it was
predominantly driven by race, but in a manner designed to meet strict
scrutiny through compliance with the Voting Rights Act. Id. at 802. Neither
party contested that compliance with the Voting Rights Act would satisfy
strict scrutiny, but the Court does not usually permit the litigants to
concede the justification for its most exacting level of scrutiny.

1 And if the CVRA generally satisfies strict scrutiny, it
2 satisfies strict scrutiny in application here, where as
3 described below, the dilution remedied was proven to be the
4 product of intentional discrimination.

5 **THE EQUAL PROTECTION CLAUSE OF THE CALIFORNIA CONSTITUTION**

6 63. Article I, section 7 of the California Constitution mirrors
7 the Equal Protection Clause of the U.S. Constitution (Fourteenth
8 Amendment).¹¹ Where governmental actions or omissions are
9 motivated by a racially discriminatory purpose they violate the
10 Equal Protection Clause, and when voting rights are implicated,
11 "[t]he Supreme Court has established that official actions
12 motivated by discriminatory intent 'have no legitimacy at all .
13' N.C. State Conference NAACP v. McCrory (4th Cir. 2016)
14 831 F.3d 204, 239 (surveying Supreme Court cases); see also
15 generally Garza v. County of Los Angeles (9th Cir. 1990) 918 F.2d
16 763, cert. denied (1991) 111 S.Ct. 681. Neither the passage of
17 time, nor the modification of the original enactment, can save a
18 provision enacted with discriminatory intent. Id.; Hunter v.
19 Underwood (1985) 471 U.S. 222 (invalidating a provision of the
20 1901 Alabama Constitution because it was motivated by a desire
21 to disenfranchise African Americans, even though its "more
22 blatantly discriminatory" portions had since been removed.)
23
24

25 ¹¹ Other than provisions relating exclusively to school integration, Article I section 7 provides "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws."

02/14/19

1 64. "Determining whether invidious discriminatory purpose was a
2 motivating factor demands a sensitive inquiry into such
3 circumstantial and direct evidence of intent as may be
4 available. ... [including] the historical background of the
5 decision." Village of Arlington Heights v. Metro. Housing Dev.
6 Corp. (1977) 429 U.S. 252, 266-68. Sometimes, racially
7 discriminatory intent can be demonstrated by the clear
8 statements of one or more decision makers. But, recognizing
9 that these "smoking gun" admissions of racially discriminatory
10 intent are exceedingly rare, in Arlington Heights, the U.S.
11 Supreme Court described a number of potential, non-exhaustive,
12 sources of evidence that might shed light on the question of
13 discriminatory intent in the absence of a smoking gun admission:
14

15 The impact of the official action -- whether it bears
16 more heavily on one race than another, may provide an
17 important starting point. Sometimes a clear pattern,
18 unexplainable on grounds other than race, emerges from
19 the effect of the state action even when the governing
20 legislation appears neutral on its face. The
21 evidentiary inquiry is then relatively easy. But such
22 cases are rare. Absent a pattern as stark as that in
23 Gomillion or Yick Wo, impact alone is not
24 determinative, and the Court must look to other
25 evidence. The historical background of the decision

02/14/19

1 is one evidentiary source, particularly if it reveals
2 a series of official actions taken for invidious
3 purposes. The specific sequence of events leading up
4 to the challenged decision also may shed some light on
5 the decision maker's purposes. ... Departures from the
6 normal procedural sequence also might afford evidence
7 that improper purposes are playing a role.
8 Substantive departures too may be relevant,
9 particularly if the factors usually considered
10 important by the decision maker strongly favor a
11 decision contrary to the one reached. The legislative
12 or administrative history may be highly relevant,
13 especially where there are contemporary statements by
14 members of the decision-making body, minutes of its
15 meetings, or reports. In some extraordinary
16 instances, the members might be called to the stand at
17 trial to testify concerning the purpose of the
18 official action, although even then such testimony
19 frequently will be barred by privilege. The foregoing
20 summary identifies, without purporting to be
21 exhaustive, subjects of proper inquiry in determining
22 whether racially discriminatory intent existed.
23
24

25 Id. at 266-268 (citations omitted). "[P]laintiffs are not
required to show that [discriminatory] intent was the sole

02/14/19

1 purpose of the [challenged government decision]," or even the
2 "primary purpose," just that it was "a purpose." Brown v. Board
3 of Com'rs of Chattanooga, Tenn. (E.D. Tenn. 1989) 722 F. Supp.
4 380, 389, citing Arlington Heights at 265 and Bolden v. City of
5 Mobile (S.D. Ala. 1982) 543 F. Supp. 1050, 1072.

6 Defendant's At-Large Election System Violates The Equal
7 Protection Clause Of The California Constitution.

8 65. Defendant's at-large election system was adopted and/or
9 maintained with a discriminatory intent on at least two
10 occasions - in 1946 and in 1992, either of which necessitates
11 this Court invalidating the at-large election system. Hunter v.
12 Underwood (1985) 471 U.S. 222 (invalidating a provision of the
13 1901 Alabama Constitution because it was motivated by a desire
14 to disenfranchise African Americans, even though its "more
15 blatantly discriminatory" portions had since been removed);
16 Brown, supra 722 F. Supp. at 389 (striking at-large election
17 system based on discriminatory intent in 1911 even absent
18 discriminatory intent in maintaining that system in decisions of
19 1957, the late 1960s and early 1970s). In the early 1990s, the
20 Charter Review Commission, impaneled by Defendant's city
21 council, concluded that "a shift from the at-large plurality
22 system currently in use" was necessary "to distribute
23 empowerment more broadly in Santa Monica, particularly to ethnic
24 groups ..." Even back in 1946, it was understood that at-large
25

02/14/19

1 elections would "starve out minority groups," leaving "the
2 Jewish, colored [and] Mexican [no place to] go for aid in his
3 special problems" "with seven councilmen elected AT-LARGE ...
4 mostly originat[ing] from [the wealthy White neighborhood] North
5 of Montana [and] without regard [for] minorities." Yet, in each
6 instance Defendant chose at-large elections.

7
8 1946

9 66. Defendant's current at-large election system has a long
10 history that has its roots in 1946. In 1946, Defendant adopted
11 its current council-manager form of government, and chose an at-
12 large elected city council and school board. The at-large
13 election feature remains in Defendant's city charter. Santa
14 Monica Charter § 600 ("The City Council shall consist of seven
15 members elected from the City at large ..."), § 900. As Dr.
16 Kousser's testimony at trial and his report to the Santa Monica
17 Charter Review Committee in 1992 explained, proponents and
18 opponents of the at-large system alike, bluntly recognized that
19 the at-large system would impair minority representation. And,
20 another ballot measure involving a pure racial issue was on the
21 ballot at the same time in 1946 - Proposition 11, which sought
22 to ban racial discrimination in employment. Dr. Kousser's
23 statistical analysis shows a strong correlation between voting
24 in favor of the at-large charter provision and against the
25 contemporaneous Proposition 11, further demonstrating the

02/14/19

1 understanding that at-large elections would prevent minority
2 representation.

3 67. When the Arlington Heights factors are each considered,
4 those non-exhaustive factors militate in favor of finding
5 discriminatory intent in the 1946 adoption of the current at
6 large election system. The discriminatory impact of the at-
7 large election system was felt immediately after its adoption in
8 1946. Though several ran, no candidates of color were elected
9 to the Santa Monica City Council in the 1940s, 50s or 60s.

10 Bolden v. City of Mobile (S.D. Ala. 1982) 542 F.Supp. 1070, 1076
11 (relying on the lack of success of Black candidates over several
12 decades to show disparate impact, even without a showing that
13 Black voters voted for each of the particular Black candidates
14 going back to 1874.) Moreover, the impact on the minority-
15 concentrated Pico Neighborhood over the past 72 years, discussed
16 above, also demonstrates the discriminatory impact of the at-
17 large election system in this case. Gingles 478 U.S. at 48, n.
18 14 (describing how at-large election systems tend to cause
19 elected officials to "ignore [minority] interests without fear
20 of political consequences.")

21
22 68. The historical background of the decision in 1946 also
23 weighs in favor of a finding of discriminatory intent. At-large
24 elections were known to disadvantage minorities, and that was
25 understood in Santa Monica in 1946. The non-White population in

02/14/19

1 Santa Monica was growing at a faster rate than the White
2 population - enough that the chief newspaper in Santa Monica,
3 the Evening Outlook, was alarmed by the rate of increase in the
4 non-white population. The fifteen Freeholders, who proposed
5 only at-large elections to the Santa Monica electorate in 1946,
6 were all White, and all but one lived on the wealthier, Whiter
7 side of Wilshire Boulevard. At-large elections were, therefore,
8 in their self-interest, and at least three of the Freeholders
9 successfully ran for seats on the city council in the years that
10 followed.

11
12 69. The Santa Monica commissioners had adopted a resolution
13 calling for all Japanese Americans to be deported to Japan
14 rather than being allowed to return to their homes after being
15 interned, Los Angeles County had been marred by the zoot suit
16 riots, and racial tensions were prevalent enough in Santa Monica
17 that a Committee on Interracial Progress was necessary.

18 However, Defendants correctly point out (in their Objections to
19 Plaintiff's proposed statement of decision) that some members of
20 the Committee on Interracial Progress supported the 1946 Santa
21 Monica charter amendment and that none signed onto
22 advertisements opposing it. Indeed, minority leaders, including
23 one the city's most prominent African Americans, Rev. W.P.
24 Carter, endorsed the charter.
25

02/14/19

1 70. The Court has weighed the historical evidence, including
2 the endorsement of the charter amendment by some minority
3 leaders, and the Court finds that the evidence of discriminatory
4 intent outweighs the contrary evidence. The Court draws the
5 inferences that the creation of the Committee on Interracial
6 Progress was an acknowledgment of racial tension, that those
7 members were aware that the election of minority candidates was
8 an issue with the charter amendment, and that the members of the
9 Committee on Interracial Progress were hopeful that the charter
10 amendment (which increased the governing body from three to
11 seven, among other things) would increase the number of
12 minorities elected to the governing body. The charter amendment
13 was approved and, despite the hopefulness, did not result in the
14 election of minorities for decades.

16 71. At the same time as the 1946 Santa Monica charter amendment
17 was approved, a significant majority of Santa Monica voters
18 voted against Proposition 11, which would have outlawed racial
19 discrimination in employment, and Dr. Kousser's EI analysis
20 shows a very strong correlation between voting for the charter
21 amendment and against Proposition 11.

23 72. The sequence of events leading up to the adoption of the
24 at-large system in 1946 likewise supports a finding of
25 discriminatory intent. As Dr. Kousser detailed, in 1946, the
Freeholders waffled between giving voters a choice of having

02/14/19

1 some district elections or just at-large elections, and
2 ultimately chose to only present an at-large election option
3 despite the recognition that district elections would be better
4 for minority representation.

5 73. The substantive and procedural departures from the norm
6 also support a finding of discriminatory intent. In 1946, the
7 Freeholders' reversed course on offering to the voters a hybrid
8 system (some district, and some at-large, elected council seats)
9 in the wake of discussion of minority representation, and, after
10 a series of votes the local newspaper called "unexpected,"
11 offered the voters only the option of at-large elections.
12

13 74. The legislative and administrative history in 1946 is
14 difficult to discern. There appears to have been no report of
15 the Freeholders' discussions, but the statements by proponents
16 and opponents of the charter amendment demonstrate that all
17 understood that at-large elections would diminish minorities'
18 influence on elections.

19 1992

20 75. After winning a FVRA case ending at-large elections in
21 Watsonville in 1989, Joaquin Avila (later principally involved
22 in drafting the CVRA) and other attorneys began to file and
23 threaten to file lawsuits challenging at-large elections
24 throughout California on the grounds that they discriminated
25 against Latinos. The Santa Monica Citizens United to Reform

1 Elections (CURE) specifically noted the Watsonville case in
2 urging the Santa Monica City Council to place the issue of
3 substituting district for at-large elections on the ballot,
4 allowing Santa Monica voters to decide the question. With the
5 issue of at-large elections diluting minority vote receiving
6 increased attention in Santa Monica and throughout California,
7 Defendant appointed a 15-member Charter Review Commission to
8 study the matter and make recommendations to the City Council.
9
10 76. As part of their investigation, the Charter Review
11 Commission sought the analysis of Plaintiff's expert, Dr.
12 Kousser, who had just completed his work in Garza regarding
13 discriminatory intent in the way Los Angeles County's
14 supervisorial districts had been drawn. Dr. Kousser was asked
15 whether Santa Monica's at-large election system was adopted or
16 maintained for a discriminatory purpose, and Dr. Kousser
17 concluded that it was, for all of the reasons discussed above.
18 Based on their extensive study and investigations, the near-
19 unanimous Charter Review Commission recommended that Defendant's
20 at-large election system be eliminated. The principal reason
21 for that recommendation was that the at-large system prevents
22 minorities and the minority-concentrated Pico Neighborhood from
23 having a seat at the table.

24
25 77. That recommendation went to the City Council in July 1992,
and was the subject of a public city council meeting. Excerpts

02/14/19

1 from the video of that hours-long meeting were played at trial,
2 and provide direct evidence of the intent of the then-members of
3 Defendant's City Council. One speaker after another - members
4 of the Charter Review Commission, the public, an attorney from
5 the Mexican American Legal Defense and Education Fund, and even
6 a former councilmember - urged Defendant's City Council to
7 change its at-large election system. Many of the speakers
8 specifically stressed that the at-large system discriminated
9 against Latino voters and/or that courts might rule that they
10 did in an appropriate case. Though the City Council understood
11 well that the at-large system prevented racial minorities from
12 achieving representation - that point was made by the Charter
13 Review Commission's report and several speakers and was never
14 challenged - the members refused by a 4-3 vote to allow the
15 voters to change the system that had elected them.

17 78. Councilmember Dennis Zane explained his professed
18 reasoning: in a district system, Santa Monica would no longer
19 be able to place a disproportionate share of affordable housing
20 into the minority-concentrated Pico Neighborhood, where,
21 according to the unrefuted remarks at the July 1992 council
22 meeting, the majority of the city's affordable housing was
23 already located, because the Pico Neighborhood district's
24 representative would oppose it. Mr. Zane's comments were candid
25 and revealing. He specifically phrased the issue as one of

02/14/19

1 Latino representation versus affordable housing: "So you gain
2 the representation but you lose the housing."¹² While this
3 professed rationale could be characterized as not demonstrating
4 that Mr. Zane or his colleagues "harbored any ethnic or racial
5 animus toward the . . . Hispanic community," it nonetheless
6 reflects intentional discrimination—Mr. Zane understood that his
7 action would harm Latinos' voting power, and he took that action
8 to maintain the power of his political group to continue dumping
9 affordable housing in the Latino-concentrated neighborhood
10 despite their opposition. Garza, supra, 918 F.2d at 778 (J.
11 Kozinski, concurring) (finding that incumbents preserving their
12 power by drawing district lines that avoided a higher proportion
13 of Latinos in one district was *intentionally discriminatory*
14 *despite the lack of any racial animus*), cert. denied (1991) 111
15 S.Ct. 681.

17 79. In addition to Mr. Zane's contemporaneous explanation of
18 his own decisive vote, the Court also considers the
19 circumstantial evidence of intent revealed by the Arlington
20 Heights factors. While those non-exhaustive factors do not each
21

22 ¹² Mr. Zane's insistence on a tradeoff between Latino representation and
23 policy goals that he believed would be more likely to be accomplished by an
24 at-large council echoed comments of the *Santa Monica Evening Outlook*, the
25 chief sponsor of and spokesman for the charter change to an at-large city
council in 1946. "[G]roups such as organized labor and the colored people,"
the newspaper announced, should realize that "The interest of minorities is
always best protected by a system which favors the election of liberal-minded
persons who are not compelled to play peanut politics. Such liberal-minded
persons, of high caliber, will run for office and be elected if elections are
held at large."

1 reveal discrimination to the same extent, on balance, they also
2 militate in favor of finding discriminatory intent in this case.
3 The discriminatory impact of the at-large election system was
4 felt immediately after its maintenance in 1992. The first and
5 only Latino elected to the Santa Monica City Council lost his
6 re-election bid in 1994 in an election marred by racial appeals
7 - a notable anomaly in Santa Monica where election records
8 establish that incumbents lose very rarely. Bolden v. City of
9 Mobile (S.D. Ala. 1982) 542 F.Supp. 1050, 1076 (relying on the
10 lack of success of Black candidates over several decades to show
11 disparate impact, even without a showing that Black voters voted
12 for each of the particular Black candidates going back to 1874.)
13 Moreover, the impact on the minority-concentrated Pico
14 Neighborhood over the past 72 years, discussed above, also
15 demonstrates the discriminatory impact of the at-large election
16 system in this case, and has continued well past 1992. Gingles,
17 supra, 478 U.S. at 48, n. 14 (describing how at-large election
18 systems tend to cause elected officials to "ignore [minority]
19 interests without fear of political consequences.")
20
21 80. The historical background of the decision in 1992 also
22 militate in favor of finding a discriminatory intent. At-large
23 elections are well known to disadvantage minorities, and that
24 was well understood in Santa Monica in 1992. In 1992, the non-
25 White population was sufficiently compact (in the Pico

02/14/18

1 Neighborhood) that Dr. Leo Estrada concluded that a council
2 district could be drawn with a combined majority of Latino and
3 African American residents. While the Santa Monica City Council
4 of the late 1980s and early 1990s was sometimes supportive of
5 policies and programs that benefited racial minorities, as
6 pointed out by Defendant's expert, Dr. Lichtman, the members
7 also supported a curfew that Santa Monica's lone Latino council
8 member described as "institutional racism," as pointed out by
9 Dr. Kousser, and they understood that district elections would
10 undermine the slate politics that had facilitated the election
11 of many of them.
12

13 81. The sequence of events leading up to the maintenance of the
14 at-large system in 1992, likewise supports a finding of
15 discriminatory intent. In 1992, the Charter Review Commission,
16 and the CURE group before that, intertwined the issue of
17 district elections with racial justice, and the connection was
18 clear from the video of the July 1992 city council meeting,
19 immediately prior to Defendant's city council voting to prevent
20 Santa Monica voters from adopting district elections.

21 82. The substantive and procedural departures from the norm
22 also support a finding of discriminatory intent. In 1992, the
23 Charter Review Commission recommended scrapping the at-large
24 election system, principally because of its deleterious effect
25 on minority representation. While Defendant's City Council

02/14/19

1 adopted nearly all of the Charter Review Commission's
2 recommendations, it refused to adopt any change to the at-large
3 elections or even submit the issue to the voters.

4 83. Finally, as discussed above, the legislative and
5 administrative history in 1992, specifically the Charter Review
6 Commission report and the video of the July 1992 city council
7 meeting, demonstrates a deliberate decision to maintain the
8 existing at-large election structure because of, and not merely
9 despite, the at-large system's impact on Santa Monica's minority
10 population.
11

12 **REMEDIES**

13 84. Having found that Defendant's election system violates the
14 CVRA and the Equal Protection Clause, the Court must implement a
15 remedy to cure those violations. The CVRA specifies that the
16 implementation of appropriate remedies is mandatory.

17 85. "Upon a finding of a violation of Section 14027 and Section
18 14028, the court shall implement appropriate remedies, including
19 the imposition of district-based elections, that are tailored to
20 remedy the violation." Elec. Code § 14029. The federal courts
21 in FVRA cases have similarly and unequivocally held that once a
22 violation is found, a remedy must be adopted. Williams v.
23 Texarkana, Ark. (8th Cir. 1994) 32 F.3d 1265, 1268 (Once a
24 violation of the FVRA is found, "[i]f [the] appropriate
25 legislative body does not propose a remedy, the district court

02/14/19

1 must fashion a remedial plan"); Bone Shirt, supra, 387 F.Supp.2d
2 at 1038 (same); Reynolds v. Sims (1964) 377 U.S. 533, 585
3 ("[O]nce a State's legislative apportionment scheme has been
4 found to be unconstitutional, it would be the unusual case in
5 which a court would be justified in not taking appropriate
6 action to insure that no further elections are conducted under
7 the invalid plan.") Likewise, in regards to an Equal Protection
8 violation implicating voting rights, "[t]he Supreme Court has
9 established that official actions motivated by discriminatory
10 intent 'have no legitimacy at all' Thus, the proper
11 remedy for a legal provision enacted with discriminatory intent
12 is invalidation." McCrorry, supra, 831 F.3d at 239 (surveying
13 Supreme Court cases.)

15 86. Once liability is established under the CVRA, the Court has
16 a broad range of remedies from which to choose. § 14029 ("Upon
17 a finding of a violation of Section 14027 and Section 14028, the
18 court shall implement appropriate remedies, including the
19 imposition of district-based elections, that are tailored to
20 remedy the violation."); Sanchez, supra, 145 Cal.App.4th at 670.
21 The range of remedies from which the Court may choose is at
22 least as broad as those remedies that have been adopted in FVRA
23 cases. Jauregui, supra, 226 Cal.App.4th at 807 ("Thus, the
24 Legislature intended to expand the protections against vote
25 dilution provided by the federal Voting Rights Act of 1965. It

02/14/19

1 would be inconsistent with the evident legislative intent to
2 expand protections against vote dilution to narrowly limit the
3 scope of . . . relief as defendant asserts. Logically, the
4 appropriate remedies language in section 14029 extends to . . .
5 orders of the type approved under the federal Voting Rights Act
6 of 1965.") Thus, the range of remedies available to the Court
7 includes not only the imposition of district-based elections per
8 § 14029, but also, for example, less common at-large remedies
9 imposed in FVRA cases such as cumulative voting, limited voting
10 and unstagged elections. U.S. v. Village of Port Chester
11 (S.D.N.Y. 2010) 704 F.Supp.2d 411 (ordering cumulative voting
12 and unstagging elections); U.S. v. City of Euclid (N.D. Ohio
13 2008) 580 F.Supp.2d 584 (ordering limited voting). The Court
14 may also order a special election. Neal v. Harris (4th Cir.
15 1987) 837 F.2d 632, 634 (affirming trial court's order requiring
16 a special election, during the terms of the members elected
17 under the at-large system, rather than awaiting the date of the
18 next regularly scheduled election, when their terms would have
19 expired.); Ketchum v. City Council of Chicago (N.D Ill. 1985)
20 630 F.Supp. 551, 564-566 (ordering special elections to replace
21 aldermen elected under a system that violated the FVRA); Bell v.
22 Southwell (5th. Cir. 1967) 376 F.2d 659, 665 (voiding an
23 unlawful election, prohibiting the winner of that unlawful
24 election from taking office, and ordering that a special
25

02/14/19

1 election be held promptly); Coalition for Education in District
2 One v. Board of Elections (S.D.N.Y. 1974) 370 F.Supp. 42, 58,
3 aff'd (2nd Cir. 1974) 495 F.2d 1090; Tucker v. Burford (N.D.
4 Miss. 1985) 603 F.Supp. 276, 279; Arbor Hill Concerned Citizens
5 Neighborhood Ass'n v. County of Albany (2d Cir. 2004) 357 F.3d
6 260, 262-263 (applauding the district court for ordering a
7 special election.) Indeed, courts have even used their remedial
8 authority to remove all members of a city council where
9 necessary. Bell v. Southwell (5th Cir. 1967) 367 F.2d 659, 665;
10 Williams v. City of Texarkana (W.D. Ark. 1993) 861 F.Supp. 771,
11 aff'd (8th Cir. 1994) 32 F.3d 1265; Hellebust v. Brownback (10th
12 Cir. 1994) 42 F.3d 1331).

13
14 87. The broad remedial authority granted to the Court by
15 Section 14029 of the CVRA extends to remedies that are
16 inconsistent with a city charter, Jauregui at 794-804, and even
17 remedies that would otherwise be inconsistent with state laws
18 enacted prior to the CVRA. Id. at 804-808 (affirming the trial
19 court's injunction, pursuant to section 14029 of the CVRA,
20 prohibiting the City of Palmdale from certifying its at-large
21 election results despite that injunction being inconsistent with
22 Code of Civil Procedure section 526(b)(4) and Civil Code section
23 3423(d)). Likewise, because the California Constitution is
24 supreme over state statutes, any remedy for Defendant's
25 violation of the Equal Protection Clause is unimpeded by

02/14/19

1 administrative state statutes. Am. Acad. of Pediatrics v.
2 Lungren (1997) 16 Cal.4th 307 (invalidating a state statute
3 because it impinged upon rights guaranteed by the California
4 Constitution). Voting rights are the most fundamental in our
5 democratic system; when those rights have been violated, the
6 Court has the obligation to ensure that the remedy is up to the
7 task.

8 88. Any remedial plan should fully remedy the violation.
9
10 Dillard v. Crenshaw Cnty., Ala. (11th Cir. 1987) 831 F.2d 246,
11 250 ("The court should exercise its traditional equitable powers
12 to fashion the relief so that it completely remedies the prior
13 dilution of minority voting strength and fully provides equal
14 opportunity for minority citizens to participate and to elect
15 candidates of their choice. ... This Court cannot authorize an
16 element of an election proposal that will not with certitude
17 completely remedy the [] violation."); Harvell v. Blytheville
18 Sch. Dist. No. 5 (8th Cir. 1997) 126 F.3d 1038, 1040 (affirming
19 trial court's rejection of defendant's plan because it would not
20 "completely remedy the violation"; LULAC Council No. 4836 v.
21 Midland Indep. Sch. Dist. (W.D. Tex. 1986) 648 F.Supp. 596, 609;
22 United States v. Osceola Cnty., Fla. (M.D. Fla. 2006) 474
23 F.Supp.2d 1254, 1256. The United States Supreme Court has
24 explained that the court's duty is to both remedy past harm and
25 prevent future violations of minority voting rights: "[T]he

09/14/19

1 court has not merely the power, but the duty, to render a decree
2 which will, so far as possible, eliminate the discriminatory
3 effects of the past as well as bar like discrimination in the
4 future." Louisiana v. United States (1965) 380 U.S. 145, 154;
5 Buchanan v. City of Jackson, Tenn., (W.D. Tenn. 1988) 683 F.
6 Supp. 1537, 1541 (same, rejecting defendant's hybrid at-large
7 remedial plan.)

8
9 89. The remedy for a violation of the Equal Protection Clause
10 should likewise be prompt and complete. Courts have
11 consistently held that intentional racial discrimination is so
12 caustic to our system of government that once intentional
13 discrimination is shown, "the 'racial discrimination must be
14 eliminated root and branch'" by "a remedy that will fully
15 correct past wrongs." N. Carolina NAACP v. McCrory (4th Cir.
16 2016) 831 F.3d 204, 239, quoting Green v. Cty. Sch. Bd. (1968)
17 391 U.S. 430, 437-439, Smith v. Town of Clarkton (4th Cir. 1982)
18 682 F.2d 1055, 1068.)

19 90. It is also imperative that once a violation of voting
20 rights is found, remedies be implemented promptly, lest minority
21 residents continue to be deprived of their fair representation.
22 Williams v. City of Dallas (N.D. Tex. 1990) 734 F.Supp. 1317
23 (*"In no way will this Court tell African-Americans and Hispanics*
24 *that they must wait any longer for their voting rights in the*
25 *City of Dallas."*) (emphasis in original).

02/14/19

1 91. Though other remedies, such as cumulative voting, limited
2 voting and ranked choice voting, are possible options in a CVRA
3 action and would improve Latino voting power in Santa Monica,
4 the Court finds that, given the local context in this case -
5 including socioeconomic and electoral patterns, the voting
6 experience of the local population, and the election
7 administration practicalities present here - a district-based
8 remedy is preferable. The choice of a district-based remedy is
9 also consistent with the overwhelming majority of CVRA and FVRA
10 cases.
11

12 92. At trial, only one district plan was presented to the Court
13 - Trial Exhibit 261. That plan was developed by David Ely,
14 following the criteria mandated by Section 21620 of the
15 Elections Code, applicable to charter cities. The populations
16 of the proposed districts are all within 10% of one another;
17 areas with similar demographics (e.g. socio-economic status) are
18 grouped together where possible and the historic neighborhoods
19 of Santa Monica are intact to the extent possible; natural
20 boundaries such as main roads and existing precinct boundaries
21 are used to divide the districts where possible; and neither
22 race nor the residences of incumbents was a predominant factor
23 in drawing any of the districts.
24

25 93. Trial testimony revealed that jurisdictions that have
switched from at-large elections to district elections as a

02/14/19

1 result of CVRA cases have experienced a pronounced increase in
2 minority electoral power, including Latino representation. Even
3 in districts where the minority group is one-third or less of a
4 district's electorate, minority candidates previously
5 unsuccessful in at-large elections have won district elections.
6 Florence Adams, *Latinos and Local Representation: Changing*
7 *Realities, Emerging Theories* (2000), at 49-61.

8 94. The particular demographics and electoral experiences of
9 Santa Monica suggest that the seven-district plan would
10 similarly result in the increased ability of the minority
11 population to elect candidates of their choice or influence the
12 outcomes of elections. Mr. Ely's analysis of various elections
13 shows that the Latino candidates preferred by Latino voters
14 perform much better in the Pico Neighborhood district of Mr.
15 Ely's plan than they do in other parts of the city - while they
16 lose citywide, they often receive the most votes in the Pico
17 Neighborhood district. The Latino proportion of eligible voters
18 is much greater in the Pico Neighborhood district than the city
19 as a whole. In contrast to 13.64% of the citizen-voting-age-
20 population in the city as a whole, Latinos comprise 30% of the
21 citizen-voting-age-population in the Pico Neighborhood district.
22 That portion of the population and citizen-voting-age-population
23 falls squarely within the range the U.S. Supreme Court deems to
24 be an influence district. Georgia v. Ashcroft (2003) 539 U.S.
25

02/14/19

1 461, 470-471, 482 (evaluating the impact of "influence
2 districts," defined as districts with a minority electorate "of
3 between 25% and 50%.") Testimony established that Latinos in
4 the Pico Neighborhood are politically organized in a manner that
5 would more likely translate to equitable electoral strength.
6 Testimony also established that districts tend to reduce the
7 campaign effects of wealth disparities between the majority and
8 minority communities, which are pronounced in Santa Monica.

9
10 95. Though given the opportunity to do so, Defendant did not
11 propose a remedy. The six-week trial of this case was not
12 bifurcated between liability and remedies. Though Plaintiffs
13 presented potential remedies at trial, Defendant did not propose
14 any remedy at all in the event that the Court found in favor of
15 Plaintiffs. On November 8, 2018, the Court gave Defendant
16 another opportunity, ordering the parties to file briefs and
17 attend a hearing on December 7, 2018 "regarding the
18 appropriate/preferred remedy for violation of the [CVRA]."¹³
19

20
21 ¹³ The schedule set by this Court on November 8, 2018 is in line with what
22 other courts have afforded defendants to propose a remedy following a
23 determination that voting rights have been violated. Williams v. City of
24 Texarkana (W.D. Ark. 1992) 861 F.Supp. 756, 767 (requiring the defendant to
25 submit its proposed remedy 16 days after finding Texarkana's at-large
elections violated the FVRA), aff'd (8th Cir. 1994) 32 F.3d 1265; Larios v.
Cox (N.D. Ga. 2004) 300 F.Supp.2d 1320, 1356-1357 (requiring the Georgia
legislature to propose a satisfactory apportionment plan and seek Section 5
preclearance from the U.S. Attorney General within 19 days); Jauregui v. City
of Palmdale, No. BC483039, 2013 WL 7018376 (Aug. 27, 2013) (scheduling
remedies hearing for 24 days after the court mailed its decision finding a
violation of the CVRA).

1 Still, Defendant did not propose a remedy, other than to say
2 that it prefers the implementation of district-based elections
3 over the less-common at-large remedies discussed at trial.
4 Where a defendant fails to propose a remedy to a voting rights
5 violation on the schedule directed by the court, the court must
6 provide a remedy without the defendant's input. Williams v.
7 City of Texarkana (8th Cir. 1994) 32 F.3d 1265, 1268 ("If [the]
8 appropriate legislative body does not propose a remedy, the
9 district court must fashion a remedial plan."); Bone Shirt v.
10 Hazeltine (D.S.D. 2005) 387 F.Supp.2d 1035, 1038 (same).

11
12 96. Defendant argues that section 10010 of the Elections Code
13 constrains the Court's ability to adopt a district plan without
14 holding a series of public hearings. On the contrary, section
15 10010 speaks to what a *political subdivision* must do (e.g. a
16 series of public hearings) in order to adopt district elections
17 or propose a legislative plan remedy in a CVRA case, not what a
18 court must do in completing its responsibility under section
19 14029 of the Elections Code to implement appropriate remedies
20 tailored to remedy the violation. Defendant could have
21 completed the process specified in section 10010 at any time in
22 the course of this case, which has been pending for nearly 3
23 years. Even if Defendant had started the process of drawing
24 districts only upon receiving this Court's November 8 Order (on
25 November 13), it could have held the initial public meetings

02/14/19

1 required by section 10010(a)(1) by November 19, and the
2 additional public meetings the week of November 26, completing
3 the process in advance of its November 30 remedies brief. To
4 the Court's knowledge, even at the time of the present statement
5 of decision, Defendant has failed to begin any remedial process
6 of its own.

7
8 97. In order to eliminate the taint of the illegal at-large
9 election system in this case, in a prompt and orderly manner, a
10 special election for all seven council seats is appropriate.
11 Other courts have similarly held that a special election is
12 appropriate, where an election system is found to violate the
13 FVRA. Neal, supra, 837 F.2d at 632-634 ("[o]nce it was
14 determined that plaintiffs were entitled to relief under section
15 2, ... the timing of that relief was a matter within the
16 discretion of the court."); Ketchum, supra, 630 F.Supp. at 564-
17 566; Bell v. Southwell (5th. Cir. 1967) 376 F.2d 659, 665
18 (voiding an unlawful election, prohibiting the winner of that
19 unlawful election from taking office, and ordering that a
20 special election be held promptly); Coalition for Ed. in Dist.
21 One v. Board of Elections of City of N.Y. (S.D.N.Y. 1974) 370
22 F.Supp. 42, 58, aff'd (2nd Cir. 1974) 495 F.2d 1090; Tucker v.
23 Burford (N.D. Miss. 1985) 603 F.Supp. 276, 279; Arbor Hill
24 Concerned Citizens v. Cnty. of Albany (2d Cir. 2004) 357 F.3d
25 260, 262-63 (applauding the district court for ordering a

02/14/19

1 special election); Montes v. City of Yakima (E.D. Wash. 2015)
2 2015 WL 11120964, at p. 11, (explaining that a special election
3 is often necessary to completely eliminate the stain of illegal
4 elections). As the Second District Court of Appeal held in
5 Jauregui, "the appropriate remedies language in section 14029
6 extends to [remedial] orders of the type approved under the
7 federal Voting Rights Act of 1965," Jauregui, supra, 226
8 Cal.App.4th at 807, so the logic of the courts for ordering
9 special elections in all of these cases is equally applicable in
10 this case.

11
12 98. From the beginning of the nomination period to election
13 day, takes a little less than four months.

14 [https://www.smvote.org/uploadedFiles/SMVote/2016\(1\)/Election%20C](https://www.smvote.org/uploadedFiles/SMVote/2016(1)/Election%20Calendar_website.pdf)
15 [alendar_website.pdf](https://www.smvote.org/uploadedFiles/SMVote/2016(1)/Election%20Calendar_website.pdf). Based on the path this Court has laid out,
16 a final judgment in this case should be entered by no later than
17 March 1, 2019. Therefore, a special election - a district-based
18 election pursuant to the seven-district map, Tr. Ex. 261, for
19 all seven city council positions should be held on July 2, 2019.
20 The votes can be tabulated within 30 days of the election, and
21 the winners can be seated on the Santa Monica City Council at
22 its first meeting in August 2019, so nobody who has not been
23 elected through a lawful election consistent with this decision
24 may serve on the Santa Monica City Council past August 15, 2019.
25 Only in that way can the stain of the unlawful discriminatory

02/14/19

1 at-large election system be promptly erased.

2 CONCLUSION

3 99. Defendant's at-large election system violates both the CVRA
4 and the Equal Protection Clause of the California Constitution.

5 100. Accordingly, the Court orders that, from the date of
6 judgment, Defendant is prohibited from imposing its at-large
7 election system, and must implement district-based elections for
8 its city council in accordance with the seven-district map
9 presented at trial. Tr. Ex. 261.

10 CLERK TO GIVE WRITTEN NOTICE.

11 IT IS SO ORDERED.

12 DATED: February 13, 2019

13
14
15
16
17
18
19
20
21
22
23
24
25


YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

02/14/19

EXHIBIT C



28905 Wight Road
Malibu, California 90265
(310) 457-0970
kishenkman@shenkmanhughes.com

VIA EMAIL

April 6, 2016

Maria Loya
mloyadlt@gmail.com

Pico Neighborhood Association
c/o Oscar de la Torre
odelatorre16@yahoo.com

Advocates for Malibu Public Schools
c/o Roui Israel
roui4444@yahoo.com

Re: California Voting Rights Act - Legal Representation

This letter describes the terms of our relationship. The law firm of Shenkman & Hughes PC ("Counsel" "we" or "us") will represent and advise Maria Loya ("Loya"), Pico Neighborhood Association ("PNA") and Advocates for Malibu Public Schools ("AMPS") (collectively "Client" or "you") in connection with the contemplated lawsuit relating to the violations of the California Voting Rights Act by the City of Santa Monica, and the invalidity of the City of Santa Monica's at-large election system for violating the California Constitution's Equal Protection clause (the "Matters").

You understand that we anticipate that we will associate with one or more law firms – including the R. Rex Parris Law Firm, the Law Offices of Milton C. Grimes and the Law Offices of Robert Rubin – for the purpose of pursuing the Matters. Unless otherwise agreed to, the terms of this agreement shall also govern your representation by any such law firm.

Client's Duties. You agree to be truthful with us, to cooperate, to keep us informed of developments, to abide by this Agreement, and to keep us informed of your address, telephone number, and whereabouts. You agree to generally cooperate fully with us in all matters related to the preparation and presentation of your claims.

Legal Fees and Expenses. Client and Counsel agree that Client will not be obligated to pay for legal services or any expenses incurred by Counsel. Rather, you understand that upon the successful conclusion of a case based on the California Voting Rights Act, the Court may award costs and/or attorneys' fees, or such fees and/or costs may be a part of any settlement of said case. Counsel shall be entitled to such fees and/or costs that are part of any award of the Court or settlement.

Approval Necessary for Settlement. You agree that you will not make any settlement or compromise of any nature of any of your claims without prior notice to us.

No Guarantee of Results. Either at the beginning or during the course of Counsel's representation, Counsel may express their opinions or beliefs concerning the matter or various courses of action and the results that might be anticipated. Any such statement is intended to be an expression of opinion only, based on information available to Counsel at the time, and must not be construed by Client as a promise or guarantee of any particular result.

Discharge and Withdrawal. Client may discharge Counsel at any time. Counsel may withdraw from representation with Client's consent or for any reason not prohibited by law.

Entire Agreement. This letter contains the full and complete understanding and agreement between Counsel and Client with respect to Counsel's representation of Client, and supersedes all other agreements between Counsel and Client, whether written or oral, relating thereto, and may not be modified or amended except by a written instrument executed by both Counsel and Client.

Your Contact Information. Please inform us immediately upon full execution of this letter as to your mailing address, telephone number, and email address, and promptly update us regarding any changes in such information via a writing or email delivered to Firm. To the extent that you do not so inform and update, we will not be responsible for any failure to inform or correspond with you.

Counterparts / Signature Delivery. This letter may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute a single agreement. A signature delivered via facsimile, email, or attachment to email shall be equally as effective as an original signature delivered in-person, via mail, or via any other means.

Effectiveness of This Letter. Please sign and return this letter to me by email or mail using my contact information, which can be found at the top of the first page of this letter. This letter will not take effect, and we will have no obligation to provide legal services, unless and until you sign and return this letter to us in a timely fashion.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

We appreciate this opportunity to be of service to you, and we appreciate your commitment to ensuring that the City of Santa Monica no longer deny its minority residents the representation they are entitled to. Please feel free to call or email me if you have any questions about this Agreement, or the contemplated case as we proceed.

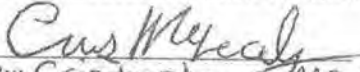
Sincerely,

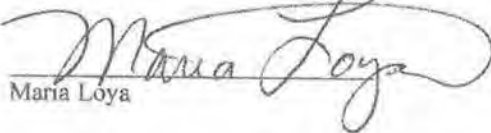
/s/ Kevin Shenkman

KEVIN SHENKMAN

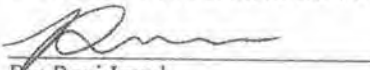
Agreed and acknowledged:

PICO NEIGHBORHOOD ASSOCIATION:


By: Christopher McLeod, Chair PNA
Its:


Maria Loya

ADVOCATES FOR MALIBU PUBLIC SCHOOLS:


By: Roui Israel
Its: President

December 19, 2016


Maria Loya and the Pico Neighborhood Association

Consistent with our discussion, I am writing to clarify and confirm an aspect of the retainer agreement we executed in April. That agreement provided, in part:

Legal Fees and Expenses. Client and Counsel agree that Client will not be obligated to pay for legal services or any expenses incurred by Counsel. Rather, you understand that upon the successful conclusion of a case related to the California Voting Rights Act, the Court may award costs and/or attorneys' fees, or such fees and/or costs may be a part of any settlement of said case. Counsel shall be entitled to such fees and/or costs that are part of any award of the Court or settlement.

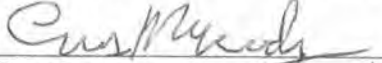

It was brought to our attention in another matter that this paragraph may not fully capture our agreement to pay *all* costs and expenses, though we certainly intended that it would. We recognize and appreciate that you have no prospect for any financial gain from enforcing the voting rights of minority voters, and therefore you should also have no prospect for any financial loss. The California Voting Rights Act provides, in part: "Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation." Nonetheless, we want to clarify that it is our intention that we are responsible for **all** costs and expenses of any sort associated with the Matters; Client will not be responsible for paying anything.

We appreciate this opportunity to be of service to you, and we appreciate your commitment to ensuring that the City of Santa Monica no longer denies its Latino citizens the representation they are entitled to. Please sign below to acknowledge you understand this clarification of our agreement.

Sincerely,
/s/ Kevin Shenkman 
KEVIN SHENKMAN

Agreed and acknowledged:

PICO NEIGHBORHOOD ASSOCIATION


By: Christopher M. Lopez
Its: Chair

Maria Loya