Kevin I. Shenkman (SBN 223315)
Mary R. Hughes (SBN 226622)
Andrea A. Alarcon (SBN 319536)
SHENKMAN & HUGHES
28905 Wight Road
Malibu, California 90265
Telephone: (310) 457- 0970

Morris Baller (SBN 48928)
Laura L. Ho (SBN 173179)
Anne Bellows (SBN 293722)
Ginger L. Grimes (SBN 307168)
GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Avenue, Suite 900
Oakland CA 94612
Telephone: (510) 763-9800

Milton C. Grimes (SBN 59437)
LAW OFFICES OF MILTON C. GRIMES
3774 West 54th Street
Los Angeles, California 90043
Telephone: (323) 295-3023

Robert Rubin (SBN 85084)
LAW OFFICE OF ROBERT RUBIN
3012 Excelsior Blvd. # 802
Minneapolis, MN 55416
Telephone: (415) 298-4857

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA, and DOES 1 through 100, inclusive,

Defendants.

CASE NO. BC616804

NOTICE OF MOTION AND MOTION TO RE-ISSUE JUDGMENT CONSISTENT WITH GUIDANCE FROM THE CALIFORNIA SUPREME COURT

Date: September 18, 2024
Time: 9:00 a.m.
Dept.: 16

Reservation ID: 016334419675

PLEASE TAKE NOTICE that on September 18, 2024 at 9:00 a.m., or as soon as the matter may be heard in Department 16 of the above-entitled Court, Plaintiffs Pico Neighborhood Association and Maria Loya (collectively "Plaintiffs") will and hereby do move for re-issuance of the judgment entered by this Court on February 13, 2019, consistent with the guidance of the California Supreme Court.

The motion is made on the following grounds:

- This Court entered judgment, and issued a corresponding Statement of Decision, on February 13, 2019. As the California Supreme Court would later recognize, this Court "found that the City's at-large voting system unlawfully diluted the electoral strength of its Latino residents within the meaning of the CVRA, in that several alternative voting systems—e.g., district-based elections, cumulative voting, limited voting, and ranked choice voting—would better enable Latino voters to elect candidates of their choice or influence the outcomes of elections." (*Pico Neighborhood Association v. City of Santa Monica* (2023) 15 Cal.5th 292, 309, internal quotations omitted; see also *id*. at p. 307.)
- The Court of Appeal observed that the California Supreme Court did not "reinstate the trial court's judgment on the Act." Indeed, the deadlines for some of the injunctive relief ordered in this Court's February 13, 2019 Judgment have now passed, and thus must be modified to reflect the later entry of a reissued judgment.
- The Court of Appeal remanded this case back to this Court "for further proceedings consistent with the Supreme Court's guidance." This Court's analysis of vote dilution mirrors that directed by the California Supreme Court. Thus, no further findings are necessary for disposition of this case.
- Re-issuing the judgment is a simple ministerial act for this Court in light of this Court's findings and analysis in its February 13, 2019 Statement of Decision.

This motion is based on the following memorandum of points and authorities; the Declaration of Kevin I. Shenkman; the [Proposed] Order; the [Proposed] Judgment lodged together with this motion, as well as upon the pleadings and other records on file with this

Court, the Court of Appeal and the California Supreme Court, in this matter, and upon such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: June 25, 2024 SHENKMAN & HUGHES PC

By: _____/s/Kevin Shenkman_____
Kevin I. Shenkman
Attorneys for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. INTRODUCTION

This Court's analysis of vote dilution, extensively detailed in its February 13, 2019 Statement of Decision, mirrors what the California Supreme Court would later instruct to be the correct standard for deciding vote dilution in its August 23, 2023 opinion. This Court's factual findings, reached after a six-week trial, address every facet of what the California Supreme Court would later advise trial courts to consider, and those findings compel the conclusion reached by this Court:

> [T]he City's at-large voting system unlawfully diluted the electoral strength of its Latino residents within the meaning of the CVRA, in that several alternative voting systems—e.g., district-based elections, cumulative voting, limited voting, and ranked choice voting—would better enable Latino voters to elect candidates of their choice or influence the outcomes of elections.

(*Pico Neighborhood Ass'n v. City of Santa Monica* (2023) 15 Cal.5th 292, 309 [describing this Court's ultimate finding of vote dilution].)

Therefore, all that is left for this Court is to re-issue the judgment, deleting the portions relating to the Equal Protection claim (consistent with the Court of Appeal's decision on that claim, review of which was denied by the Supreme Court), and updating the dates that have passed while this case was in the appellate courts. The judgment should be re-issued promptly so minority voters in Santa Monica may finally have their voting rights respected. (See *Williams v. City of Dallas* (N.D. Tex. 1990) 734 F.Supp. 1317, 1330 ["*In no way will this Court tell African-Americans and Hispanics that they must wait any longer for their voting rights in the City of Dallas*."], emphasis in original).

II. BACKGROUND

This case has an extensive history, as it has traveled from this Court to the California Supreme Court and back. For brevity, only a summary of that history, pertinent to the instant motion, is set out here.

A. Trial and Findings

Following a six-week trial, post-trial briefing and proceedings regarding the selection of appropriate remedies, this Court issued its Statement of Decision ("SOD") and ultimately

entered judgment for Plaintiffs. [1] On the California Voting Rights Act ("CVRA") claim, this Court found:

- Defendant's elections are consistently plagued by racially polarized voting (SOD, pp. 9-32);
- The "probative but not necessary" factors listed in Elections Code section 14028(e) militated in favor of finding a violation of the CVRA (*id.* at pp. 32); and
- Defendant's at-large elections dilute the Latino vote, as demonstrated by evidence that "several available remedies … would enhance Latino voting power over the current at-large system" (*id.* at pp. 38-39; also see *id.* at pp. 65-67).

After more than four years of appellate review, ***all of those findings remain valid and undisturbed***.

B. Appellate Proceedings

In July 2020, the Court of Appeal reversed this Court's judgment on the CVRA claim, ruling that Plaintiffs could not show vote dilution because it was impossible to draw a majority-Latino district. The Court of Appeal also reversed this Court's judgment on the Equal Protection claim.

The California Supreme Court depublished the Court of Appeal's opinion in its entirety on October 21, 2020 and granted review on the CVRA claim. Then, in August 2023 the California Supreme Court reversed the Court of Appeal's decision on the CVRA claim. (*Pico Neighborhood Ass'n v. City of Santa Monica* (2023) 15 Cal.5th 292 ("*Pico*").)

Just as this Court did, the Supreme Court rejected Defendant's argument that to establish vote dilution under the CVRA, a plaintiff must show the possibility of drawing a majority-minority or near-majority-minority district, or for that matter a remedial district with any particular pre-ordained minority proportion. (*Pico*, 15 Cal.5th at 320-323.) The Supreme Court recognized, as other appellate courts had done, that the explicit command of Section 14028(c) of the CVRA – "The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section …" – among other portions of the CVRA, precludes such a restrictive

[1] For the Court's convenience, a copy of the Statement of Decision is attached as Exhibit A to the Declaration of Kevin Shenkman, filed concurrently with this motion.

interpretation. (*Pico*, 15 Cal.5th at 316-319; see also *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 669; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789; *Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1229.)

The Supreme Court held that in addition to showing the "key element" of racially polarized voting, a plaintiff must demonstrate that "under some lawful alternative electoral system, the protected class would have the potential, on its own or with the help of crossover voters, to elect its preferred candidate." (*Pico*, 15 Cal.5th at pp. 307-308.) Thus, a finding of dilution requires "that racially polarized voting exists," and that "the protected class thereby has less ability to elect its preferred candidate or influence the election's outcome than it would have" under a different system. (*Id*. at pp. 314-315.) That different system which "serve[s] as the benchmark undiluted voting practice" for liability purposes may but need not be district elections; it could be "cumulative voting, limited voting, or ranked choice voting." (*Id*. at pp. 315, 318, 319-320.)

The Supreme Court directed that in determining whether the vote dilution element was satisfied, trial courts "should undertake a searching evaluation of the facts and circumstances (see, e.g., Elec. Code § 14028, subd. (e)), including the characteristics of the specific locality, its electoral history, and an 'intensely local appraisal of the design and impact of the contested electoral mechanisms' as well as the design and impact of the potential alternative electoral system." (*Id.* at 308, quoting *Thornburg v. Gingles* (1986) 478 U.S. 30, 79 ("*Gingles*") and citing *Allen v. Milligan* (2023) 599 U.S. 1, 19.)

The Supreme Court recognized this Court found vote dilution under the standard it was announcing:

> "The trial court further found that the City's at-large voting system unlawfully diluted the electoral strength of its Latino residents within the meaning of the CVRA, in that several alternative voting systems—e.g., district-based elections, cumulative voting, limited voting, and ranked choice voting—would better enable Latino voters to elect candidates of their choice or influence the outcomes of elections."

(*Id*. at p. 309, internal quotations omitted; see also *id*. at p. 307.)

The Supreme Court remanded the case to the Court of Appeal to apply the "correct legal standard" for reviewing this Court's finding of vote dilution and to address any "other

unresolved issues in the City's appeal." (*Pico,* 15 Cal.5th at 325.) Then, on February 9, 2024, the Court of Appeal issued a brief order summarizing the appellate history of the case, including the high court's ruling on "the proper way to analyze the Act," and remanding the case to this Court "for further proceedings consistent with the Supreme Court's guidance." (Remand Order at 1-2.)

III. ARGUMENT

A. This Court's Findings Track the Supreme Court's Standard for Vote Dilution.

Though it did not have the benefit of the Supreme Court's opinion, this Court nonetheless made factual findings addressing each of the factors that the Supreme Court held are relevant to the vote dilution issue and ultimately made a finding of vote dilution mirroring the legal standard later adopted by the Supreme Court.

1. Electoral History

The Supreme Court recognized that the "electoral history" of the locality could shed light on the impact of district elections. (*Pico*, supra, 15 Cal.5th at p. 308.) Specifically, the Supreme Court instructed that courts should consider whether "the greater concentration of protected class voters in the hypothetical district … [would] be sufficient to enable them to elect their preferred candidate when combined with the available crossover votes," focusing on voting patterns within the hypothetical remedial district, because "racially polarized voting by other voters in the hypothetical district [may be] lower than in the community as a whole." (*Id.* at p. 318.)

That is precisely what this Court did in this case. After determining that Latino voters consistently preferred Latino candidates when the choice was available (see SOD, pp. 18-21), this Court evaluated how Latino voters' preferred Latino candidates actually performed in the Pico Neighborhood district. Based on the "particular demographics and electoral experiences of Santa Monica," this Court concluded that the remedial district plan would "result in the increased ability of the minority population to elect candidates of their choice or influence the outcome of elections." (SOD, p. 66; see also SOD, p. 39 [citing "precinct-level elections results in past elections from Santa Monica's city council" in finding that the proposed remedial

district "will likely be effective" and improve Latino voters' ability to elect their preferred candidate].) As this court found:

> Mr. Ely's analysis of various elections shows that the Latino candidates preferred by Latino voters perform much better in the Pico Neighborhood district of Mr. Ely's [proposed remedial district] plan than they do in other parts of the city—while they lose citywide, they often receive the most votes in the Pico Neighborhood district.

(SOD, p. 66.) Of course, receiving the most votes in the district is enough to win in a plurality-vote district race, and historically the number of candidates is more than double, and typically more than triple, the number of available seats in Defendant's nonpartisan city council elections. (See *Pico*, 15 Cal.5th at 307.)

2. Specific Characteristics of Santa Monica, Including Those in Section 14028(e).

The Supreme Court also directed that the dilution inquiry be grounded in "the characteristics of the specific locality," including the factors enumerated in Elections Code section 14028, subdivision (e). (*Pico*, 15 Cal.5th at 308, 320, 324.) This Court made well-supported findings on those qualitative factors, which it found "further support" its determination that Defendant's at-large election system dilutes the Latino vote in violation of the CVRA. (SOD, pp. 32-38.) Specifically, this Court found:

- Latino voters are disadvantaged in Santa Monica's exceptionally expensive at-large campaigns due to the disposable wealth disparity between white and Latino residents that is "far greater than the national disparity" (SOD, p. 36) – a disadvantage that would be reduced by district-based elections because "districts tend to reduce the campaign effects of wealth disparities between the majority and minority communities, which are pronounced in Santa Monica" (SOD, p. 67);
- A troubling history of discrimination against Latinos in Santa Monica still impacting the Latino community's ability to compete in expensive at-large elections, including: (1) restrictive real estate covenants that concentrated Latinos into the Pico Neighborhood; (2) 70% percent of Santa Monica voters supporting a proposition to repeal the Rumsford Fair Housing act "and therefore again allow racial discrimination in housing"; (3) segregation in public facilities; and (4) discriminatory programs such as English-literacy requirements for voting and a "repatriation" program that sought to force Mexican-American legal immigrants and even citizens out of the country. (SOD, pp. 33-34.)

- A long record of unresponsive indifference by Defendant to the Latino community and the Latino-concentrated Pico Neighborhood, for example placing "[t]he elements of the city that most residents would want to put at a distance—the freeway, the trash facility, the city's maintenance yard, a park that continues to emit poisonous methane gas, hazardous waste collection and storage, and, most recently, the train maintenance yard—[] all [] in the Latino-concentrated Pico Neighborhood … at the direction, or with the agreement, of Defendant or members of its city council." (SOD, pp. 37-38.)
- "the staggering of Defendants' city council elections enhances the dilutive effect of its at-large election system." (SOD, p. 35)
- Defendant's elections have been plagued by both overt and subtle racial appeals—including depictions of a Latino candidate as the leader of a Latino gang, and repeated questions of a Latina candidate regarding "whether she could represent all Santa Monica residents or just 'her people.'" (SOD, pp. 36-37);
- A pattern of racial exclusion in the appointments made by Defendant's city council to various commissions, resulting in those commissions being "nearly devoid of Latino members, in sharp contrast to the significant proportion (16%) of Santa Monica residents who are Latino" – a fact that "is important not only in city planning but also for political advancement: in the past 25 years there have been 2 appointments to the Santa Monica City Council, and both of the appointees had served on the planning commission." (SOD, p. 38.); and
- "Latinos in the Pico Neighborhood are politically organized in a manner that would more likely translate to equitable electoral strength [in a district system]." (SOD, p. 67.)

As this Court recognized, all of these socio-economic, historical and political factors combine with the at-large election system to deprive Latino voters of the voting power they would enjoy with an alternative system such as district-based elections. Specifically, the continuing impact of historical discrimination against Latinos in Santa Monica, a gulf in wealth and income between Latino and white residents of Santa Monica combined with extraordinarily expensive campaigns, overt and subtle racial appeals in city council campaigns, and the use of dilutive staggered elections, all combine with the at-large system to prevent Latinos from electing the Latino candidates they have preferred. (SOD, pp. 32-38; see also *Gingles*, 478 U.S. at 47 ["The essence" of a vote dilution claim is that an electoral practice like at-large elections

"interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives."].)

3. The Experiences of Similar Jurisdictions

The Supreme Court instructed that courts may also consider "the experiences of other similar jurisdictions that use district elections" in analyzing whether at-large voting is dilutive as compared with district-based elections. (*Pico*, 15 Cal.5th at 321, 324.) Here too, this Court has already made findings that the experiences of comparable jurisdictions support a conclusion that districts would afford Latino voters in Santa Monica a greater opportunity to elect their preferred candidates. This Court evaluated the experiences of other jurisdictions that had recently adopted district elections due to the CVRA, especially the results in districts where the protected class is not a majority, and concluded:

> Trial testimony revealed that jurisdictions that have switched from at-large elections to district elections as a result of CVRA cases have experienced a pronounced increase in minority electoral power, including Latino representation. Even in districts where the minority group is one-third or less of a district's electorate, minority candidates previously unsuccessful in at-large elections have won district elections. (SOD, p. 66)

4. Non-District Remedies

As the Supreme Court noted, "the trial court found that, in addition to district elections, several alternative at-large election methods — cumulative voting, limited voting, and ranked choice voting — would each enhance Latino voting power and their ability to elect candidates of their choice." (*Pico*, 15 Cal.5th at 317; see also SOD, pp. 38-39, 65.) The significance of these findings is not diminished by this Court's ultimate selection of a district remedy. Rather, as the Supreme Court explained:

> "Courts should likewise keep in mind that the inquiry at the liability stage is simply to prove that a solution is possible, and not necessarily to present the final solution to the problem. … In other words, the remedy the court ends up selecting under section 14029 may, but need not, be the benchmark the plaintiff offered to show the element of dilution."

(*Pico*, 15 Cal.5th at 321, internal citations and quotations omitted.)

Particularly in evaluating potential non-district remedies, the Supreme Court instructed "[t]he key inquiry in establishing dilution of a protected class's ability to elect its preferred

candidate under the CVRA [] is what percentage of the vote would be required to win." (*Pico*, 15 Cal.5th at 320.) In a cumulative, limited, or ranked-choice voting system, the Supreme Court explained that percentage is no greater than the "threshold of exclusion." (*See id.* at 320, fn. 11, quoting *Dillard v. Chilton County Bd. Of Education* (M.D. Ala. 1988) 699 F.Supp. 870, 874.) In Santa Monica, as this Court and the Supreme Court recognized, Latinos comprise 13.64% of eligible voters (*id*. at 308; SOD, p. 66)—exceeding the threshold of exclusion of 12.5% the Supreme Court calculated for Santa Monica (see *Pico,* 15 Cal.5th at 320 ["in a jurisdiction with seven seats [like Santa Monica], the threshold of exclusion [is] 12.5%."].) Thus, even under the most adverse circumstances, Latino voters, whom this Court found are cohesive and organized (SOD, pp. 18, 67), can elect their preferred candidate to Defendant's city council with cumulative, limited or ranked-choice voting.

5. Comparison of Remedial Systems to the Current At-Large System

Consistent with the Supreme Court's instruction to determine whether "the alternative voting systems [] offer the protected class at least a 'potential' to elect its preferred candidates that did not exist under the at-large system" (*Pico*, 15 Cal.5th at 322), this Court also evaluated Latinos' voting power (or lack thereof) under the current at-large system. Specifically, evaluating the election outcomes under the current at-large system over the previous 24 years, this Court found that, absent unusual circumstances, Latinos have not been able to elect their preferred Latino candidate in any of those elections:

> [W]hen Latino candidates run for the Santa Monica City Council, Latino voters cohesively support those Latino candidates – in all but one of those six elections, a Latino candidate received the most Latino votes, often by a large margin. And in all but one of those six elections, the Latino candidate most favored by Latino voters lost … . Even in that one instance (2012 – Tony Vazquez) the Latino candidate barely won, coming in fourth in a four-seat race in that unusual election, in which none of the incumbents who had won four years earlier sought re-election.

(SOD, pp. 18-19.)

This Court was explicit in its comparison of the current at-large system to the available remedial systems. (SOD, pp. 38-39 ["At trial, Plaintiffs presented several available remedies (district-based elections, cumulative voting, limited voting and ranked choice voting, each of

which would ***enhance*** Latino voting power ***over the current at-large system***."]; id. at p. 39 ["Based on that evidence, the Court finds that the district map developed by Mr. Ely … will likely be effective, ***improving Latinos' ability to elect their preferred candidate*** … ."]; id. at p. 65 ["cumulative voting, limited voting and ranked choice voting, are possible options in a CVRA action and would ***improve*** Latino voting power in Santa Monica"].)

B. With All of the Findings Having Already Been Made, the Judgment Should Be Reissued.

The Court of Appeal remanded this case for "further proceedings consistent with the Supreme Court's guidance" on the issue of vote dilution, but gave no instructions for those proceedings. Nothing in the Remand Order requires the Court to conduct another trial or take any new evidence. Indeed, no new trial is necessary or appropriate because this Court has (1) already made findings regarding each of the factors the Supreme Court identified as relevant to vote dilution, and (2) also made the ultimate finding required by the Supreme Court ruling in this case that the protected class "has less ability to elect its preferred candidate" under the at large system than it would have under an alternative system. (*See Pico*, 15 Cal.5th at 314-15; Sec. III.A, *supra*.) Because those findings remain intact[2] and are consistent with the legal standard announced by the Supreme Court, there is no need or justification for reopening the case for a new trial.

Rather, as the Court of Appeal noted, the Supreme Court did not "reinstate the trial court's judgment on the Act," so this Court is merely required to perform that ministerial step to provide the Court of Appeal a judgment to review. This Court's Statement of Decision already addresses the vote dilution factors and analysis laid out by the Supreme Court, so no further explanation of the grounds for this Court's decision is necessary. This Court could certainly provide further explanation for its decision if it so desires – perhaps organizing this Court's previous findings relevant to dilution into a single section entitled "Vote Dilution" –but that is not necessary to properly reissue the judgment so the Court of Appeal can review the judgment.

[2] The Court of Appeal reversed the trial court's judgment on the CVRA claim based on an erroneous standard for vote dilution. (*See Pico*, 15 Cal.5th at 316-18.) The Supreme Court then "reverse[d] the judgment of the Court of Appeal," thus undoing the prior reversal, and remanded the case to the Court of Appeal for further proceedings. (*Id.* at 325.)

C. That Elections Have Occurred While This Case Was Pending in the Appellate Courts Does Not Justify a New Trial.

Defendant may argue that the Court should order a new trial to consider evidence regarding elections that occurred since the last trial.[3] However, evidence regarding post-trial elections should not be entertained at this late stage in the case. This Court found, based on elections spanning more than two decades, that Defendant's at-large system is characterized by "a consistent pattern" in which "[i]n most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for Defendant's city council, but, despite that support, the preferred Latino candidate loses." (SOD at 12.) "Because loss of political power through vote dilution is distinct from the mere inability to win a particular election," evidence of vote dilution "that extends over a period of time is more probative … than are the results of a single election." (*Gingles, supra*, 478 U.S. at p. 57.) "[F]or this reason, [] where elections are shown usually to be polarized, the fact that racially polarized voting is not present in one or a few individual elections does not necessarily negate the conclusion that the [jurisdiction] experiences legally significant bloc voting." (*Id.*) Given this Court's unequivocal finding that for more than two decades Latino-preferred candidates have consistently lost due to racially polarized voting, it would be error to disregard that pattern based on evidence from one or two post-trial elections—especially since those elections would, if considered at all, be less probative than the pre-lawsuit elections already examined by this Court. (*See Pico*, 15 Cal.5th at 313, fn. 5, quoting Elec. Code, § 14028, subd. (a) ["[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action."]; see also *United States v. Village of Port Chester* (S.D.N.Y. 2010) 704 F. Supp. 2d 411, 442 [post-lawsuit elections in which a voting rights lawsuit becomes a central campaign issue, are rightly disregarded as outliers fueled by that "special circumstance"].)

[3] Defendant made a similar argument in the Supreme Court and the Court of Appeal in requesting judicial notice of the results of 2020 and 2022 elections. Although the Supreme Court took judicial notice of the raw election results, that court "express[ed] no view" on the import of those election results, nor did the Court of Appeal in its subsequent orders. (*Pico*, 15 Cal.5th at 309, fn. 1.)

The court in *Missouri State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.* (E.D. Mo. 2016) 219 F.Supp.3d 949, 954 summed it up best, in rejecting the defendant's attempt to reopen the evidence to consider post-trial elections which the defendant claimed demonstrated that its existing at-large system did not dilute African American votes:

> [Defendant's] argument seems to be that I should forgo the detailed analysis I conducted of all of the evidence and expert analysis presented over the course of a six-day trial, accept their expert's analysis of the 2016 election results without giving the Plaintiffs a chance to respond and without considering any context, and simply conclude that because there are currently three African Americans (who, they argue, are all Black-preferred candidates) on the Ferguson-Florissant School Board, the current system results in proportionality and is thus legally acceptable and superior to any of the systems Plaintiff propose.
>
> I decline to do so. It would be neither fair nor helpful to consider the School District's expert analysis on the 2016 election results at this stage. A finding of proportional representation at this moment would not, standing alone, negate my liability finding. Plaintiffs have not had the opportunity to respond or offer their own expert analysis. If I were to reopen the case again and give them the chance to do so, we would necessarily extend the case, perhaps past the next election, and then there would seem to be no reason not to reopen the case again to include those results, and so on.

(*Id*. at 954 (internal citations and quotations omitted), citing *Harvell v. Blytheville Sch. Dist. No. 5* (8th Cir. 1995, *en banc*) 71 F.3d 1382, 1388 and *Cottier v. City of Martin* (8th Cir. 2010, *en banc*) 604 F.3d 553, 561 n.4.)

The rationale expressed by the court in *Missouri State Conf. of the NAACP* for refusing evidence of post-trial elections is even stronger in this case. In *Missouri State Conf. of the NAACP*, the court had completed a "six-day trial" (*Id*. at 954); here, this Court completed a six-*week* trial. The evidence of racially polarized voting was, as this Court found, overwhelming:

> Analyzing elections over the past twenty-four years, a consistent pattern of racially-polarized voting emerges. In most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for Defendant's city council, but, despite that support, the preferred Latino candidate loses. … This is the prototypical illustration of legally significant racially polarized voting. (SOD, pp. 12, 20.)

Even if the post-trial elections did not exhibit racially polarized voting, that still would not undermine this Court's findings. Evaluating the seven city council elections the CVRA directs are most probative between 1994 and 2016 – those involving at least one Latino candidate, this Court found that five of those elections exhibited legally significant racially polarized voting, and one more involved "special circumstances" due to the "unusual [circumstance], in which none of the incumbents who had won four years earlier sought re-election." (SOD, p. 19.) Even if the 2020 and 2022 elections[4] were not racially polarized, that would still mean that five out of nine elections were racially polarized and at least one more involved "special circumstances." As the court in another recent CVRA case held, a finding of racially polarized voting in even less than half of the studied elections still supports a finding of a violation of the CVRA. (*Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385, 412-420, 424 [affirming trial court's finding of racially polarized voting and a violation of the CVRA where "five of 10 city council elections, or four of nine school elections" were racially polarized].)

D. The Judgment Should Be Re-Issued Without Further Delay.

As this Court correctly stated in its Statement of Decision, "It is [] imperative that once a violation of voting rights is found, remedies be implemented promptly, lest minority residents continue to be deprived of their fair representation." (SOD, p. 64, citing *Williams v. City of Dallas* (N.D. Tex. 1990) 734 F.Supp. 1317.) Unfortunately, due to the lengthy appellate proceedings following this Court's entry of judgment in February 2019, including the temporary reversal of this Court's judgment in June 2020, the remedies this Court ordered have not yet been implemented and Latino residents continue to be deprived of their fair representation. The next election for Defendant's governing board is scheduled for November 5, 2024.

Concurrently with this motion, Plaintiffs submit a proposed judgment. That proposed judgment is identical to the judgment entered by this Court in February 2019, with two

[4] The 2018 election did not involve any Latino candidates. (See *Westwego Citizens for Better Government v. City of Westwego* (5th Cir. 1989) 872 F.2d 1201, 1208-1209, n. 9 ["plaintiffs may not be denied relief simply because the absence of black candidates has created a sparsity of data on racially polarized voting in purely indigenous elections." "To hold otherwise would allow voting rights cases to be defeated at the outset by the very barriers to political participation that Congress has sought to remove."].)

exceptions: 1) portions relating to the Equal Protection claim are deleted (consistent with the Court of Appeal's decision), and 2) the dates that have passed while this case was in the appellate courts are changed to future dates. Specifically, whereas this Court's February 13, 2019 judgment required Defendant to hold a district-based election on July 2, 2019, with only district-elected members serving on the council after August 15, 2019, the proposed judgment requires Defendant to hold a district-based election on November 5, 2024 (the date of the upcoming statewide general election), with only district-elected members serving on the council after December 15, 2024.[5]

This timing is consistent with the Elections Code, if judgment is entered as late as early-August.[6] The nominating period for November 2024 city council elections (the first step in the election process, in which candidates secure voter signatures in order to secure their place on the ballot) closes on August 15, 2024. (See Elec. Code § 10407.) Other cities, faced with CVRA cases, have converted to district-based elections, including by court order, with similar time to the next election. For example, on July 23, 2018 the Santa Clara Superior Court ordered the City of Santa Clara to implement district-based elections in the November 2018 election, explicitly finding that an order on July 23 provided sufficient time in advance of the November election; indeed, it was enough time and the City of Santa Clara successfully held district-based elections for its city council on November 6, 2018. (See Shenkman Decl. ¶ 4, Ex. C, D.) The City of Carson adopted its district-based election ordinance even closer to the election date – on August 4, 2020, in settlement of a CVRA case, and successfully held district-based elections for its city council on November 3, 2020. (See Shenkman Decl. ¶ 5, Exs. E, F.)

Minority residents in Santa Monica have already waited far too long for their voting rights; this Court can and should end their wait now.[7]

---

[5] For the Court's convenience, attached as Exhibit B to the Declaration of Kevin Shenkman in support of this motion, is a "redline" of the proposed judgment, showing all changes from this Court's February 13, 2019 judgment.

[6] This motion was originally scheduled to be heard in Department 9 on July 24, 2024, but that hearing date was vacated when this case was reassigned on June 21, 2024. Plaintiffs will, soon after filing this motion, seek to advance the hearing date through an ex parte application. If this motion is not heard by early-August, the dates in the proposed judgment may need to be revised.

[7] See Dr. Martin Luther King, Jr. (1963) Letter From a Birmingham Jail ["[J]ustice too long delayed is justice denied."].)

IV. CONCLUSION

This Court's findings and analysis in its Statement of Decision mirror the direction of the California Supreme Court for determining vote dilution under the CVRA. Accordingly, there is nothing more for this Court to do other than to re-issue its judgment, consistent with the appellate proceedings in this case. The voting rights of minorities in Santa Monica and throughout California depend on it.

Dated: June 25, 2024

SHENKMAN & HUGHES
GOLDSTEIN BORGEN DARDARIAN & HO
LAW OFFICE OF MILTON C. GRIMES
LAW OFFICE OF ROBERT RUBIN

By: _____
Kevin Shenkman
Attorneys for Plaintiffs

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 June 25, 2024, I served true copies of the following document(s) described as

MOTION TO RE-ISSUE JUDGMENT

on the interested parties in this action as follows:

Douglas Sloan
SANTA MONICA CITY ATTORNEY
1685 Main Street, Room 310
Santa Monica, CA 90401
Tel: (310) 458-8336

Theodore Boutrous, Marcellus McRae, Kahn Scolnick,
Michelle Maryott, Tiaunia Henry, Helen Galloway, William
Thomson
GIBSON DUNN & CRUTCHER
333 S. Grand Ave.
Los Angeles, CA 90071

BY ELECTRONIC SERVICE: I caused the document(s) in .pdf format to be delivered electronically to the persons listed in the Service List by email(s).

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

Executed on June 25, 2024 at Malibu, California.

/s/Kevin Shenkman
Kevin Shenkman

Make a Reservation

PICO NEIGHBORHOOD ASSOCIATION ET AL VS CITY OF SANTA MONICA

Case Number: BC616804 Case Type: Civil Unlimited Category: Civil Rights/Discrimination
Date Filed: 2016-04-12 Location: Stanley Mosk Courthouse - Department 16

Reservation

Case Name: PICO NEIGHBORHOOD ASSOCIATION ET AL VS CITY OF SANTA MONICA	Case Number: BC616804
Type: Motion re: (Motion to Re-Issue Judgment Consistent With Guidance from the California Supreme Court)	Status: RESERVED
Filing Party: Maria Loya (Plaintiff)	Location: Stanley Mosk Courthouse - Department 16
Date/Time: 09/18/2024 9:00 AM	Number of Motions: 1
Reservation ID: 016334419675	Confirmation Code: CR-GVNN5KBYYZTBMA4HR

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
TOTAL			$0.00

Payment

Amount: $0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: 1969-12-31	

Print Receipt | + Reserve Another Hearing | View My Reservations