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I. INTRODUCTION.

More than fifteen years after a strong majority of both houses of the California Legislature passed, and the Governor signed into law, the California Voting Rights Act ("CVRA"), the City of Santa Monica ("Defendant") continues to cling to its racially discriminatory and unlawful method of electing its City Council, even in the face of a strong majority of its own residents preferring district elections. For decades, the Latino residents of Santa Monica have repeatedly sought representation in their city's government, but their efforts have consistently been thwarted by Defendant's at-large elections. Indeed, since the current at-large council system was adopted in 1946, seventy-one (71) residents have been elected to the Santa Monica City Council, but only one (1) has been the favored Latino candidate of the Latino community .

The CVRA addresses this very problem, which has been recognized by the courts for decades—that is, the dilutive effect of at-large elections where there is "racially polarized voting." (*Thornburg v. Gingles* (1986) 478 U.S. 30, 47.) Quite simply, the CVRA prohibits a political subdivision from "impos[ing] or appl[ying] [an at-large election] in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election." (Elec. Code, § 14027.) The CVRA also specifies what must be shown to establish a violation: "A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision." (Elec. Code, § 14028, subd. (a).) And, the CVRA also specifies the precise elections that should be analyzed. Where plaintiffs seek to show racially polarized voting in "elections for members of the governing body of the political subdivision[,]" it is "elections in which at least one candidate is a member of a protected class . . . ." (Elec. Code, § 14028, subds. (a), (b).) Where plaintiffs seek to show racially polarized voting in "elections incorporating other electoral choices by voters of the political subdivision[,]" it is "elections involving ballot measures, or other electoral choices that affect the rights and privileges of

members of a protected class." (*Ibid.*) The key element of any claim under the CVRA is, therefore, "racially polarized voting."

In this case, not only does Plaintiffs' expert, Dr. J. Morgan Kousser, find that Defendant's elections are plagued by racially polarized voting, but the statistical analysis performed by Defendant's expert, Dr. Jeffrey Lewis, shows the same thing—Defendant's at-large elections over the past twenty-four years reveal a consistent pattern of racially polarized voting. The only real dispute between the experts revolves around methodology. Dr. Kousser bases his analysis on the methods specifically endorsed in the CVRA, and Dr. Lewis contends that the California Legislature should not have endorsed those methods—an argument more appropriately made to the Legislature. Nonetheless, the statistics demonstrate that when serious candidates recognized as Latino run for Defendant's governing board, Latino voters cohesively support those candidates more than any of their non-Hispanic white opponents; however, with the lone occasional exception of Tony Vazquez, all of those Latino candidates lose because the non-Hispanic white majority will not support them. There could not be a clearer violation of the CVRA, yet Defendant still insists on locking its Latino residents out of the democratic process by denying them a voice in city government.

The Court's analysis of liability under the CVRA should end there, but Defendant argues that this Court should ignore the text, purpose and legislative history of the CVRA, and decades of jurisprudence relating to the CVRA and the federal Voting Rights Act ("FVRA"), to require much more. Specifically, Defendant would have this Court require that Plaintiff show that: (i) a majority-Latino district could be created; (ii) no Latino has ever been elected to city council; (iii) Latinos have been unsuccessful in elections for governing boards *other than Defendant's* governing board; and (iv) Latinos can't even elect their second, third, and fourth choices when those candidates are white. None of these additional showings suggested by Defendant have any support in the law; rather, other courts have rejected the very same arguments made by Defendant here, even under the more restrictive FVRA. Indeed, adopting these unsupported requirements would make it virtually impossible for any plaintiff to ever make out a case under the CVRA, or the FVRA for that matter.

The effects of Defendant's election system are both palpable and stark. As a result of Latinos being generally locked out of Defendant's governing board, the Pico Neighborhood, where Latinos (and African Americans) are concentrated, has consistently borne the burden of all undesirable elements of the City. The toxic triangle of Defendant's vehicle maintenance yard, the trash facility, and the freeway have all been placed in the Pico Neighborhood, along with an unmitigated landfill-turned-park that continues to emit methane. The Latino residents have been powerless to prevent the heaping of these indignities on the Pico Neighborhood because the council members understand that they don't need Latinos' votes to be elected.

That result is no accident; it was intentional. In 1946, the Board of Freeholders and the Santa Monica electorate recognized that at-large elections would prevent racial minorities from having a voice in their city government. As shown by the correlation of voting for the at-large system and voting against prohibiting racial discrimination in employment, racial discrimination was a motivating factor in adopting and maintaining the at-large election system. In 1992, when this fact was brought to the attention Santa Monica's Charter Review Commission, they were nearly unanimous in their suggestion that the at-large election system be scrapped because it prevented minorities, particularly Latinos and the Pico Neighborhood, from expressing their distinctive voice in their city government. But a majority of the self-interested city council members refused to allow the Santa Monica electorate to choose district elections at the ballot box.

If Defendant's at-large election system is allowed to stand, the situation will likely get worse; not better. The only Latino ever elected to Defendant's governing board, Tony Vazquez, is almost certain to move on to higher office on the State Board of Equalization in November—he is a Democrat in a runoff against a Republican in a district that is overwhelmingly Democratic. And of Defendant's commissioners—appointed by the City Council and widely regarded as a path to the City Council—only one (1) out of one hundred and six (106) is recognized as Latina or Latino.

Satisfied that either: (1) the combination of racially polarized voting and Defendant's particular at-large system of electing its governing board violates the CVRA; ***and/or*** (2) that

the at-large system was adopted or maintained with a discriminatory intent, this Court should then turn to fashioning an appropriate remedy. The remedy adopted by way of settlement and judgment in most CVRA cases is prohibiting the continued imposition of at-large elections—requiring "district-based elections" instead. (Elec. Code, § 14029.) Though it appears that Defendant will not present any remedy, Plaintiffs' expert demographer, David Ely, has developed a district plan that accounts for all traditional districting criteria enumerated in Section 21620 of the Elections Code and the public input he received from Santa Monica's neighborhood groups. That remedy is likely to be effective here, as evidenced by an analysis of past election results from the districts drawn by Mr. Ely. But even if this Court were to find district-based elections unsuited to remedying Defendant's violation of the CVRA and/or the Equal Protection Clause, other remedies, such as ranked-choice voting, cumulative voting and limited voting, are also available. In certain circumstances, these alternative at-large systems of election can also be effective in providing a minority community the opportunity to elect candidates of its choice, or at least influence the outcome of elections to a degree greater than the status quo. Indeed, any change to Defendant's scheme of at-large plurality-winner staggered elections, could only serve to improve Latino voters' opportunity to secure a seat at the table of Defendant's governing board, giving the Latino community a voice in the City. Regardless of the particular remedy, one thing is abundantly clear—Defendant's discriminatory voting system violates the CVRA and must change.

II. "AT-LARGE" ELECTIONS AND THE CVRA.

The CVRA disfavors the use of so-called "at-large" voting—an election method that permits voters of an entire jurisdiction to elect candidates to the seats of its governing board. (See generally *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660 (*Sanchez*).) Voting rights advocates have targeted "at-large" election schemes for decades, because they often result in "vote dilution," or the impairment of minority groups' ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. (See *Thornburg v. Gingles* (1986) 478 U.S. 30, 46 (*Gingles*).) The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting

schemes may operate to minimize or cancel out the voting strength" of minorities. (*Id.* at p. 47; see also *id.* at p. 48, n. 14 [at-large elections may also cause elected officials to "ignore [minority] interests without fear of political consequences"], citing *Rogers v. Lodge* (1982) 458 U.S. 613, 623; *White v. Regester* (1973) 412 U.S. 755, 769.) "[T]he majority, by virtue of its numerical superiority, will regularly defeat the choices of minority voters." (*Gingles*, at p. 47) When racially polarized voting occurs, dividing the political unit into single-member districts may facilitate a minority group's ability to elect its preferred representatives. (*Rogers*, at p. 616.)

Section 2 of the Federal Voting Rights Act ("FVRA"), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, discriminatory at-large election schemes. (*Gingles*, *supra*, 478 U.S. at p. 37; see also Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402.) Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, "[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965." (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 808 (*Jauregui*).)

While the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered "restrictive interpretations given to the federal act." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 2.) So, while cases decided under the FVRA may provide some guidance, a more expansive view of the CVRA is warranted.

The CVRA is more expansive than the FVRA in several important ways. Principally, by eliminating the requirement that plaintiffs show that a "majority-minority" district can be drawn (Elec. Code, § 14028, subd. (c); *Sanchez*, *supra*, 145 Cal.App.4th at p. 669), and making other factors "not necessary [] to establish a violation" (Elec. Code, § 14028, subd. (e)), the CVRA simplifies claims against political subdivisions that cling to their at-large election systems and makes it easier for plaintiffs to put an end to the inherently discriminatory at-large election systems that still plague parts of California. The CVRA requires only that a plaintiff

show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA; not the desirability of any particular remedy. (See Elec. Code, § 14028, subd. (a) ["A violation of Section 14027 ***is established*** if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision ***or*** in elections incorporating other electoral choices by the voters of the political subdivision . . . ."], emphasis added; see also Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown."].)

The key element under the CVRA—"racially polarized voting"—consists of two interrelated elements: (1) "the minority group . . . is politically cohesive[;]" and (2) "the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances—usually to defeat the minority's preferred candidate." (*Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1413, quoting *Gingles*, *supra*, 478 U.S. at pp. 50–51.) It is the combination of plurality-winner at-large elections and racially polarized voting that yields the harm the CVRA is intended to combat. (*Jauregui*, *supra*, 226 Cal.App.4th at p. 789 [describing how vote dilution is proven in FVRA cases and how vote dilution is differently proven in CVRA cases].)

Consistent with cases decided under the FVRA, the CVRA also directs the courts, in analyzing "elections for members of the governing body of the [defendant]" to pay particular attention to those "elections in which at least one candidate is a member of a protected class." (Elec. Code, § 14028, subds. (a), (b).) While Defendant's at-large election system in this case was adopted and maintained with an intent to discriminate, the CVRA is very clear that "proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required." (Elec. Code, § 14028, subd. (d).)

Once liability is established under the CVRA, the Court has a broad range of remedies from which to choose in order to provide greater electoral opportunity, including both district and non-district solutions. (See Elec. Code, § 14029; *Sanchez*, *supra*, 145 Cal.App.4th at p.

670; *Jauregui, supra*, 226 Cal.App.4th at p. 808 ["The Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act. It is incongruous to intend this expansion of vote dilution liability but then constrict the available remedies in the electoral context to less than those in the Voting Rights Act. The Legislature did not intend such an odd result."].)

III. DEFENDANT'S ELECTIONS VIOLATE THE CVRA.

A. There Are Two Elements to a CVRA Claim: (1) An "At Large Method of Election" and (2) "Racially Polarized Voting."

The unambiguous text of the CVRA makes clear that there are only two necessary elements to establish a claim under the CVRA—an "at large method of election" and "racially polarized voting":

> 14027: An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026.
>
> 14028 (a): A violation of Section 14027 ***is established*** if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision . . . .

(Elec. Code, §§ 14027, 14028, emphasis added.) The legislative history too supports this straightforward reading of the CVRA. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 2 [The CVRA "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity."] and at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."].) And, the appellate courts that have addressed the CVRA have likewise noted that showing racially polarized voting establishes the at-large election system dilutes minority votes and therefore violates the CVRA. (*Rey v. Madera*

Unified School Dist., 203 Cal.App.4th at p. 1229 ["To prove a CVRA violation, the plaintiffs must show that the voting was racially polarized. However, they do not need to either show that members of a protected class live in a geographically compact area or demonstrate a discriminatory intent on the part of voters or officials."]; *Jauregui*, *supra*, 226 Cal.App.4th at p. 798 ["The trial court's unquestioned findings [concerning racially polarized voting] demonstrate that defendant's at-large system dilutes the votes of Latino and African American voters."].)

B. Defendant Employs An "At Large" Method of Electing Its City Council.

Defendant employs an at large method of electing its governing board—in other words all of the voters residing in Santa Monica elect every member of its city council. Defendant has admitted this in response to Request for Admission No. 1.

C. The Relevant Elections Are Consistently Plagued By Racially Polarized Voting.

The consistent presence of racially polarized voting in elections for Defendant's governing board—the city council—is also beyond any doubt. Though they employ slightly different analyses, the analyses of Plaintiffs' and Defendant's experts reveal the same thing—Defendant's elections are racially polarized.

Dr. J. Morgan Kousser, a Caltech professor and voting rights expert for over 40 years, analyzed the elections specified by the CVRA: "elections for members of the governing body of the political subdivision . . . in which at least one candidate is a member of a protected class." (Elec. Code, § 14028; Kousser Decl., at Appendices A & B.) Dr. Kousser performed both weighted and un-weighted regression analyses for each such election, and provides both his estimates and the standard error in parentheses for each. Only where the difference in support between Latinos and non-Hispanic whites is statistically significant to a standard 95%

confidence level, does Dr. Kousser conclude that there is racially polarized voting.[1] Still, with this high standard, consistent racially polarized voting is revealed. Based on his extensive analysis, Dr. Kousser concluded that Santa Monica City Council elections are racially polarized, and with the lone exception of Tony Vazquez, the candidates most favored by Latino voters lose. (Kousser Decl., at Appendix B.) Dr. Kousser provides the details of his analysis, including group voting behavior estimates, for some of the more recent elections meeting the criteria of the CVRA, and concludes those elections demonstrate "stark racially polarized voting" that is "far more pronounced than in other California jurisdictions including Palmdale, where [he] has analyzed elections for racially polarized voting and the courts ultimately found violations of the CVRA and FVRA." (Kousser Decl., at ¶ 59.)

Likewise, even the analyses of Defendant's expert confirm that these elections, and others, exhibit racially polarized voting, though he claims to have reached no conclusions about racially polarized voting. (Lewis Deposition, at pp. 72–73, 117:6–16 ["I have not reached conclusions about the existence or nonexistence of racially-polarized voting"], 120–124, 136–137, 147–152, 161–162, 171–209.)

1. The definition of racially polarized voting and how it is determined.

The CVRA defines "racially polarized voting" as "voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. § 1973 et seq.), in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate." (Elec. Code, § 14026, subd. (e).) The federal jurisprudence regarding "racially polarized voting" over the past thirty-two years finds its roots in Justice Brennan's decision in *Gingles*, and in particular, the second and third "*Gingles* factors." Justice Brennan explained that racially polarized voting is tested by two criteria: (1) that the minority group is politically cohesive; and (2) the majority group votes sufficiently as

[1] In another CVRA case decided earlier this year—*Yumori Kaku v. City of Santa Clara*—the court found that just an 80% confidence level was sufficient in those circumstances to show racially polarized voting. In any event, Dr. Kousser uses the stricter standard of a 95% confidence level here.

a bloc to enable it to usually defeat the minority group's preferred candidates. (*Gingles*, *supra*, 478 U.S. at p. 451.) The extent of majority "bloc voting" sufficient to show racially polarized voting is that which allows the white majority to "usually defeat the minority group's preferred candidate." (*Ibid.*) As Justice Brennan wrote thirty-two years ago, it is through establishment of this element that impairment is shown—i.e. that the "at-large method of election [is] imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election." (Elec. Code, § 14027; *Gingles*, at p. 51 ["In establishing this last circumstance, the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives."].) Subsequent discussions in federal cases have offered definitions that track Justice Brennan's opinion in *Gingles*.[2]

The U.S. Supreme Court in *Gingles* also set forth appropriate methods of identifying racially polarized voting; since individual ballots are not identified by race, race must be imputed through ecological demographic and political data. The long-approved method of "ecological regression" yields statistical power to determine if there is racially polarized voting if there are not a sufficient number of racially homogenous precincts (90% or more of the precinct is of one particular ethnicity). (See *Benavidez v. City of Irving* (N.D. Tex. 2009) 638 F.Supp.2d 709, 723 ["HPA [(homogenous precinct analysis)] and ER [(ecological regression)] were both approved in *Gingles* and have been utilized by numerous courts in Voting Rights Act cases."].) The CVRA expressly adopts this method of demonstrating racially polarized voting. (Elec. Code, § 14026, subd. (e) ["The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting."].)

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[2] See, e.g., J. Gerald Hebert, Donald B. Verrilli, Jr., Paul M. Smith, and Sam Hirsh, *The Realists' Guide to Redistricting: Avoiding the Legal Pitfalls* (Chicago: American Bar Assn., 2000), at pp. 41–44; Bernard Grofman, Lisa Handley, and Richard G. Niemi, *Minority Representation and the Quest for Voting Equality* (New York: Cambridge University Press, 1992), at pp. 82–108.

Perhaps the simplest way to understand racially polarized voting and how it is determined is to consider what the U.S. Supreme Court in *Gingles* held demonstrates racially polarized voting. Specifically, the Court in *Gingles*, and many lower courts since then, test whether there is racially polarized voting by focusing on the level of support for minority candidates from minority voters and majority voters respectively. (See *Gingles*, *supra*, 478 U.S. at pp. 58–61 ["We conclude that the District Court's approach, which tested data derived from three election years in each district, and *which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did, **satisfactorily addresses each facet of the proper legal standard**."], italics and emphasis added; see also, e.g., *Garza v. County of Los Angeles* (C.D. Cal. 1990) 756 F.Supp. 1298, 1335–1337, *aff'd*, 918 F.2d 763 (9th Cir. 1990); *Benavidez v. Irving Indep. Sch. Dist.* 2014 WL 4055366, *11–12 (N.D. Tex. Aug. 15, 2014) [finding racially polarized voting based on Dr. Engstrom's analysis which the court described as follows: "Dr. Engstrom then conducted a statistical analysis . . . to estimate the percentage of Hispanic and non-Hispanic voters who voted for the Hispanic candidate in each election . . . . Based on this analysis, Dr. Engstrom opined that voting in Irving ISD trustee elections is racially polarized."].) Comparing the levels of support for minority candidates, from minority voters and majority voters, respectively, is particularly telling because it best reveals white bias and unwillingness to vote for minorities for the particular governing body at issue. That same analytical method is also what Dr. Kousser used to determine whether Palmdale's elections were racially polarized, and the court in that case adopted Dr. Kousser's analysis, finding it to be "persuasive," and the appellate court affirmed the trial court's finding of racially polarized voting. (*Jauregui*, *supra*, 226 Cal.App.4th at p. 790.)

2. Dr. Kousser's analysis.

Consistent with *Gingles*, Dr. Kousser focused his attention on candidates recognized as Latino, estimating the support for each minority candidate through multivariate ecological regression analysis. See Elec. Code, § 14028, subd. (b) ["The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate

is a member of a protected class . . . ."].) Of the 7 elections for Santa Monica City Council between 1994 and 2016, for which sufficient data is available, that involved Spanish-surnamed candidates, Dr. Kousser estimated through unweighted and weighted regression analysis that non-Hispanic whites voted statistically significantly differently from Latinos in 6 of the 7 elections. In all but one of those six elections, the Latino candidate most favored by Latino voters lost.

Unweighted Ecological Regression

Year	Latino Candidate(s)	% Latino Support	% Non-Hispanic White Support	Polarized	Won?
1994	**Vazquez**	142.5 (28.2)	34.4 (1.8)	Yes	No
1996	**Alvarez**	24.9 (12.6)	15.6 (1.0)	No	No
2002	**Aranda**	68.2 (10.2)	16.5 (1.1)	Yes	No
2004	**Loya**	101.0 (12.0)	21.0 (2.0)	Yes	No
2008	**Piera-Avila**	32.5 (5.5)	5.2 (0.8)	Yes	No
2012	**Vazquez** **Gomez** **Duron**	91.4 (8.4) 29.6 (3.1) 5.2 (2.5)	19.4 (1.9) 2.9 (0.7) 4.4 (0.6)	Yes Yes No	Yes No No
2016	**de la Torre** **Vazquez**	89.9 (6.5) 71.7 (11.4)	13.3 (1.7) 36.6 (3.0)	Yes Yes	No Yes

Weighted Ecological Regression

Year	Latino Candidate(s)	% Latino Support	% Non-Hispanic White Support	Polarized	Won?
1994	**Vazquez**	145.5 (28.0)	34.9 (1.9)	Yes	No
1996	**Alvarez**	22.2 (12.9)	15.8 (1.1)	No	No
2002	**Aranda**	82.6 (12.6)	16.5 (1.3)	Yes	No
2004	**Loya**	106.0 (12.3)	21.2 (2.0)	Yes	No
2008	**Piera-Avila**	33.3 (5.2)	5.7 (0.8)	Yes	No
2012	**Vazquez** **Gomez** **Duron**	92.7 (9.0) 30.4 (3.3) 5.0 (2.6)	19.1 (2.0) 2.9 (0.7) 4.4 (0.6)	Yes Yes No	Yes No No

2016	**de la Torre**	88.0 (6.0)	12.9 (1.5)	Yes	No
	Vazquez	78.3 (9.0)	36.6 (2.3)	Yes	Yes

The unweighted and weighted ecological regression analyses of these elections[3] also reveals that when serious candidates recognized as Latinos run for the Santa Monica City Council, Latino voters cohesively support those Latino candidates. In 5 out of the 7 elections discussed above, a Latino candidate received the most Latino votes, but only once (2012—Tony Vazquez) did that Latino candidate prevail. Even in that one instance the Latino candidate barely won, coming in fourth in a four-seat race in which only two incumbents sought re-election.

In 1994, in a race for three city council positions, Latino voters heavily favored the lone Latino candidate—Tony Vazquez. But he lost due to a lack of support from non-Hispanic whites. The details of the unweighted ecological regression analysis are summarized in the table below:

Candidate	**Latino**	**Asian**	**Est. Black**	**Est. Non-Hispanic White**	**Actual %**
Bob Holbrook*	-108.1 (39.1)	349.0 (68.2)	37.1 (22.1)	35.1 (2.5)	36.5
Pam O'Connor*	107.9 (27.4)	-160.3 (47.7)	7.2 (15.5)	39.6 (1.8)	36.3
Ruth Ebner*	-104.6 (33.0)	302.0 (57.4)	45.2 (18.6)	35.2 (2.1)	35.7
Tony Vazquez	142.5 (28.2)	-190.1 (49.1)	20.2 (15.9)	34.4 (1.8)	33.2
Bruria Finkel	116.3 (28.9)	-207.2 (50.4)	6.3 (16.4)	36.9 (1.9)	33.0
Matthew P. Kann	-82.8 (31.2)	244.3 (54.3)	26.0 (17.6)	23.6 (2.0)	24.4
Bob Knonovet	-4.0 (7.8)	48.2 (13.6)	5.0 (4.4)	8.6 (0.5)	8.9
Ron Taylor	52.2 (6.4)	-38.7 (11.2)	9.9 (3.6)	4.9 (0.4)	6.3
John Stevens	38.7 (5.9)	9.3 (10.3)	2.5 (3.4)	3.6 (0.4)	5.6
Wallace Peoples	11.6 (7.1)	37.6 (12.4)	11.2 (4.0)	3.6 (0.5)	5.3
Joe Sole	12.5 (4.1)	-5.4 (7.2)	1.1 (2.3)	3.0 (0.3)	3.2

[3] For the sake of brevity, only the unweighted ecological regression results are duplicated below. The weighted ecological regression results are not materially different.

In 2002, a race for three city council positions, the lone Latina candidate and resident of the Pico Neighborhood—Josefina Aranda—was favored by Latino voters. But she lost due to a lack of support from non-Hispanic whites. The details of the unweighted ecological regression analysis are summarized in the table below:

Candidate	Latino	Asian	Black	Non-Hispanic White	Actual %
Pam O'Connor*	54.7 (20.3)	-24.7 (50.3)	31.2 (27.7)	46.4 (2.2)	43.4
Kevin McKeown*	62.4 (20.7)	-6.8 (51.3)	33.2 (28.3)	44.3 (2.3)	42.8
Bob Holbrook*	-9.9 (25.6)	133.2 (63.5)	19.8 (35.0)	34.7 (2.8)	36.2
Abby Arnold	43.9 (16.0)	-50.3 (39.7)	17.5 (21.9)	39.4 (1.8)	35.2
Matteo Dinolfo	0.4 (20.4)	83.9 (50.6)	11.3 (27.9)	26.6 (2.2)	27.1
Josefina S. Aranda	68.2 (10.2)	52.1 (25.3)	28.7 (13.9)	16.5 (1.1)	21.3
Chuck Allord	0.5 (9.1)	14.7 (22.5)	0.6 (12.4)	10.9 (1.0)	10.1
Jerry Rubin	0.7 (7.2)	-13.2 (17.9)	25.1 (9.9)	9.0 (0.8)	7.8
Pro Se	8.6 (5.4)	2.9 (13.3)	27.8 (7.4)	4.8 (0.6)	5.4

In 2004, a race for four city council positions, the lone Latina candidate and resident of the Pico Neighborhood—Maria Loya—was heavily favored by Latino voters. But she lost due to a lack of support from non-Hispanic whites. The details of the unweighted ecological regression analysis are summarized in the table below:

Candidate	Latino	Asian	Black	Non-Hispanic White	Actual %
Bobby Shriver*	29.6 (19.8)	44.1 (63.4)	-14.4 (27.0)	52.0 (3.3)	48.7
Richard Bloom*	59.9 (13.2)	-49.2 (42.4)	19.6 (18.1)	35.8 (2.2)	33.7
Herb Katz*	15.0 (21.8)	97.4 (70.0)	-20.6 (29.8)	28.7 (3.6)	29.2
Ken Genser*	50.3 (12.5)	-55.3 (40.1)	11.9 (17.1)	29.0 (2.1)	27.0
Patricia Hoffman	37.4 (12.8)	-30.1 (40.9)	29.2 (17.4)	27.1 (2.1)	25.4
Matt Dinolfo	2.8 (23.4)	62.6 (75.0)	-17.7 (31.9)	25.6 (3.9)	23.7
Maria Loya	101.0 (12.0)	-65.4 (38.5)	25.6 (16.4)	21.0 (2.0)	23.1
Kathryn J. Morea	-8.3 (15.3)	61.7 (49.1)	14.5 (20.9)	21.5 (2.5)	19.5
Michael Feinstein	38.1 (8.7)	-29.7 (27.8)	3.1 (11.9)	16.6 (1.4)	16.2
David Cole	1.5 (3.7)	54.0 (11.8)	6.9 (5.0)	6.5 (0.6)	8.4
Leticia M. Anderson	14.5 (3.9)	6.1 (12.6)	13.1 (5.4)	5.7 (0.7)	6.8
Bill Bauer	3.9 (4.1)	35.1 (13.0)	7.4 (5.5)	5.3 (0.7)	6.8
L. Mendelsohn	4.5 (27.5)	26.3 (8.8)	9.4 (3.8)	5.2 (0.5)	6.6
Tom Viscount	10.7 (4.4)	4.7 (14.1)	7.7 (6.0)	5.2 (0.7)	5.6
Jonathan Mann	4.0 (2.4)	10.4 (7.6)	4.4 (3.3)	3.1 (0.4)	3.6

Linda Armstrong	3.8 (1.7)	16.5 (5.5)	6.0 (2.4)	1.0 (0.3)	2.1

In 2008, a race for four city council positions, the lone Latina candidate and resident of the Pico Neighborhood—Linda Piera-Avila—received significant support from Latino voters, even though she was not a particularly serious candidate (she received only about one-quarter of the votes needed to win one of four seats). She had almost no support from non-Hispanic whites. The details of the unweighted ecological regression analysis are summarized in the table below:

Candidate	Latino	Asian	Black	Non-Hispanic White	Actual %
Bobby Shriver*	-2.7 (15.7)	27.0 (39.7)	58.8 (19.8)	53.2 (2.4)	47.7
Richard Bloom*	50.2 (8.2)	7.0 (20.7)	42.0 (10.4)	40.6 (1.2)	39.7
Ken Genser*	55.6 (9.7)	-12.7 (24.5)	30.7 (12.2)	39.4 (1.5)	37.6
Herb Katz*	10.0 (14.6)	58.4 (36.8)	45.5 (18.4)	34.2 (2.2)	33.7
Ted Winterer	15.7 (12.9)	14.5 (32.5)	39.5 (16.2)	23.9 (2.0)	23.6
Susan Hartley	19.6 (9.3)	68.1 (23.5)	24.6 (11.7)	16.0 (1.4)	19.5
Michael Kovac	2.3 (6.3)	28.6 (16.0)	25.0 (8.0)	11.7 (1.0)	12.4
Jerry Rubin	19.9 (7.2)	8.8 (18.2)	20.3 (0.1)	10.8 (1.1)	11.9
Linda M. Piera-Avila	32.5 (5.5)	35.3 (14.0)	7.0 (7.0)	5.2 (0.8)	9.1
Herbert Silverstein	0.0 (5.4)	11.4 (13.7)	5.4 (6.9)	7.1 (0.8)	6.8
John Blakely	4.8 (4.3)	19.5 (10.8)	11.5 (5.4)	4.3 (0.7)	5.5
Jon Louis Mann	8.8 (3.4)	20.8 (8.5)	7.1 (4.2)	3.1 (0.5)	4.7
Linda Armstrong	13.8 (2.4)	18.8 (6.1)	4.5 (3.1)	3.0 (0.4)	4.7

In 2012, two incumbents—Richard Bloom and Bobby Shriver—decided not to run for re-election. In a race for four city council positions, the three Latino candidates—Tony Vazquez, Robert Gomez and Steve Duron—were collectively favored by Latino voters but did not receive nearly as much support from non-Hispanic white voters. Tony Vazquez was able to eke out a victory, coming in fourth place in this four-seat race. The details of the unweighted ecological regression analysis are summarized in the table below:

Candidate	Latino	Asian	Black	Non-Hispanic White	Actual %
Ted Winterer*	55.1 (13.8)	-22.7 (52.8)	-3.9 (17.1)	41.1 (3.2)	36.9
Terry O'Day*	65.1 (10.0)	-35.2 (38.1)	29.0 (12.4)	38.0 (2.3)	35.7
Gleam Davis*	52.0 (11.2)	-27.7 (42.9)	30.0 (13.9)	34.0 (2.6)	31.7
Tony Vazquez*	**91.4 (8.4)**	17.6 (32.0)	8.1 (10.4)	**19.4 (1.9)**	24.9
Shari Davis	3.8 (12.9)	49.7 (49.3)	7.7 (16.0)	24.2 (3.0)	22.6
Richard McKinnon	3.4 (9.8)	35.1 (37.4)	8.4 (12.1)	17.0 (2.3)	16.7
John Cyrus Smith	8.3 (4.7)	82.3 (18.1)	12.3 (5.9)	9.9 (1.1)	14.0
Frank Gruber	11.7 (11.7)	43.4 (44.6)	-17.0 (14.5)	13.1 (2.7)	12.9
Jonathan Mann	19.5 (4.7)	4.6 (17.9)	16.6 (5.8)	9.8 (1.1)	10.7
Bob Seldon	-10.5 (7.5)	99.2 (28.8)	6.4 (9.3)	5.3 (1.8)	8.9
Armen Melkonians	-1.3 (3.9)	31.5 (15.0)	19.1 (4.9)	7.0 (0.9)	8.3
Terence Later	0.3 (5.5)	1.5 (20.9)	11.2 (6.8)	8.8 (1.3)	7.8
Jerry Rubin	9.4 (3.4)	-13.5 (13.1)	11.4 (4.2)	7.0 (0.8)	6.4
Robert Gomez	**29.6 (3.1)**	15.2 (11.9)	8.8 (3.9)	**2.9 (0.7)**	6.1
Steve Duron	5.2 (2.5)	15.4 (9.4)	4.8 (3.1)	**4.4 (0.6)**	5.1

Finally, in 2016, a race for four city council positions, Oscar de la Torre—a Latino resident of the Pico Neighborhood—was heavily favored by Latinos, but lost due to a lack of support from non-Hispanic whites. Importantly, Mr. de la Torre received more support from Latinos than did Mr. Vazquez. The details of the ecological regression analysis are summarized in the table below:

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Terry O'Day*	51.5 (8.2)	8.9 (31.0)	20.3 (11.3)	39.1 (2.2)	37.3
Tony Vazquez*	**71.7 (11.4)**	-6.4 (42.8)	12.1 (15.7)	**36.6 (3.0)**	35.7
Ted Winterer*	32.4 (11.3)	-49.1 (42.4)	7.0 (15.5)	43.6 (2.9)	35.1
Gleam Davis*	39.8 (9.2)	-8.1 (34.4)	24.7 (12.6)	37.9 (2.4)	34.5
Armen Melkonians	11.0 (9.7)	69.6 (36.3)	9.4 (13.3)	23.3 (2.5)	24.4
Oscar de la Torre	**89.9 (6.5)**	32.2 (24.4)	22.1 (8.9)	**13.3 (1.7)**	21.8
James T. Watson	2.6 (5.3)	24.0 (20.0)	28.8 (7.3)	10.9 (1.4)	11.9
Mende Smith	12.0 (4.4)	11.3 (16.5)	14.1 (6.0)	9.4 (1.1)	10.1
Terence Later	4.8 (5.8)	12.3 (21.7)	5.9 (7.9)	10.3 (1.5)	9.9
Jonathan Mann	10.5 (3.6)	4.9 (13.4)	8.1 (4.9)	7.4 (0.9)	7.7

To summarize: in 1994 Tony Vazquez was the Latino-preferred candidate and he lost; in 2002 Josefina Aranda was the Latino-preferred candidate and she lost; in 2004 Maria Loya was the Latino-preferred candidate and she lost; in 2012 Tony Vazquez was the Latino-preferred candidate and he barely came in fourth place in a four-seat election in which two incumbents did not seek re-election; and in 2016 Oscar de la Torre was the Latino-preferred candidate and he lost. With the lone exception of 2012, the top choices of non-Hispanic whites were elected; Latinos did not even have the ability to veto any of the choices of non-Hispanic whites.

3. Dr. Lewis' analysis.

Though Dr. Lewis denigrates the methodologies that have been used to demonstrate racially polarized voting in FVRA cases, and thus were endorsed by the California Legislature, the results of his analyses also reveal racially polarized voting. (See Elec. Code, 14026 subd. (e) ["The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. § 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting."].)

In deposition, though he refused to opine on whether particular elections exhibited racially polarized voting, Dr. Lewis confirmed all of the indicia of racially polarized voting in those elections. Specifically, Dr. Lewis confirmed that his ecological regression and ecological inference results demonstrate: (1) that the Latino candidates discussed above likely 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. (Lewis Deposition, at pp. 72–73, 120–124, 136–137, 147–152, 161–162, 171–209.) Dr. Lewis' analyses showed that this statistically significant difference in voting behavior between Latinos and non-Hispanic whites is not confined to city council elections—it also holds true in elections for other local offices (e.g. school board and college board) and "ballot measures . . . that affect the rights and privileges of members of a protected class" such as Propositions 187

(1994), 209 (1996) and 227 (1998). (Elec. Code, 14028 subd. (b).) (Lewis Deposition, at pp. 119–121, 133, 147–152, 161–167, 205–209.)

D. The Secondary Factors of the CVRA Are Also Present.

Though not necessary to prove a violation, the CVRA lists "other factors" that are probative in a case under the CVRA:

> "[a] history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, 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."

(Elec. Code, § 14028, subd. (e).) Those factors are abundantly present in Santa Monica.

1. History of discrimination.

In *Garza v. County of Los Angeles* (C.D. Cal. 1990) 756 F.Supp. 1298, the court detailed how "[t]he Hispanic community in Los Angeles County has borne the effects of a history of discrimination." (*Id.* at pp. 1339–1340, *aff'd*, 918 F.2d 763 (9th Cir. 1990).) The court described the many sources of discrimination endured by Latinos in Los Angeles County:

- "restrictive real estate covenants [that] have created limited housing opportunities for the Mexican-origin population";
- the "repatriation" program in which "many legal resident aliens and American citizens of Mexican descent were forced or coerced out of the country";
- segregation in public schools;
- exclusion of Latinos from "the use of public facilities" such as public swimming facilities; and
- "English language literacy [being] a prerequisite for voting" until 1970.

Since Santa Monica is within Los Angeles County, Plaintiffs do not need to re-prove this history of discrimination in this case. (See *Smith v. Clinton* (E.D. Ark. 1988) 687 F.Supp. 1310, 1317 ["We do not believe that this history of discrimination, which affects the exercise

of the right to vote in all elections under state law, must be proved anew in each case under the Voting Rights Act."].) Moreover, this same sort of discrimination was perpetuated specifically against Latinos in Santa Monica. For example, restrictive real estate covenants were so common in Santa Monica that Wilshire Blvd. became known as the Mason-Dixon Line of Santa Monica, and approximately 70% of Santa Monica voters voted in favor of Proposition 14 in 1964 to repeal the Rumford Fair Housing Act and therefore again allow racial discrimination in housing. (See Kousser Decl., at ¶ 104, fns. 149–150.) And racial minorities were confined to the portion of the beach in Santa Monica known as the "Inkwell." (*Ibid.*, see also Oscar de la Torre Deposition, at p. 35; Lichtman Deposition, at p. 135:14–19.) Even further, the extensive list of undesirable and hazardous items dumped on the Latino-concentrated Pico Neighborhood—the trash facility, the city's vehicle maintenance yard, the freeway and an unmitigated methane emitting landfill, among other things—demonstrates a long history of official and unofficial discrimination.

2. The use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections.

The staggering of Defendant's city council elections (electing 4 or 3 council members every two years instead of electing all 7 every four years) is known to enhance the dilutive effects of at-large election systems. (See *City of Lockhart v. United States* (1983) 460 U.S. 125, 135 ["The use of staggered terms also may have a discriminatory effect under some circumstances, since it . . . might reduce the opportunity for single-shot voting or tend to highlight individual races."]; *City of Rome v. United States* (1980) 446 U.S. 156, 183 [same].) While it is true that most California cities stagger their council elections, that does not change the fact that staggering enhances the dilutive effect of at-large elections. And, nothing prevents Defendant from unstaggering its elections. (Cal. Const. Art. XI § 5.)

In fact, in his deposition, Mr. Vazquez made the point, specifically with respect to Defendant's staggered elections, noting that it is "better for anybody like [him] who's very strong on their principles" to "run . . . in the presidential cycle than the gubernatorial cycle" because four seats are up in presidential years and only three seats are up in gubernatorial

years. (Vazquez Deposition, at pp. 176:9–177:3). For Mr. Vazquez that made all the difference—in 1994, he came in fourth place and lost; in 2012, he came in fourth place and won.

3. 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.

"Courts have [generally] recognized that political participation by minorities tends to be depressed where minority groups suffer effects of prior discrimination such as inferior education, poor employment opportunities and low incomes." (*Garza v. County of Los Angeles* (C.D. Cal. 1990) 756 F.Supp. 1298, 1347, citing *Gingles, supra*, 478 U.S. at p. 69. Where a minority group has less education and wealth than the majority group, that disparity "necessarily inhibits full participation in the political process" by the minority. (*Smith v. Clinton* (E.D. Ark. 1988) 687 F.Supp. 1310, 1317.)

The differences in education and economics between Whites, African Americans and Hispanics in Santa Monica are troubling. For example, as revealed by the most recent Census, Whites enjoy significantly greater income than their Hispanic and African American neighbors in Santa Monica—a difference far greater than the national disparity.

Even more troubling is the severe achievement gap between White students and their African American and Hispanic peers in Santa Monica's schools. This achievement gap is no coincidence—racial segregation in Santa Monica's schools has been institutional.

4. The use of overt or subtle racial appeals in political campaigns.

Subtle, and even overt, racial appeals are commonplace in Santa Monica politics when Latinos seek election to the city council. In deposition, Tony Vazquez identified some of the more heinous racial appeals he has had to deal with in his bids for the city council. In 1994, for example, opponents of Mr. Vazquez advertised that he had voted to allow "Illegal Aliens to Vote." (Kousser Decl., at ¶ 122.) When Mr. Vazquez lost that election, he let his feelings be known to the Los Angeles Times: "Vazquez blamed his loss on 'the racism that still exists in

our city . . . . The racism that came out in this campaign was just unbelievable.' " (*Id.*, at ¶ 123, fn. 197.)

Similar racial appeals, although less overt, have been used to defeat other Latino candidates for Santa Monica's city council. For example, when Maria Loya ran in 2004, she was frequently asked whether she could represent all Santa Monica residents or just "her people." Of course, non-Hispanic white candidates are not asked that same question because non-Hispanic whites are the majority in Santa Monica.

These sorts of racial appeals are particularly caustic to minority success, not just because they make it more difficult for minority candidates to win, but also because they discourage minority candidates from even running.

E. Defendant's Arguments Deflecting From the CVRA's Plain Language Are Contrary to the Law.

Perhaps recognizing the consequences of this straightforward analysis of racially polarized voting, Defendant seeks to raise the bar to be cleared by Plaintiffs. Specifically, Defendant would have this Court require that Plaintiff show: (i) that a majority-Latino district could be created; (ii) that no Latino has ever been elected to city council; (iii) that Latinos have been unsuccessful in elections for governing boards *other than Defendant's* governing board; and (iv) that Latinos can't even elect their second, third, and fourth choices when those candidates are white. None of those additional requirements have any basis in the law. (See Elec. Code, § 14028, subd. (a) ["A violation of Section 14027 ***is established*** if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision ***or*** in elections incorporating other electoral choices by the voters of the political subdivision . . . ."], emphasis added).)

1. A majority-Latino district is not necessary to establish a violation of the CVRA.

Pointing only to cases interpreting the FVRA, which, unlike the CVRA, does require more than racially polarized voting, Defendant continues to argue that this Court should disregard the Legislature's admonition, and instead require Plaintiffs to show that a majority-

minority district is possible in Santa Monica. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002; *Jauregui*, *supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a 'compact majority-minority' district is possible for liability purposes."], quoting *Sanchez*, *supra*, 145 Cal.App.4th at p. 669.) Defendant's contrived view of the CVRA simply finds no support in the law. The FVRA cases cited by Defendant are inapposite because none of them address the CVRA—a law distinct from the FVRA, and "intended to provide a broader basis for relief from vote dilution than available under the federal Voting Rights Act." (*Jauregui*, at p. 806, quoting *Sanchez*, at p. 669.)

Indeed, even the federal case authority interpreting the FVRA acknowledges that racially polarized voting is itself an injury and establishes the causal link between at-large elections and vote dilution. (See *Gingles*, *surpa*, 478 U.S. at p. 51 [explaining that racially polarized voting is an injury itself—it is by showing majority bloc voting sufficient to "usually defeat the minority group's preferred candidate" that the "the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives."]; *Gomez v. City of Watsonville* (1988) 863 F.2d 1407, 1413, citing *Gingles*, at p. 51 ["[t]his showing of racial bloc voting establishes the required causal link between the use of a multimember district and the inability of the minority group 'to elect its chosen representatives.' "]; see also Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 2. [The CVRA "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity."].)

The CVRA could not be clearer in its rejection of the requirement under the FVRA that a majority-minority district is possible. In Section 14028(c), the CVRA explicitly states that whether Latinos are "not geographically compact or concentrated" to permit a majority-Latino district "may not preclude a finding of racially polarized voting, or a violation of [the CVRA]." (Elec. Code, § 14028, subd. (c).) Undeterred, Defendant, seeking to add its preferred text to the statute, argues for an extra requirement to find "vote dilution." Most charitably, Defendant

argues that if "vote dilution" is what the CVRA is meant to combat, the minorities' voting power must be measured from some baseline and therefore a consideration of available remedies is necessary in determining not only a remedy but also whether the CVRA has been violated. It cannot be a requirement that the courts settle on a particular remedy before establishing liability: that is precisely what the text and legislative history of the CVRA admonish courts not to do. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."].) Instead, even if Defendant were correct that "dilution" were required for a finding of liability, it would logically require only a finding that there exists, hypothetically, at least one alternative to the present system that would provide the protected minority with greater electoral opportunity.

Defendant urges that the only available such alternative is a contiguous, equally populous, majority-Latino district. But Defendant's argument flies in the face of the text of the CVRA, its legislative history, and all of the cases discussing the CVRA. (Elec. Code, § 14028, subd. (c); *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.) It is true that federal plaintiffs under the FVRA must show that a compact minority group or groups could comprise the majority in a district. (*Bartlett v. Strickland* (2009) 556 U.S. 1, 14–15, 18–20 (plurality opinion).) But this is only the requirement of a specific federal statute, not a constitutional minimum. All of the quotes in all of the cases that Defendant has cited with respect to a "majority-minority district" concern the interpretation of that federal statute. California certainly has the authority to provide greater protection against discrimination by its own subdivisions than federal law provides for jurisdictions nationwide, and that is exactly what the California Legislature has done through the CVRA. (Cf. *Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 842 ["The FEHA offers greater protection and relief to employees than does title VII."].)

Specifically, California has decided that plaintiffs need not show that a minority group constitutes the majority of a district, nor that a minority group be compact, nor even that the minority group show impairment of the ability to elect candidates of choice, rather than only impairment of the ability to influence the outcome of an election. (Elec. Code, § 14027; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at 669.) Even leaving aside the influence standard, a minority bloc could demonstrate a "dilution" of their ability to elect candidates of their choice even without a majority-Latino district. For example, a minority group demonstrating racially polarized voting in the current system might show that they could regularly compete to win elections in an alternative "crossover" district, in which the minority bloc constituted less than half of the district but typically received "crossover" support from a portion of the majority group or another minority group. (*Georgia v. Aschcroft* (2003) 539 U.S. 461, 470–471, 482 [finding that Georgia's legislative redistricting did not violate Section 5 of the FVRA even though it reduced the number of safe black districts, because it "increased the number of ["crossover"] districts with a black voting age population of between 25% and 50% by four," and noting "various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or coalitional districts."]; *Cooper v. Harris* (2017) 137 S.Ct. 1455, 1470 [reviewing such an effective "crossover" district].) Showing the potential for a "crossover" district may not meet the FVRA conditions of liability, but such districts are themselves constitutional, (*Bartlett v. Strickland, supra*, 556 U.S. at pp. 23–24 ["States that wish to draw crossover districts are free to do so where no other prohibition exists."]), and there is no reason why California could not under its own state law that permits plaintiffs to show the "dilution" of an existing system based on the potential existence of a crossover district providing more equitable representation than the status quo.

Indeed, in this case, David Ely, whose council district maps have been adopted by several federal and state courts (including the only CVRA case where the court was required to pick between competing district maps) as well as California cities (e.g. Los Angeles),

developed an illustrative Latino-opportunity crossover district based on the traditional districting criteria listed in Section 21620 of the Elections Code, as discussed more fully below in Section V. While Latinos represent a much larger proportion in that district than in the city as a whole, race was not a predominant consideration in Mr. Ely's selection of district boundaries. Based on an evaluation of the demographics and past election results of that district, Professor Justin Levitt, an expert in districting and alternative voting systems, concludes that the district drawn by Mr. Ely would be much better than the current system, and is certainly sufficient to show an alternative to the current system that demonstrates Latino vote dilution in Santa Monica. As Professor Levitt correctly noted in his previous declaration, the Latino proportion of a district is only one factor in its effectiveness at giving Latino voters the opportunity to elect candidates of their choice or influence the outcome of elections.

Similarly, a minority bloc could demonstrate a "dilution" of their ability to elect candidates of their choice even without a district at all, if an alternative system provided greater electoral opportunity. In Defendant's current system, each Santa Monica voter casts one vote for up to three or four candidates (depending on the year), and the three or four candidates with the most votes win; this structure is what allows the majority to reliably swamp the votes of the minority in every election. Alternative structures—like limited voting, cumulative voting, or ranked-choice voting—each entail a different structure for casting and counting ballots; without drawing district lines, these alternatives may allow minorities greater opportunity to win elections than an at-large plurality vote. Showing the availability of an alternative voting system does not alone satisfy the FVRA, but such systems are themselves constitutional,[4] and there is no reason why California could not under its own state law permit

[4] Indeed, limited and cumulative voting have each been adopted as a remedy in several FVRA cases—in the Euclid School Board, Port Chester, Sisseton ISD, Chilton Co. Bd. of Ed., and Peoria, to name just a few of more than 75 such jurisdictions—and Defendant's assertions that "the only remedy available under the FVRA is a majority-minority district" or "the Supreme Court has held repeatedly that a majority-minority district is the only constitutional remedy for federal vote-dilution claims" are demonstrably false. (See e.g., *U.S. v. Village of Port Chester* (S.D.N.Y. 2010) 704 F. Supp. 2d 411, 448–453 [ordering cumulative voting as remedy for violation of the FVRA and, coincidentally, rejecting the opinions of the expert retained here by the City of Santa Monica]; *U.S. v. Euclid City School Bd.* (N.D. Ohio 2009) 632 F. Supp. 2d 740, 755–770 [ordering limited voting as remedy for violation of the FVRA].)

plaintiffs to show the "dilution" of an existing system based on the potential for one of these voting systems. Indeed, just last week the Orange County Superior Court entered judgment against the City of Mission Viejo on a CVRA claim and ordered that city to implement cumulative voting and unstagger its council elections.

As discussed more fully below in Section V, Plaintiffs' experts present four different election systems that would give Latino voters a greater opportunity than the current system, to elect candidates of their choice or influence the outcome of the elections. While none of those systems includes a Latino-majority district, they are sufficient under the CVRA to show "vote dilution" under any definition of that term that doesn't fly in the face of the statute's text, purpose, legislative history and interpreting cases.

2. The success of Latino candidates in elections for the governing boards of other political subdivisions does not excuse the racially polarized voting in the elections for defendant's governing board.

Recognizing that at-large elections for one governing board might result in minority vote dilution while at-large elections for another board for the same region do not, or vice versa, the CVRA specifies that it is "elections for members of the governing body of the [defendant]," not the elections for some other governing board of a different political subdivision, that are most relevant to whether the defendant is in violation of the CVRA. (Elec. Code, § 14028, subd. (a).)[5] In the next subdivision, the CVRA reiterates the point—it is elections for the defendant's governing board that are most relevant. (See Elec. Code, § 14028, subd. (b) ["One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting

[5] Defendant's reliance on the subsequent language in Section 14028(a)—"or in elections incorporating other electoral choices by the voters of the political subdivision"—is misplaced. Defendant construes this language as a catch-all that puts all elections on equal footing under the CVRA. But, Defendant's interpretation ignores the alternative nature of the language of Section 14028(a). Specifically, section 14028(a) directs that a violation of the CVRA is established if there is racially polarized voting in either of two groups of elections: "A violation of Section 14027 **is established** if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision **or** in elections incorporating other electoral choices by the voters of the political subdivision."

behavior, have been elected *to the governing body of a political subdivision that is the subject of an action* based on Section 14027 and this section."], italics added).) The focus on the elections for the governing board of the defendant makes sense particularly because a finding that a particular defendant is in violation of the CVRA will result in change(s) to the election method of that defendant's governing board; not the election methods employed by political subdivisions that are not parties to the case. (See Elec. Code, § 14029 ["remedies . . . [should be] tailored to remedy the violation."].) In this case, the focus on elections for Defendant's governing board rather than other governing boards in the area is particularly appropriate because of the enormous differences between those elections. Santa Monica City Council elections are far more expensive and far more politically contested than elections for the lower offices of school board, college board and rent board, which are often essentially uncontested.

Generally, exogenous elections (elections other than those for the defendant's governing board) are deemed much less probative than endogenous elections (elections for the defendant's governing board). (See generally *Black Political Task Force v. Galvin* (D. Mass. 2004) 300 F. Supp. 2d 291, 304–305 ["we recognize the obvious: in most instances, the best indicator of how voting operates in a particular type of election is how voting historically has operated in that type of election."], citing *Rural West Tenn.* (6th Cir. 2000) 209 F.3d 835, 841; *Johnson v. Hamrick* (11th Cir.1999) 196 F.3d 1216, 1222; *Uno v. City of Holyoke* (1st Cir. 1995) 72 F.3d 973 [suggesting that, in general, endogenous elections are more probative than exogenous elections].) Consequently, we focus on multi-race endogenous elections.

There are some circumstances where federal courts, addressing FVRA claims, have found it appropriate to examine exogenous elections. While acknowledging that exogenous elections are of much less probative value than endogenous elections, some federal courts have relied upon exogenous elections involving minority candidates to *further support* evidence of racially polarized voting in endogenous elections. (See, e.g. *Bone Shirt v. Hazeltine* (8th Cir. 2006) 461 F.3d 1011; *Jenkins v. Red Clay Consol. School Dist. Bd. of Educ.* (3d Cir. 1993) 4 F.3d 1103, 1128–1129; *Rodriguez v. Harris Cnty, Texas* (2013) 964 F.Supp.2d 686; *Citizens for a Better Gretna v. City of Gretna, La.* (5th Cir. 1987) 834 F.2d 496, 502–503 ["Although

exogenous elections alone could not prove racially polarized voting in Gretna aldermanic elections, the district court properly considered them as additional evidence of bloc voting—particularly in light of the sparsity of available data."].) Other courts addressing FVRA claims have looked to exogenous elections involving minority candidates where there are no endogenous elections (or only one such election) involving minority candidates. (*Clay v. Board of Educ. of City of St. Louis* (8th Cir. 1996) 90 F.3d 1357 [exogenous elections "should be used only to supplement the analysis of" endogenous elections]; *Rangel v. Morales* (5th Cir. 1993) 8 F.3d 242 [only one prior endogenous election]; *Westwego Citizens for Better Gov't v. City of Westwego* (5th Cir.1991) 946 F.2d 1109 [analysis of exogenous elections appropriate because no minority candidates had ever run for the governing board of the defendant]; *Rodriguez v. Bexar Cty., Tex.* (5th Cir. 2004) 385 F.3d 853, 860–861; *Reed v. Town of Babylon* (1996) 914 F.Supp. 843 [only one African American candidate had run in endogenous election].) The logic underlying the examination of exogenous elections in those cases is that the absence of minority candidates in endogenous elections may be due to a sense of futility, which is a symptom of the at-large election system, and a voting rights claim challenging an election system should not be barred as a result of a symptom of that election system. A few other courts have looked to exogenous elections where only a single election cycle has occurred under the challenged election system, because the single endogenous election is insufficient to itself show a pattern. (See, e.g., *Rangel v. Morales* (5th Cir. 1993) 8 F.3d 242.)[6] But none of those circumstances apply here—there are at least a half-dozen endogenous elections involving Latino candidates, and the analysis of those elections leads to the inescapable conclusion of racially polarized voting.

In no event, though, does the success of minority candidates in exogenous elections excuse a defendant from liability where the endogenous elections exhibit racially polarized

[6] Under the FVRA, unlike the CVRA, once the existence of racially polarized voting is shown, the court must determine the extent of racially polarized voting as part of the "totality of circumstances" analysis, and exogenous elections may be considered in that capacity. (See *NAACP v. Fordice* (5th Cir.2001) 252 F.3d 361, 370.) But while the CVRA specifies that some of the FVRA's "totality of circumstances" factors are "probative but not necessary" (Elec. Code, 14028, subd. (e)), any mention of the *extent* of racially polarized voting is conspicuously absent from the CVRA.

voting. (See *Cottier v. City of Martin* (8th Cir.2006) 445 F.3d 1113, 1121–1122 [reversing district court's reliance on exogenous elections to undermine racially polarized voting in endogenous elections]; *Rural West Tenn. African American Affairs Council v. Sundquist* (W.D. Tenn. 1998) 29 F.Supp.2d 448, 457 ["Certainly, the voting patterns in exogenous elections cannot defeat evidence, statistical or otherwise, about endogenous elections."], quoting *Cofield v. City of LaGrange* (N.D.Ga.1997) 969 F.Supp. 749, 773.) To hold otherwise would only serve to perpetuate the sort of glass ceilings that the CVRA and FVRA are intended to eliminate.

But even if this Court looks to the exogenous elections analyzed by Dr. Lewis, they further *support* Plaintiffs' claim. As Dr. Lewis conceded at his deposition, the Latino candidates in those exogenous elections generally received much less support from non-Hispanic white voters than from Latino voters; and the difference is statistically significant at a 95% confidence level. (Lewis Deposition, at pp. 147–152, 161–167, 205–209.) And, the Latina candidates most supported by Latino voters in their respective races, for example Ana Jara (2004 school board) and Maria Loya (2014 college board), lost due to the bloc voting of the non-Hispanic white electorate. (See generally *ibid.*; see also *id.*, at pp. 205, 209.)

3. The success of non-Hispanic white candidates with some support from Latino voters does not excuse the racially polarized voting in Defendant's elections.

It also appears, based on recent comments by Defendant's counsel, that Defendant will argue that there is no racially polarized voting because in some elections the non-Hispanic white candidates who were the second, third or fourth choices of Latino voters prevailed. But what Defendant ignores is that in 5 of the last 6 city council elections involving at least one Latino candidate, Latino voters' first choice was a Latino candidate, and in all but one instance that Latino candidate lost. In 1994, Latinos' first choice was Tony Vazquez; he lost. (Kousser Decl., at Appendix B.) In 2002, Latinos' first choice was Josefina Aranda; she lost. (*Ibid.*) In 2004, Latinos' first choice was Maria Loya; she lost. (*Ibid.*) In 2016, Latinos' first choice was Oscar de la Torre; he lost. (*Ibid.*) Defendant would have this Court find that because the

second, third or fourth choices of Latino voters were elected in some instances, as long as that second choice was non-Hispanic white (except in one instance), there is no racially polarized voting. But that is precisely the argument that the Ninth Circuit Court of Appeals rejected in *Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F.3d 543:

> The district court erred in applying a simple mathematical approach-counting the number of successful Hispanic-preferred candidates divided by the number of elections-in its Gingles prong three analysis. This mechanical approach failed to fulfill the district court's duty to make "a searching practical evaluation of the past and present reality" with "a functional view of the political process." (*Gingles*, 478 U.S. at p. 45.) The reality facing Hispanic voters in Santa Maria in the 1988, 1990, and 1992 elections was a choice of one Hispanic candidate and several non-Hispanic candidates for two council seats. In those elections, Hispanic voters preferred the lone Hispanic candidate and, unavoidably, one of the remaining non-Hispanic candidates. The Hispanic candidate came in last while Urbanske, a Hispanic-preferred candidate, won in 1988 and 1992. (See *Gingles*, 478 U.S. at pp. 60–61 [district court properly considered "the very different order of preference blacks and whites assigned black candidates"].) The success of a Hispanic-preferred candidate like Urbanske does not necessarily demonstrate that Hispanics have an equal opportunity to participate in Santa Maria city council elections. Rather, it may simply show that, at least historically, Hispanics have been relegated to casting a veto between majority-preferred white candidates. On remand, the district court should consider the elections of Urbanske in 1988 and 1992 in determining whether racial bloc voting exists in Santa Maria. The defeat of Hispanic-preferred Hispanic candidates, however, is more probative of racially polarized voting and is entitled to more evidentiary weight. The district court should also consider the order of preference non-Hispanics and Hispanics assigned Hispanic-preferred Hispanic candidates as well as the order of overall finish of these candidates.

(*Id.* at p. 554.) Just as the *Ruiz* court suggested would be consistent with a finding of racially polarized voting, in 1994, 2002 and 2004 there was only one Latino candidate—Tony Vazquez, Josefina Aranda and Maria Loya, respectively—they were Latinos' first choice, and then Latinos' second, third and fourth choices were unavoidably non-Hispanic whites. In

2016, Latinos' first and second choices were the Latino candidates, and their first choice—Mr. de la Torre—lost, while Latinos' third and fourth choices were unavoidably non-Hispanic whites. In all of these elections, it is only when a non-Hispanic white second, third or fourth choice of Latino voters is also preferred by non-Hispanic whites that they can prevail; in other words Latinos are generally unable to elect a Latino candidate that they choose, and it doesn't matter who Latinos vote for because, with only one unusual exception, non-Hispanic whites always choose the winners. That scenario is the precise circumstance that the *Ruiz* court noted to be consistent with a finding of racially polarized voting.

It is no wonder that Defendant has failed to cite any cases in which courts have utilized its distorted test for racially polarized voting; there are none—at least none that were not promptly reversed by appellate courts. Rather, courts test whether there is racially polarized voting by doing exactly what Dr. Kousser does in this case and many others before this one—focusing on the level of support for minority candidates from the minority and majority respectively. (See *Gingles*, *supra*, 478 U.S. at pp. 58–61 ["We conclude that the District Court's approach, which tested data derived from three election years in each district, and *which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did,* ***satisfactorily addresses each facet of the proper legal standard.***"], emphasis added); see also *Garza v. County of Los Angeles* (C.D. Cal. 1990) 756 F.Supp. 1298, 1335–1337 [focusing on the levels of support for Hispanic candidates from Hispanic voters and non-Hispanic voters, respectively, and on that basis finding the components of racially polarized voting], *aff'd*, 918 F.2d 763 (9th Cir. 1990); *Benavidez v. Irving Indep. Sch. Dist.* 2014 WL 4055366, *11-12 (N.D. Tex. Aug. 15, 2014) [finding racially polarized voting based on Dr. Engstrom's analysis which the court described as follows: "Dr. Engstrom then conducted a statistical analysis . . . to estimate the percentage of Hispanic and non-Hispanic voters who voted for the Hispanic candidate in each election . . . . Based on this analysis, Dr. Engstrom opined that voting in Irving ISD trustee elections is racially polarized."]. Comparing the levels of support for minority candidates, from minority voters and majority voters, respectively, is particularly telling because it best reveals white bias and

unwillingness to vote for minorities. That same analytical method is also what Dr. Kousser used to determine whether Palmdale's elections were racially polarized, and the court in that case adopted Dr. Kousser's analysis, finding it to be "persuasive," and the Court of Appeal affirmed that analysis. (*Jauregui, supra*, 226 Cal.App.4th at p. 790.)

The Court in *Smith v. Clinton* (E.D. Ark. 1988) 687 F.Supp. 1310, summed it up best. In that case, the court was presented with the situation where "[c]andidates favored by blacks can win, but only if the candidates are white." (*Id.* at p. 1318.) In light of those circumstances, the court had no problem finding racially polarized voting and even setting aside the results of the last election held under the challenged system. (*Ibid.*)

4. The results of all-white elections do not excuse the racially polarized voting in defendant's elections involving at least one Latino candidate.

The CVRA specifies the precise "elections for members of the governing board" of the defendant that this Court is to evaluate—those including at least one candidate that is a member of the applicable minority group. (Elec. Code, § 14028, subd. (b) ["The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class . . . ."].) It is the success of minority-preferred candidates who are themselves members of the minority group that counts the most. (Elec. Code, § 14028, subd. (b) ["One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action . . . ."].)

The CVRA's focus on elections involving minority candidates is consistent with the view of a majority of federal circuit courts that racially-contested elections are most probative of an electorate's tendencies with respect to racially polarized voting. (See *U.S. v. Blaine Cty.* (9th Cir. 2004) 363 F.3d 897, 911 [rejecting defendant's argument that trial court must give weight to elections involving no minority candidates]; *Ruiz v. Santa Maria* (9th Cir. 1998) 160

F.3d 543, 553 ["minority v. non-minority election is more probative of racially polarized voting than a non-minority v. non-minority election" because "[t]he Act means more than securing minority voters' opportunity to elect whites."]; *Westwego Citizens for Better Gov't v. City of Westwego* (5th Cir.1991) 946 F.2d 1109, 1119, n. 15 ["[T]he evidence most probative of racially polarized voting must be drawn from elections including both black and white candidates."]; *LULAC 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* (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 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."].)[7]

Ignoring the text of the CVRA and the cases addressing the FVRA, Defendant has indicated that it will argue that successful non-Hispanic white candidates are preferred by Latino voters in elections where no Latino candidates ran. The law simply does not permit Defendant to use its all-white elections to escape liability for the racially polarized voting in the most probative elections—elections for Defendant's city council including at least one Latino candidate. (*Smith v. Clinton* (E.D. Ark. 1988) 687 F.Supp. 1310, 1318, *aff'd*, 488 U.S. 988 (1988) [it is not enough to avoid liability under the FVRA that "candidates favored by blacks can win, but only if the candidates are white."].)

[7] But see *Lewis v. Alamance Cty.* (4th Cir. 1996) 99 F.3d 600 [affirming finding of no racially polarized voting in part because minority-preferred candidates who were white won in elections with no minority candidates, though the dissent pointed out that is contrary to the holdings of other courts].

In arguing against both the plain text of the CVRA and the vast majority of federal jurisprudence concerning the FVRA, Defendant has pointed to the discussion in *Gingles* concerning the importance of the race of the candidates. But that discussion has nothing to do with the identification of elections appropriate to analyze for racially polarized voting. Rather, that discussion merely addresses whether the race of a candidate can overcome statistical evidence in determining whether that candidate is preferred by the minority—a subject on which the various circuit courts still disagree. While no opinion garnered a majority of the Court concerning that issue, a solid majority of the Court did agree that the district court's focus on black candidates was appropriate and established racially polarized voting. (See *Gingles*, *supra*, 478 U.S. at pp. 58–61 ["We conclude that the District Court's approach, which tested data derived from three election years in each district, and *which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did,* ***satisfactorily addresses each facet of the proper legal standard.***"], emphasis added.)

5. The occasional success of Tony Vazquez does not excuse the racially polarized voting in Defendant's elections.

Defendant also points to the one Latino candidate who has had electoral success in the 72-year history of Defendant's at-large elected council, Tony Vazquez, and argues that his success immunizes Defendant from having to comply with the CVRA. But the U.S. Supreme Court rejected that very same argument in *Gingles*. (*Gingles*, *supra*, 478 U.S. at p. 57 ["[I]n a district 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 district experiences legally significant bloc voting. Furthermore, ***the success of a minority candidate in a particular election does not necessarily prove that the district did not experience polarized voting in that election.***"], emphasis added.)

The election history presented in *Gingles*, which is discussed in more detail in the trial court decision, is illustrative. In that case, six (6) black candidates had won seats in the multi-member districts challenged in that case in the 1982 election alone. (*Gingles v. Edmisten*

(E.D.N.C. 1984) 590 F.Supp. 345, 365–366.) That significant success among black candidates, each of whom received more than 40% support from white voters, did not change the district court's conclusion of racially-polarized voting. (See generally *id.*) The U.S. Supreme Court affirmed the trial court's ruling and explicitly adopted the trial court's definition and analysis of racially-polarized voting. (*Gingles*, *supra*, 478 U.S. at pp. 52–61.) Compared to the lone successful Latino candidate in Defendant's city council elections in 72 years, the six successful black candidates in one election cycle in *Gingles* reflects huge success by minority candidates in the challenged election system, and even then it is not enough to undermine a finding of racially polarized voting.

Moreover, in an election marred by racial appeals, Mr. Vazquez was one of only two incumbents in the last thirty years to lose their bids for re-election, and he was only able to regain a seat on the city council by barely coming in fourth place in 2012 after two incumbents chose not to seek re-election. In *Gingles,* the U.S. Supreme Court explicitly recognized that it is important to evaluate the special circumstances that might lead to the election of a minority and minority-preferred candidate in a jurisdiction that otherwise experiences racially polarized voting. (*Gingles*, *supra*, 478 U.S. at p. 57, fn. 26 ["Furthermore, the success of a minority candidate in a particular election does not necessarily prove that the district did not experience polarized voting in that election; special circumstances, such as the absence of an opponent, incumbency, or the utilization of bullet voting, may explain minority electoral success in a polarized contest. This list of special circumstances is illustrative, not exclusive."].) Most recently, Mr. Vazquez demonstrated the special nature of his political career by raising an enormous amount of money and securing a spot in the runoff for District #3's seat on the State Board of Equalization, a district having a population over ten million. Mr. Vazquez will almost certainly prevail in that runoff because District #3 is overwhelmingly Democratic, and Mr. Vazquez is identified as a Democrat while his opponent is a Republican. Therefore, absent some change to the election system, in December the Santa Monica City Council will likely return to the way it has been for 62 years of its 72 year history—devoid of any Latinos.

Even Mr. Vazquez's mixed record is far better than any other Latino candidate has fared. Since Mr. Vazquez's loss in 1994, Josefina Aranda, Maria Loya and Oscar de la Torre have all lost in their bids for Defendant's city council despite being the first-choice of Latino voters. (Kousser Decl., at Appendix B.) Quite simply, the election of a lone Latino, who was *not* the Latinos' preferred candidate in the most recent election, should not deny Latino voters in Santa Monica the opportunity to elect candidates of their choice now.

Defendant makes much of the fact that one Latino (Mr. Vazquez) on its seven-member governing board approximates Latinos' proportion of the population of Santa Monica, insisting that means that Latinos have proportional representation. But that argument ignores a host of issues. First, proportional representation is not even mentioned in the CVRA. Rather, the federal cases addressing the probative weight of proportional representation under the FVRA do so under the "totality of circumstances" test that the CVRA explicitly disclaims. (See Elec. Code, § 14028, subd. (e) [listing some of the totality of circumstances factors, but not including any reference to proportional representation, and specifying that the listed factors are "probative but not necessary"].) Second, even under the FVRA, only "persistent" and "consistent" proportional representation can possibly defeat a claim under the "totality of circumstances" test that the CVRA disclaims. (*Jenkins v. Red Clay Consolidated Sch. Dist. Bd. of Ed.* (3d Cir. 1993) 4 F.3d 1103, 1117–1120.) Here, any proportional representation Latinos may have enjoyed while Mr. Vazquez has been on the council is certainly not "persistent" or "consistent"; it accounts for only 10 of the 72 years of Defendant's at-large elected city council (1990–1994, 2012–2018), and it is almost certain to end later this year because Mr. Vazquez will move on to a higher office on the State Board of Equalization. (See *Gingles*, *supra*, 478 U.S. at pp. 74–77 [finding persistent minority success in the most recent six election cycles House District 23 to be inconsistent with a FVRA claim, but success of a single minority candidate in another district could be discounted because it was not persistent success].) Third, even under the FVRA, and even where there is persistent and consistent proportional representation, that does not preclude a finding that an at-large election system violates the FVRA. (See, e.g., *Harvell v. Blytheville Sch. Dist. #5* (8th Cir. 1995) 71 F.3d

1382, 1388 [rejecting the defense that minorities had achieved proportional representation – "the white majority has no right under Section 2 to ensure that a minority group has absolutely no opportunity to achieve greater than proportional representation in any given race."], cert. denied, 517 U.S. 1233 (1996), citing *Johnson v. De Grandy* (1994) 512 U.S. 997.)

IV. DEFENDANT ADOPTED AND MAINTAINED ITS AT-LARGE ELECTION SYSTEM WITH A DISCRIMINATORY PURPOSE.

The fact that Santa Monica's at-large election system has impaired the ability of Latinos to elect candidates of their choice or influence the outcome of city council elections, is no surprise to Defendant. Defendant has been aware of that problem for several decades, and indeed the at-large system was maintained for that purpose.

In the early 1990s, with the issue of at-large elections diluting minority vote receiving more attention in Santa Monica and throughout California, Defendant appointed a 15-member Charter Review Commission to study the issue and make recommendations to the City Council. As part of their investigation, the Charter Review Commission sought the analysis of Dr. Kousser, who had just completed his work in *Garza v. County of Los Angeles* regarding the discriminatory intent in the way Los Angeles County's supervisorial districts had been drawn. Dr. Kousser was asked whether Santa Monica's at-large election system was adopted or maintained for a discriminatory purpose, and Dr. Kousser concluded that it was. Dr. Kousser's report pointed to statements by proponents and opponents of the at-large system alike, bluntly recognizing that the plurality at-large system would impair minority representation, and the strong correlation between voting in favor of the at-large charter provision and against the contemporaneous Proposition 11 to ban racial discrimination in employment – a pure measure of attitude on racial discrimination.

Based on their extensive study and investigations, the near-unanimous Charter Review Commission recommended that Defendant's at-large election system be tossed into the scrap heap of history with other vote-diluting relics. The principal reason for that recommendation was that the plurality at-large system prevents minorities and the minority-concentrated Pico Neighborhood from having a seat at the table.

That recommendation went to the City Council in July 1992. Though the City Council understood well that the at-large elections system prevented racial minorities from achieving representation, they refused by a 4-3 vote to allow the voters to change the system that had elected them. Councilmember Zane explained his professed reasoning – in a district system, Santa Monica would no longer be able to dump affordable housing into the minority-concentrated Pico Neighborhood, where the majority of the city's affordable housing was already located, because the Pico Neighborhood district's representative would oppose it. While this professed rationale could be characterized as not demonstrating that Mr. Zane or his colleagues "harbored any ethnic or racial animus toward the . . . Hispanic community," it nonetheless reflects intentional discrimination—Mr. Zane understood that his action would have a disparate impact on Latino residents, and he took that action to maintain his power to continue dumping affordable housing in the Latino-concentrated neighborhood despite their opposition. (See *Garza v. County of Los Angeles* (1990) 918 F.2d 763, 778 (J. Kozinski, concurring) [finding that incumbents preserving their power by drawing district lines that avoided a higher proportion of Latinos in one district was intentionally discriminatory despite the lack of any racial animus], cert. denied 111 S.Ct. 681 (1991).) Though the city staff was directed to come back with further information concerning district systems and hybrid systems with some district-elected seats and some at-large, the issue was never brought back to the council for any vote, and has remained dormant ever since.

"Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. ... [including] the historical background of the decision." *Village of Arlington Heights v. Metro. Housing Dev. Corp.* (1977) 429 U.S. 252, 266-68. Recognizing that "smoking gun" admissions of racially discriminatory intent are exceedingly rare, in *Arlington Heights*, the U.S. Supreme Court described a number of *potential, non-exhaustive*, sources of evidence that might shed light on the question of discriminatory intent:

> The impact of the official action -- whether it bears more heavily on one race than another, may provide an important starting point. Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face. The evidentiary inquiry is then relatively easy. But such cases are rare. Absent a pattern as stark as that in *Gomillion* or *Yick Wo*, impact alone is not determinative, and the Court must look to other evidence. The historical background of the decision is one evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes. The specific sequence of events leading up to the challenged decision also may shed some light on the decisionmaker's purposes. ... Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached. The legislative or administrative history may be highly relevant, especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports. In some extraordinary instances, the members might be called to the stand at trial to testify concerning the purpose of the official action, although even then such testimony frequently will be barred by privilege. The foregoing summary identifies, without purporting to be exhaustive, subjects of proper inquiry in determining whether racially discriminatory intent existed.

(Id. at 266-268 (citations omitted). "[P]laintiffs are not required to show that [discriminatory] intent was the sole purpose of the [challenged government decision]," or even the "primary purpose," just that it was "*a* purpose." *Brown v. Board of Com'rs of Chattanooga, Tenn.* (E.D. Tenn. 1989) 722 F. Supp. 380, 389, citing *Arlington Heights* at 265 and *Bolden v. City of Mobile* (S.D. Ala. 1982) 543 F. Supp. 1050, 1072.

Here, the analysis mandated by *Arlington Heights* leads to the inescapable conclusion that Defendant's at-large election system has been maintained with a discriminatory purpose. In both 1946 and 1992, the decisionmakers understood that district elections would mean

ethnic minority representation, while at-large elections would impede minority representation. In 1946 that was made clear by the local newspaper, and in 1992 the video of the city council meeting at which the issue was discussed shows one person after another, including council members, making that point with no rebuttal offered by anyone. Yet, in both 1946 and again in 1992, the decisionmakers (the Board of Freeholders (1946) and the City Council (1992)) refused to give voters the choice of district elections, leaving proponents of the district system that would empower racial minorities no means of expressing their preference. The racial climate in 1946, and the correlation between support for the at-large charter and opposition to Proposition 11, further support the conclusion that at-large elections were chosen to prevent racial minorities from having a voice in their city government. Even as late as 1964, approximately 70% of Santa Monica voters voted to repeal a state statute that barred racial discrimination in housing. In 1992, though the racial climate had improved somewhat, the contemporaneous and recent statements of Defendant's council members are such strong evidence of discriminatory intent that no amount of improvement in racial climate can undermine the implication of those statements.

When voting rights are implicated, "[t]he Supreme Court has established that official actions motivated by discriminatory intent 'have no legitimacy at all . . . .' (*N. Carolina NAACP v. McCrory* (4th Cir. 2016) 831 F.3d 204, 239 [surveying Supreme Court cases].). Here, Defendant's at-large election system was maintained with a discriminatory intent on at least two occasions (1946 and 1992), and perhaps even a third (1975). It is therefore illegitimate and should be eliminated. *Id.*; also see generally, *Garza v. County of Los Angeles* (1990) 918 F.2d 763, cert. denied 111 S.Ct. 681 (1991).[8]

[8] Defendant has indicated that it will argue that Plaintiffs cannot prevail on their Equal Protection claim because a Latino-majority district is not possible in Santa Monica. But that same argument was flatly rejected in *Garza v. County of Los Angeles* (1990) 918 F.2d 763, 771, cert. denied 111 S.Ct. 681 (1991): "The County cites a number of cases in support of its argument that Gingles requires these plaintiffs to demonstrate that they could have constituted a majority in a single-member district as of 1981. None dealt with evidence of intentional discrimination. To impose the requirement the County urges would prevent any redress for districting which was deliberately designed to prevent minorities from electing representatives

V. THE EFFECTS OF DEFENDANT'S DILUTIVE AND ILLEGAL AT-LARGE ELECTIONS ARE PALPABLE AND DAMAGING TO THE LATINO COMMUNITY AND THE LATINO-CONCENTRATED PICO NEIGHBORHOOD.

As the United States Supreme Court has noted, the at-large election system that Defendant clings to, tends to cause elected officials to "ignore [minority] interests without fear of political consequences." (See *Thornburg v. Gingles* (1986) 478 U.S. 30, 48, n. 14; see also *id.*, at pp. 36–37 [holding that a significant lack of responsiveness on the part of elected officials to the needs of the minority community is evidence of vote dilution]; *Rogers v. Lodge* (1982) 458 U.S. 613, 626–627 [extensive evidence that elected officials had been unresponsive to the needs of the black community demonstrated that dilutive voting was likely occurring].) That is exactly what has happened in Santa Monica, and those effects are demonstrated by Defendant's own reports, among other things.

Moreover, without fear of political consequences, Defendant's city council members have even made sure that the commissions that often serve as the source of future city council members[9] are nearly devoid of any Latinos. Out of the one hundred and six (106) current commissioners appointed by the Santa Monica City Council, only one (1) is recognized as Latina—Ana Jara, appointed to the Social Services Commission. (Plaintiffs' Trial Exhibit 301.)

A. The Most Undesirable Land Uses Were Intentionally Placed In The Pico Neighborhood Throughout Santa Monica's History.

The lack of representation for Pico Neighborhood residents on the city council has caused the most undesirable elements of the city to all be dumped on the Latino-concentrated Pico Neighborhood (e.g. the freeway, the trash facility, the city's maintenance yard, a park that continues to emit poisonous methane gas, and the train maintenance yard). These

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in future elections governed by that districting. This appears to us to be a result wholly contrary to Congress' intent in enacting Section 2 of the Voting Rights Act and contrary to the equal protection principles embodied in the fourteenth amendment."

[9] At least the four most recent members of Defendant's council were all on Defendant's planning commission immediately before being appointed or elected to Defendant's city council.

circumstances must be considered in evaluating the totality of the circumstances relevant to "disparate impact" as well as a history of discrimination under the CVRA. (See Elec. Code, § 14028, subd. (e).)

The City's land use decisions have created horrible conditions for the Latino electorate within the Pico Neighborhood throughout history (i.e. noise, pollution, and generally undesirable land features). Defendant has argued that it did not have a hand in some of the land use decisions that have negatively affected the Pico Neighborhood. However, that is simply untrue. Ultimately, it is within the City's power to control the use of land through zoning; not another entity. (See e.g., Santa Monica Municipal Code, §§ 9.60, 9.83 [discussing the City Council's involvement in development projects, planning, land use, and zoning].). And at least some of those undesirable elements dumped on the Pico Neighborhood (the city maintenance yard and the trash sorting facility) are actually operated by Defendant, or on land leased by Defendant itself.

1. Methane gas in Gandara Park.

The fact that methane is leaking into a park in the highest Latino proportion neighborhood and poisoning its children, and that the council is unaware or unconcerned, is the exact kind of neglect and unresponsiveness that dilutive at-large elections are known to cause. (See O'Connor Deposition, at pp. 59:9–11, 93:8–16, 94:4–97:21 ["Q: Do you feel an obligation to specifically investigate whether or not methane exposure is an issue around Gandara Park? A: Being that it has been raised so much in terms of this activity, no . . . ."]; *id.*, at p. 98:6–15 ["A: I don't believe there's a problem [with methane at Gandara Park]. I've not heard of a problem from a reliable source."]; O'Day Deposition Vol. 1, at p. 104:9–12 ["Q: Do you take your kids [to Stewart/Gandara Park] to play? A: Yeah. Q: Do they smell the methane coming out? A: Sometimes, yeah."]; see also *Thornburg v. Gingles* (1986) 478 U.S. 30, 36–37 [holding that a significant lack of responsiveness on the part of elected officials to the needs of the minority community is evidence of vote dilution]; *Rogers v. Lodge* (1982) 458 U.S. 613, 626–627 [extensive evidence that elected officials had been unresponsive to the needs of the black community demonstrated that dilutive voting was likely occurring].)

The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. (*Gingles*, *supra*, 478 US at p. 47; see also *id.* at p. 48, fn. 14 [at-large elections may also cause elected officials to "ignore [minority] interests without fear of political consequences"], quoting *Rogers v. Lodge* (1982) 458 U.S. 613, 623; *White v. Regester* (1973) 412 U.S. 755, 769.) Perhaps if the Pico neighborhood had a representative on the City Council, not every undesirable land feature would have ended up there. The symptom is a city government that is unresponsive to the minority community; the disease is Defendant's unlawful election system that is known to dilute the minority vote.

2. The presence of undesirable land uses such as a disproportionate amount of affordable housing, automobile repair facilities, liquor stores, and homeless service shelters in the Pico Neighborhood.

As discussed above, zoning, planning, and land use in Santa Monica falls within the purview of the City Council. Therefore, the Council's decisions to place a whole host of undesirable land uses — such as countless liquor stores, affordable housing, auto repair shops, and homeless service shelters (see Plaintiffs' Trial Exhibit 229) — in the Pico Neighborhood, which has a high concentration of Latinos and other minorities, highlights the history of discrimination in the City. (See Elec. Code, § 14028, subd. (e).) Defendant's discriminatory intent is all too clear in the City's 1992 council meeting, wherein Denny Zane expresses concerns regarding a switch to districted elections. (See Plaintiffs' Trial Exhibit 267.) In fact, Zane's main concern was where the City would place the affordable housing (suggesting that the City could not continue to place it disproportionately in the Pico Neighborhood) if there was pushback from a Pico Neighborhood representative. (*Ibid.*)

3. The 10 freeway, Metro Maintenance Yard, City Yards, and SoCal Disposal.

Despite Defendant's contentions to the contrary, the City Council does have a significant influence on the placement of facilities in the City. In particular, the Metro Maintenance Yard's placement was due in part to City Council member Pam O'Connor—who

was chair of Metro Board (as a direct result of her power on City Council) when the decision was made to place the Metro Maintenance Yard in the Pico Neighborhood. City Council member Kevin McKeown did not approve of Ms. O'Connor's involvement in the decision and noted that the Pico Neighborhood did not need any more noise and pollution producing land features. Furthermore, due to the adoption and maintenance of the City's at-large system with an intent to discriminate against minorities, and absent any representative on the City Council from the Pico Neighborhood, the minority residents have been powerless to prevent the placement of these undesirable land uses in their backyard. (See Plaintiffs' Trial Exhibit 267 [Denny Zane expresses concerns regarding a switch to districted elections because there would be no place to put the undesirable land features].)

A. The City Commissioned a Study That Reveals the Pico Neighborhood Residents Have the Worst Sense of Community, the Lowest Life Satisfaction, and the Highest Economic Worry.

The City commissioned a study called the "Wellbeing Index" which evaluated the overall health and wellbeing of residents within different zip codes of Santa Monica. (Plaintiffs' Trial Exhibits 1, 3.) The results are disturbing, although not surprising.

The 90404 zip code encompasses the Pico Neighborhood, which has a higher proportion of minority residents than any other neighborhood in Santa Monica. (Plaintiffs' Trial Exhibit 1, at p. 23.) The 90404 has the worst overall sense of community, scores the lowest on life satisfaction, and the highest in the category of economic worry, among other things.[10] But, because the City Council has no fear of political consequences when it comes to the opinions and needs of the Pico Neighborhood, they are oblivious to these issues, or simply refuse to acknowledge the possibility that certain neighborhoods, like the Pico Neighborhood, may have unique issues that need to be addressed. (O'Connor Deposition, at pp. 173:22–174:2 ["Q: The wellbeing index that was funded by the City of Santa Monica through a grant from the

[10] 90404 is significantly below average on all dimensions except learning. This zip code also performs worst on community, health, and economic opportunity. The largest gaps can be seen in terms of satisfaction with home, many of the community variables such as trusting people and belonging to neighborhood, use of outdoor space, fruit and vegetable consumption, physical activity, and credit card debt. (Plaintiffs' Trial Exhibit 3, at p. 109.)

Bloomberg Foundation, has that raised any concerns in your mind that the neighborhoods experience disparate treatment by the city? A: No."].) This evidence further demonstrates a lack of concern on the part of elected officials for the powerless Pico Neighborhood residents. (See *Thornburg v. Gingles* (1986) 478 U.S. 30, 48, n. 14; see also *id.*, at pp. 36–37 [holding that a significant lack of responsiveness on the part of elected officials to the needs of the minority community is evidence of vote dilution]; *Rogers v. Lodge* (1982) 458 U.S. 613, 626–627 [extensive evidence that elected officials had been unresponsive to the needs of the black community demonstrated that dilutive voting was likely occurring].)

VI. REMEDIES.

Once liability is established under the CVRA, the Court has a broad range of remedies from which to choose, including both district and non-district solutions. (See Elec. Code, § 14029 ["Upon a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation."]; *Sanchez*, *supra*, 145 Cal.App.4th at p. 670; *Jauregui*, *supra*, 226 Cal.App.4th at p. 807 ["Thus, the Legislature intended to expand the protections against vote dilution provided by the federal Voting Rights Act of 1965. It would be inconsistent with the evident legislative intent to expand protections against vote dilution to narrowly limit the scope of . . . relief as defendant asserts. Logically, the appropriate remedies language in section 14029 extends to . . . orders of the type approved under the federal Voting Rights Act of 1965."].)

Likewise, when voting rights are implicated, "[t]he Supreme Court has established that official actions motivated by discriminatory intent 'have no legitimacy at all . . . .' Thus, the proper remedy for a legal provision enacted with discriminatory intent is invalidation." (*N. Carolina NAACP v. McCrory* (4th Cir. 2016) 831 F.3d 204, 239 [surveying Supreme Court cases].) Once intentional discrimination is shown, "the 'racial discrimination must be eliminated root and branch' " by "a remedy that will fully correct past wrongs." (*Ibid.*, quoting *Green v. Cty. Sch. Bd.* (1968) 391 U.S. 430, 437–439, *Smith v. Town of Clarkton* (4th Cir. 1982) 682 F.2d 1055, 1068.)

At trial, Plaintiffs will present the Court with several remedial options, including by-district elections, ranked-choice voting, cumulative voting and limited voting. Though Defendant has had ample time, it appears that Defendant will not propose any remedy at all.

A. By-District Elections.

Requiring by-district elections is certainly the most common remedy in CVRA as well as FVRA cases. In fact, with very limited exception, each and every CVRA case resolved in the fifteen-year history of the CVRA resulted in the defendant political subdivision changing its system of electing its board from an at-large system to a by-district system. The Legislature has certainly expressed its preference for district elections since the enactment of the CVRA, as it has made it easier for political subdivisions to adopt district elections.[11]

In this case, demographics and districting expert, David Ely, developed a seven-district map that complies with all legal requirements. The districts are compact, contiguous and generally equal in population. Race was not a predominant consideration in drawing the districts; rather, Mr. Ely considered the traditional districting criteria specified in Section 21620 of the Elections Code, and the public input collected from Santa Monica residents.

The districts drawn by Mr. Ely will be an effective remedy, as is demonstrated by several considerations. First, 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 plan than they do in other parts of the city. Mr. Ely evaluated Tony Vazquez's performance in that district in 1994 and Maria Loya's performance in that district in 2004. Mr. Vazquez was preferred by Latino voters in 1994 and Ms. Loya was preferred by Latino voters in 2004. In both instances, while they lost citywide, they each garnered more votes in the Pico

[11] In just the past two years, the California Legislature has passed, and the Governor has signed, several such laws, including: Assembly Bill 277 (2015), declaring that vote dilution by at-large elections is a matter of statewide concern, and "codify[ing] the holding in *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781"; Assembly Bill 2389 (2016) permitting special districts to convert from at-large elections to district-based elections without a vote of the electorate "in furtherance of the purposes of the California Voting Rights Act of 2001"; Senate Bill 493 (2015) permitting cities with less than 100,000 population to convert from at-large elections to district-based elections without a vote of the electorate "in furtherance of the purposes of the California Voting Rights Act of 2001"; and Assembly Bill 2220 (2016) permitting cities with more than 100,000 population to convert from at-large elections to district-based elections without a vote of the electorate "in furtherance of the purposes of the California Voting Rights Act of 2001".

Neighborhood district than any other candidate in their respective elections, and Ms. Loya resides in the Pico Neighborhood district. In 2016, there were two candidates who resided in the Pico Neighborhood—Terry O'Day and Oscar de la Torre. Though Mr. O'Day received the most votes of any candidate citywide, Mr. de la Torre, the candidate preferred by Latino voters, almost certainly received more votes than Mr. O'Day in the Pico Neighborhood district.

Second, the Latino proportion of eligible voters is much greater in the Pico Neighborhood district than the city as a whole. In contrast to 13.64% of the citizen-voting-age-population and 16.1% of the population in the city as a whole, Latinos comprise 30% of the citizen-voting-age-population and 33.8% of the population in the Pico Neighborhood district. (Ely Decl., at ¶¶ 17, 29.) That portion of the population and citizen-voting-age-population falls squarely within the range the U.S. Supreme Court deems to be an influence district. (*Georgia v. Aschcroft* (2003) 539 U.S. 461, 470–471, 482 [finding that Georgia's legislative redistricting did not violate Section 5 of the FVRA even though it reduced the number of safe black districts, because it "increased the number of ["crossover"] districts with a black voting age population of between 25% and 50% by four," and noting "various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or coalitional districts."].)

Third, Latinos in the Pico Neighborhood are politically organized, and have devoted political leaders. That fact was demonstrated most recently in the 2016 Democratic primary election between Hillary Clinton and Bernie Sanders. Oscar de la Torre was a state co-chair for Mr. Sanders' campaign. Based in no small part on Mr. de la Torre's advocacy, Mr. Sanders carried all of the precincts of the Pico Neighborhood district, while Ms. Clinton carried almost all of the other precincts in Santa Monica and secured approximately 55% of the vote city wide.

All of these analytics suggest that Latino preferred candidates will fare well in the Pico Neighborhood district. While no election result can be guaranteed, Mr. Ely's district plan would at least guarantee Latinos a **more equitable opportunity**, and that is all the law demands.

B. Limited Voting.

Limited voting is an alternative at-large method of election that improves the ability of minorities to elect representatives of their choice. Put simply, limited voting limits the number of votes a voter can cast to fewer than the number of seats to be filled at the election. For example, in an election to fill the seven city council seats in Santa Monica, one limited voting system might limit each voter to voting for just one candidate; another might limit each voter to voting for two candidates; still another might limit each voter to voting for three, four, five or six—but not seven—candidates. This limit allows the jurisdiction's majority to win at least one seat, but prevents that same majority from dominating every seat and, thus, provides the opportunity for a sufficiently large and cohesive minority to win a seat.

Under limited voting, a well-organized minority can win a seat even in the face of well-organized majority opposition. The size necessary for the minority to win a seat under the most adverse conditions is determined by something known as the "threshold of exclusion," which, in turn, is determined by the number of seats to be filled and the number of votes a voter may cast. In a seven-seat election, with each voter limited to casting just one vote, a well-organized minority can win a seat if the minority-preferred candidate receives 12.5% of the vote regardless of how the majority spreads its votes. In Santa Monica, Latinos account for at least 13.6% of eligible voters, and therefore limited voting in a seven-seat election would, even under the most adverse circumstances, give Latino voters a more equitable opportunity to elect a candidate of their choice.[12]

The threshold of exclusion applicable to limited voting is calculated by the following equation: V/(V+N), where V is the number of votes a voter may cast and N is the number of seats to be filled. Where there are seven seats to be filled and each voter is limited to one vote, then N=7 and V=1, the threshold of exclusion is 1/(1+7)—a minority can win a seat if it

[12] Defendant may argue that because its elections are staggered—with 3 or 4 seats being up for election every two years—the applicable threshold of exclusion is larger. However, when federal courts have ordered such at-large remedies in FVRA cases, they have also unstaggered the elections to lower the threshold of exclusion. (See, e.g., *United States v. Village of Port Chester* (S.D.N.Y. 2010) 704 F.Supp. 2d 411 [unstaggering elections to enhance remedial effect of cumulative voting].)

receives more than one-eighth (12.5%) of the vote. Of course, as the number of seats is increased, or the number of votes a voter may cast is decreased, the threshold of exclusion decreases.

Limited voting has been adopted in several jurisdictions as part of judgments and consent decrees in cases brought under the FVRA. In Alabama alone, limited voting systems have been adopted in at least twenty (20) jurisdictions to resolve FVRA cases. (See e.g., *Dillard v. Town of Cuba* (M.D. Ala. 1988) 708 F. Supp. 1244, 1245–1246, n. 3 [upholding settlement of vote dilution claims against two towns that replaced at-large elections for town councils with limited voting plans, and noting prior approvals of limited voting settlements in eleven other jurisdictions and pending limited voting settlements in four more jurisdictions]; Judgment and Order Modifying Consent Decree, *United States v. City of Calera* (N.D. Ala. Oct. 23, 2009) No. CV-08-BE-1982-S [approving a limited voting system in a consent decree].) In a study of fourteen of those municipalities, in the first election following the imposition of limited voting, African-American candidates won elections in thirteen of the towns (and missed election in the fourteenth by a single vote). In the six towns where these victories were contested, African-Americans constituted 10.2%, 14.6%, 23.5%, 26.3%, 32.2%, and 38.5% of the population. (See Richard L. Engstrom, *Modified Multi-Seat Election Systems as Remedies for Minority Vote Dilution*, 21 STETSON L. REV. 743, 758–759 (1992).) Limited voting systems have also been adopted beyond Alabama as the result of FVRA litigation, including in jurisdictions like Lake Park, Florida, (see Consent Judgment and Decree, *United States v. Town of Lake Park, Fla.* (S.D. Fla. Oct. 26, 2009) No. 9:09-cv-80507; Bladen and Tyrrell Counties, North Carolina, see Anita S. Earls et al., *Voting Rights in North Carolina: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 577, 607, 630 (2008); and Euclid, Ohio, *see United States v. Euclid City Sch. Bd.* (N.D. Ohio 2009) 632 F.Supp. 2d 740.)

C. Cumulative Voting.

Cumulative voting operates differently but achieves the same effect: recognition of a majority's preferred candidates while still making room to seat the preferred candidate of a sufficiently large and cohesive minority. In cumulative voting, each voter may cast as many

votes as there are positions to be filled; a voter may either vote for one candidate for each of the positions to be filled or may instead cumulate his or her votes behind those candidates he or she prefers most intensely. For example, in an election to fill the seven city council seats in Santa Monica, a voter could cast seven votes for one candidate; three votes for one candidate, and four votes for a second candidate; or one vote for each of seven candidates (or any other allocation of the seven votes).

Just as with limited voting, under cumulative voting, a well-organized minority can win a seat even in the face of well-organized majority opposition. The size necessary for the minority to be guaranteed to be able to win a seat—the "threshold of exclusion"—applicable to cumulative voting is calculated by the following equation: 1/(1+N), where N is the number of seats to be filled. Where, as in Santa Monica, there are seven seats to be filled, N=7. The threshold of exclusion is therefore 1/(1+7)—a minority can win a seat if it receives more than one-eighth (12.5%) of the vote. In Santa Monica, Latinos account for at least 13.6% of eligible voters, and therefore limited voting in a seven-seat election would, even under the most adverse circumstances, give Latino voters a more equitable opportunity to elect a candidate of their choice.

Cumulative voting has also been adopted in several jurisdictions as part of judgments and consent decrees in cases brought under the FVRA. In Texas alone, cumulative voting systems have been adopted to enhance minority representation (particularly Latino representation) in at least forty-seven (47) jurisdictions after FVRA lawsuits. (See e.g., Robert R. Brischetto & Richard L. Engstrom, *Cumulative Voting and Latino Representation: Exit Surveys in Fifteen Texas Communities*, 78 SOC. SCI. Q. 973, 974 (1997).) Similarly, in just Alabama, at least five jurisdictions have adopted cumulative voting as part of settlements of FVRA cases, and "[d]espite having African American populations that ranged from only 10.3% to 11.9%, an African American was elected for the first time to the governing board in each of these jurisdictions under cumulative voting rules." (See Richard L. Engstrom, *supra*, at pp. 756–757.) Jurisdictions in Illinois, New Mexico, New York, and South Dakota, for example, have similarly found success in resolving FVRA cases by turning to cumulative

voting. (See e.g., *Banks v. City of Peoria, Ill.*, No. 2:87-cv-2371 (C.D. Ill.); Richard L. Cole et al., *Cumulative Voting in a Municipal Election: A Note on Voter Reactions and Electoral Consequences*, 43 WESTERN POL. Q. 191 (1990); *United States v. Village of Port Chester* (S.D.N.Y. 2010) 704 F.Supp.2d; Richard L. Engstrom & Charles J. Barrilleaux, *Native Americans and Cumulative Voting: The Sisseton-Wahpeton Sioux*, 72 SOC. SCI. Q. 388, 389 (1991).)

Cumulative voting was also recently adopted in a CVRA case. On July 26, 2018, the Orange County Superior Court entered judgment against the City of Mission Viejo and ordered that all further elections for the Mission Viejo City Council employ cumulative voting and that the elections be unstaggered.

D. Ranked-Choice Voting.

Ranked-choice voting, sometimes called single transferable voting, is another election system that, when implemented in its multi-seat election form, combats vote dilution even in an at-large jurisdiction. In a ranked-choice system, voters can rank as many candidates as they want in order of their choice; the voter's single vote is initially allocated to his/her most preferred candidate and, as the count proceeds and candidates are either elected or eliminated, the votes for eliminated candidates are transferred to other candidates according to the voter's stated preferences. As with the other alternative forms above, ranked-choice voting in a multi-seat race results in the election of a majority's preferred candidates while still making room to seat the preferred candidate of a sufficiently large and cohesive minority. A form of ranked-choice voting used for single-seat elections is more common in local American jurisdictions, including in several jurisdictions in California, but ranked-choice voting is currently used to elect multiple at-large city council members in Cambridge, Massachusetts.

The "threshold of exclusion" applicable to ranked-choice voting is the same as that for cumulative voting—it is calculated by the following equation: 1/(1+N), where N is the number of seats to be filled. Where, as in Santa Monica, there are seven seats to be filled, N=7. The threshold of exclusion is therefore 1/(1+7)—a minority can win a seat if it receives more than one-eighth (12.5%) of the vote. In Santa Monica, Latinos account for at least 13.6% of eligible

voters, and therefore ranked-choice voting in a seven-seat election would, even under the most adverse circumstances, give Latino voters a more equitable opportunity to elect a candidate of their choice.

Notably, several members of Santa Monica's Charter Review Commission recommended the adoption of ranked-choice voting (they called it single transferable voting) in 1992. Defendant's city council, however, never really discussed that possibility.

VII. CONCLUSION.

Santa Monica City Council elections are consistently racially polarized, and with the lack of success of Latino candidates preferred by Latino voters, there can be little doubt that Defendant is in violation of the CVRA. That should come as no surprise to Defendant; the dilutive effect of its at-large election system, and even the discriminatory purpose behind the at-large system, were exposed in 1992, and yet Defendant's self-interested city council chose to maintain that system. The right to representation in government is fundamental in our democracy; it is time that Latinos are afforded that right in Santa Monica.

Dated: July 30, 2018

SHENKMAN & HUGHES PC
PARRIS LAW FIRM
LAW OFFICE OF MILTON C. GRIMES
LAW OFFICE OF ROBERT RUBIN

By: _____
Kevin Shenkman
Attorneys for Plaintiffs

PROOF OF SERVICE
1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534.

On July 30, 2018, I served the foregoing document described as **PLAINTIFF'S TRIAL BRIEF** as follows:

*** *See Attached Service List* ***

[x] **BY MAIL as follows:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **BY PERSONAL SERVICE as follows:**

[ ] I delivered such envelope by hand to the addressees at 11 North Hill Street, Los Angeles, CA 90012. _____

[ ]_ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is Team Legal, Inc., 40015 Sierra Highway, Suite B220, Palmdale, CA 93550.

[ ]__ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is First Legal Support Services,1511 West Beverly Blvd., Los Angeles, CA 90026.

[ ] **BY FACSIMILE as follows:** I served such document(s) by fax at See Service List to the fax number provided by each of the parties in this litigation at Lancaster, California. I received a confirmation sheet indicating said fax was transmitted completely.

[ ] **BY GOLDEN STATE OVERNIGHT DELIVERY/OVERNIGHT MAIL as follows:** I placed such envelope in a Golden State Overnight Delivery Mailer addressed to the above party or parties at the above address(es), with delivery fees fully pre-paid for next-business-day delivery, and delivered it to a Federal Express pick-up driver before 4:00 p.m. on the stated date.

[ ] **BY ELECTRONIC SERVICE as follows:** Based on a court order, or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addressed listed on the attached Service List.

Executed on July 30, 2018, at Lancaster, California.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Cheryl Cinnater

SERVICE LIST

Pico Neighborhood Association v. City of Santa Monica, California, et al.

Lane Dilg, Esq. Joseph Lawrence, Esq. Susan Y. Cola, Esq. 1685 Main Street, Room 310 Santa Monica, CA 90401 Telephone: (310) 458-8336 Facsimile: (310) 395-6727	Attorneys for Defendant City of Santa Monica
Theodore J. Boutrous, Jr., Esq. Marcellus McRae, Esq. Khan A. Scolnick, Esq. William E. Thomson, Esq. Theane Evangelis, Esq. Tiaunia N. Bedell, Esq. Gibson, Dunn & Crutcher, LLP 333 South Grand Avenue Los Angeles, CA 90071 Telephone: (213) 229-7000 Facsimile: (213) 229-7520 thenry@gibsondunn.com kscolnick@gibsondunn.com	Attorneys for Defendant City of Santa Monica
Kevin I. Shenkman, Esq. Mary R. Hughes, Esq. John L. Jones, II, Esq. SHENKMAN & HUGHES 28905 Wight Road Malibu, California 90265 Telephone: (310) 457- 0970 Shenkman@sbcglobal.net	Attorneys for Plaintiffs Pico Neighborhood Association, Maria Loya and Advocates for Malibu Public School ***Via Email Only**
Milton Grimes LAW OFFICES OF MILTON GRIMS 3774 West 54TH Street Los Angeles, CA 90043 miltgrim@aol.com Telephone: (323) 295-3023	Attorneys for Plaintiffs Pico Neighborhood Association, Maria Loya and Advocates for Malibu Public School ***Via Email Only**
Robert Rubin LAW OFFICE OF ROBERT RUBIN 131 Steuart Street, Suite 300 San Francisco, CA 94105 robertrubinsf@gmail.com Telephone: (415) 625-8454	Attorneys for Plaintiffs Pico Neighborhood Association, Maria Loya and Advocates for Malibu Public School ***Via Email Only**

EXHIBIT S

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE

PICO NEIGHBORHOOD ASSOCIATION, ET AL,

PLAINTIFFS,

vs.

CITY OF SANTA MONICA, ET AL.,

DEFENDANTS.

NO. BC616804

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, AUGUST 7, 2018

P.M. SESSION

APPEARANCES:

FOR PLAINTIFFS:

SHENKMAN & HUGHES, PC
BY: KEVIN SHENKMAN, ESQ.
ANDREA A. ALARCON, ESQ.
28905 WIGHT ROAD
MALIBU, CALIFORNIA 90265
KISHENKMAN@SHENKMANHUGHES.COM

PARRIS LAW
BY: R. REX PARRIS, ESQ.
43364 10TH STREET WEST
LANCASTER, CALIFORNIA 93534

LAW OFFICES OF MILTON C. GRIMES
BY: MILTON C. GRIMES, ESQ.
3774 WEST 54TH STREET
LOS ANGELES, CALIFORNIA 90043
MILTGRIM@AOL.COM

(APPEARANCES CONTINUED)

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REPORTED BY: LORA J. JOHNSON, CSR 10119
RPR, CRR, RMR, CCRR #202
OFFICIAL REPORTER PRO TEMPORE

A This is a general finding in political science. And so we have -- there's a huge branch of political science that studies turnout. And one of the things that it has found unanimously is that when there is more interest in an election, when there are more candidates of a particular group running, when those candidates are more popular, they're more likely to participate.

Q And applying that research and study to the situation in Santa Monica, from what you've seen, do you have any opinions about the Latino no vote?

MR. McRAE: Your Honor, same objection.

THE COURT: Overruled.

MR. McRAE: It's just generalized. It's not specific. I still don't know what it is.

THE COURT: Overruled.

THE WITNESS: The reason that I put in no vote and the number of candidates voted for and that these were in tables that were part of my report was that I was concerned with this sort of question and let it -- and provided the basis for it in Santa Monica so that, if you compare one table to another, you will see whether there is that pattern in the data. And the -- you can do it -- anybody can do it simply by comparing table after table after table.

BY MR. SHENKMAN:

Q Okay. And if you need us to put up the past tables that we've looked at, we can, but if you could

please tell us what you see from those tables as far as the Latino no vote?

THE COURT: In Santa Monica?

THE WITNESS: In Santa Monica.

The no vote goes down for Latinos as the number of candidates goes up and as the seriousness of the candidates goes up.

BY MR. SHENKMAN:

Q Okay. And number of candidates, the seriousness of the candidates, are you talking about just Latino candidates or all candidates?

A Just Latino candidates.

THE COURT: Can I ask a question? Are you going to another subject, or do you need to finish this one out?

MR. SHENKMAN: I think I had one more question, but please.

THE COURT: Wouldn't you expect to see -- you said there was racial polarization with respect to the last two candidates. Wouldn't you expect to see that with respect to Vazquez?

THE WITNESS: No. I'm sorry. I apologize. I said two candidates. Vazquez and Gomez are racially polarized.

THE COURT: Okay. But still wouldn't you expect all three of them to show that? It's the same election.

THE WITNESS: It is the same election. I

don't know how serious Mr. Duron was. All I can say is that -- that his vote was not polarized.

THE COURT: When you say wasn't serious, what does that mean?

THE WITNESS: He got only 5 percent of the actual votes, and he --

THE COURT: But Gomez got 6. That's not much more.

THE WITNESS: Gomez got 6. The thing that was different about Gomez was that that vote was very racially polarized, more than for Duron.

I do not know issues in that particular race. I don't know how much money Mr. Duron had, don't know how much money Mr. Gomez had. But it was a little surprising to me that Mr. Gomez, who finished with such a small percentage of votes, that his votes -- that vote was actually racially polarized.

THE COURT: It's just that we're talking about the same pool of voters, right?

THE WITNESS: Yes.

THE COURT: Wouldn't you expect them all to vote that way in a racially polarized manner?

THE WITNESS: If the only thing -- only reason that they voted was because of race, yes, but there are clearly other things that are taken into account, and one is the chances that each candidate is perceived to have.

So for that reason, I was surprised to see

Gomez get as high a proportion of Hispanic votes as he did.

I could have added all three of these together. And the CVRA says that that's a possibility. And then seeing whether their vote was racially polarized, what you would find on the point estimates is that if you add all the point estimates together, that will have the same effect as adding them up and then calculating them, but the standard errors will not be exactly the same as they are now.

So I didn't do that. I left the possibility that there might be some differentiation in the support for all three candidates rather than sort of assuming that they were all polarized and pooling them together.

I don't know whether that was the right thing to do. It might not have been the right thing to do.

BY MR. SHENKMAN:

Q Can you tell from this chart, if you had added them up to get the group-wide support, would it be racially polarized?

A I think clearly so because it's -- it's such a large number. It would be 125 percent for all three candidates. One -- each Hispanic would -- voter would cast a vote for one of the three candidates.

And if you look at the standard errors on the non-Hispanic whites, those are very low. Actually, the standard errors on the Latino candidates are very low. So if they're at all correlated, it would clearly be

racially polarized.

And the fact that two of them are, even without adding them all together, and that the third one doesn't get very much votes from anybody implies that it would still be quite racially polarized.

Q Thank you.

MR. SHENKMAN: Ask to admit 287?

THE COURT: It's received.

MR. SHENKMAN: Thank you.

(Exhibit 287 was received into evidence.)

MR. SHENKMAN: Let's pull up Exhibit 290, please.

(Exhibit 290 identified.)

BY MR. SHENKMAN:

Q If you could, Dr. Kousser, explain what the chart on Exhibit 290 is and what it shows you.

A This is the 2016 election for city counsel. It is weighted regression. There are two Spanish surname candidates, Mr. Vazquez and Mr. de la Torre. Both of them get a very substantial proportion of Latino votes. Eight out of nine or nine out of ten, rather, Hispanics vote for Mr. de la Torre, eight out of ten vote for Mr. Vazquez as well.

The relationship between ethnicity and the vote is quite strong. Mr. de la Torre gets 88 percent of the Latino votes and only 13 percent of non-Hispanic whites.

EXHIBIT T

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE

PICO NEIGHBORHOOD ASSOCIATION, ET AL,

PLAINTIFFS,

vs.

NO. BC616804

CITY OF SANTA MONICA, ET AL.,

DEFENDANTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, SEPTEMBER 5, 2018

P.M. SESSION

APPEARANCES:

FOR PLAINTIFFS:

SHENKMAN & HUGHES, PC
BY: KEVIN SHENKMAN, ESQ.
ANDREA A. ALARCON, ESQ.
28905 WIGHT ROAD
MALIBU, CALIFORNIA 90265
kishenkman@shenkmanhughes.com

PARRIS LAW
BY: R. REX PARRIS, ESQ.
ELLERY S. GORDON, ESQ.
RUTGER R. PARRIS, ESQ.
43364 10TH STREET WEST
LANCASTER, CALIFORNIA 93534

LAW OFFICES OF MILTON C. GRIMES
BY: MILTON C. GRIMES, ESQ.
3774 WEST 54TH STREET
LOS ANGELES, CALIFORNIA 90043
miltgrim@aol.com

(APPEARANCES CONTINUED)

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REPORTED BY: LORA J. JOHNSON, CSR 10119
RPR, CRR, RMR, CCRR #202
OFFICIAL REPORTER PRO TEM

1992 in Santa Monica with respect to the election system?

A This was the third and last pivot point that Dr. Kousser cites as exemplary of intentional discrimination in the maintenance of the at-large election system in Santa Monica.

And in this case, you had the formation of a Charter Review Commission, and Dr. Kousser's 1992 report, which we discussed a lot, was resulting from that.

THE COURT: In connection with that, right?

THE WITNESS: Yeah.

And the city council voted 4 to 3 against putting districts on the ballot, didn't vote one way or the other on another recommendation, which was this ranked choice voting, STV, single transferrable vote. It also voted unanimously to get more information on both hybrid and districts.

And, of course, hybrid is a combined at-large district system that they have, four elected districts, three elected at-large, or more if you expanded the size of the city council in Santa Monica.

BY MR. SCOLNICK:

Q So in terms of the first Arlington Heights factor, discriminatory effect, did the maintenance of at-large elections in 1992 have a discriminatory effect on Latinos in Santa Monica?

A No, it did not.

Q Why not?

A Well, the answer is complicated, but I'll -- I'll just give some quick bullet points.

Number one, there was no district that was proposed that, in my view, gave Latinos the ability to elect candidates of their choice. For the first time, there were actually a district proposed. Although I never saw the entire map, I did see some numbers on a district that were in the report of the Charter Review Commission, but in my view, based on my analysis, those proposed districts fall well short.

We have also not seen an analysis of the effect of that plan on the two other protected minorities in Santa Monica, kind of a forgotten people, the Asian Americans and the African Americans, who in my view, had you adopted that plan which wouldn't have given Latinos the ability to elect candidates of their choice, it would have had a very adverse effect on African Americans and Latinos.

In addition, you had a Latino elected in 1990, Tony Vazquez, who at the time the Charter Review Commission was reporting to the city council and the city council was debating election system issues. Latinos had greater than proportional representation; 1 out of 7 exceeded their representation in the citizen voting age or even in the voting age population.

In addition, immediately after these debates, you had the election of another minority, an

Asian American, Asha Greenberg, who was elected to the city council in the regular election in 1992. So minorities had super-proportional -- 2 out of 7 -- representation on the city council.

I will also demonstrate that Dr. Kousser's attempt to link the maintenance of the at-large election with racist attacks on Tony Vazquez and Tony Vazquez's defeat is in fact fundamentally flawed, and his own results that he cites in support of that in fact show the precise opposite.

Q I think you said that, in your opinion, it wouldn't have been possible to draw a district in 1992 that would have given Latinos the ability to elect candidates of their choice. Did you say that?

A I did. And that's based on my analysis of the numbers that I saw. I don't know if those numbers are right, you know, but the Charter Review Commission said, but taken at face value, they wouldn't be sufficient.

Q And was there an actual district presented to the Charter Review Commission?

A I don't know, your Honor, if there was an actual district. I saw someone waving a map, but, you know, I didn't see an actual plan of seven or nine districts with an actual full demographic breakdown of each of the districts. And really to evaluate a district plan, you got to see it in toto.

All I saw were numbers for voting age Latinos

Asians and African Americans --

THE COURT: Okay. So bring this back to the intent. What does this have to do with intent?

THE WITNESS: This has to do with intent because my point is that the failure to create a Latino district or correspondingly the creation of a Latino district would in fact have discriminatory effects on other minority groups.

THE COURT: So the city council was afraid of these things --

THE WITNESS: Exactly.

THE COURT: -- these problems? Okay.

THE WITNESS: The Charter Review Commission made that crystal clear.

THE COURT: All right.

BY MR. SCOLNICK:

Q Thank you.

How does the African American and Asian presence among registered voters in 1992 compare to Latinos?

A As I said, combined, they're higher. They're not an insignificant voter group within Santa Monica. They were 7.4 percent, according to Dr. Kousser's compilation, as compared to 5.9 percent of registered voters for Latinos.

So if you want to provide opportunities for minorities, you can't just leave out of your analysis Asian Americans and African Americans.

Q And as of 1992, did African American and Asian candidates get elected to the city council under the at-large system?

A Yes. An African American, Nat Trives, was elected in 1971 and 1975, and then very shortly after all of these deliberations that we're talking about in that same year, 1992, an Asian American, Asha Greenberg, was elected to the city council. She was re-elected in 1996 and served until she resigned from the city council after her second election.

Q So in 1992, did the Charter Review Commission recommend going to districts?

A It did not. Only 5 members out of 15 recommended going to districts.

Q What did the commission recommend?

A Bare majority of 8, your Honor, out of 15 recommended returning to the pre-1925 system, although not necessarily designated posts, but to the form of election which was ranked choice voting or in particular the single transferrable vote.

Q In 1992, would a ranked choice voting system have been favorable to minority voters in Santa Monica?

A I don't think it would have in 1992.

MR. SCOLNICK: Can we look at the Charter Review Commission report, 127, Exhibit 127, at page 27. Blow up this chart just before the notes. Everything from the top of the page to the notes.

Q Can you explain what is shown here in the

Charter Review Commission report about ranked choice voting?

A Yeah. I think you've heard something about thresholds of exclusion, your Honor, in ranked choice voting. That is, that depending on how many candidates are up for election, there is a certain threshold at which if a minority group's voting strength -- and this is voting strength, this is voters -- if a minority group's voting strength reaches a certain percentage, depending upon the number of seats up, and presuming that they concentrate their voting strength on that one person, then they can in fact elect a candidate of their choice under those two provisos, percentage of voters equal to the threshold and a concentration of their vote on particular candidates of choice.

Q So what did the Charter Review Commission conclude with respect to the thresholds?

A Well, you can see that Latinos at 5.6 percent of registration are far below the threshold, no matter how you measure it.

Under a -- when three seats are elected at one time, your Honor, the threshold is all the way up to 25 percent because there's not much you can do with that many seats with single choice with a single transferrable vote.

When four seats are up, it's still 20 percent. This is the system that exists at the time, the staggered election system, and the thresholds under

EXHIBIT U

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE

PICO NEIGHBORHOOD ASSOCIATION, ET AL,

PLAINTIFFS,

vs.

NO. BC616804

CITY OF SANTA MONICA, ET AL.,

DEFENDANTS.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, AUGUST 16, 2018

A.M. SESSION

APPEARANCES:

FOR PLAINTIFFS:

SHENKMAN & HUGHES, PC
BY: KEVIN SHENKMAN, ESQ.
ANDREA A. ALARCON, ESQ.
28905 WIGHT ROAD
MALIBU, CALIFORNIA 90265
KISHENKMAN@SHENKMANHUGHES.COM

PARRIS LAW
BY: R. REX PARRIS, ESQ.
ELLERY S. GORDON, ESQ.
43364 10TH STREET WEST
LANCASTER, CALIFORNIA 93534

LAW OFFICES OF MILTON C. GRIMES
BY: MILTON C. GRIMES, ESQ.
3774 WEST 54TH STREET
LOS ANGELES, CALIFORNIA 90043
MILTGRIM@AOL.COM

(APPEARANCES CONTINUED)

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REPORTED BY: LORA J. JOHNSON, CSR 10119
RPR, CRR, RMR, CCRR #202
OFFICIAL REPORTER PRO TEMPORE

or discriminatory impact, he favors district elections for policy reasons, right?

A That's correct.

Q Okay. Thank you.

Let's go back to talk about SMRR.

So yesterday we were talking about your testimony on direct examination that SMRR wanted to maintain at-large systems to maintain its power in Santa Monica, and I asked you wasn't it true that SMRR endorsed candidates of color, and that testimony is in the record. And then I asked you whether it was true that SMRR also backed individuals and endorsed them who favored districts as opposed to at-large elections, and that testimony is in the record.

Sir, isn't it a fact that SMRR has endorsed --

Let me just show you Exhibit 1697. And if we could go to page 4 of Exhibit 1697.

(Exhibit 1697-4 identified.)

BY MR. McRAE:

Q Now, sir, do you see that this is a SMRR mailer urging votes for the SMRR team?

And I know this has been done a lot. I'll just go ahead and say it. It's SMMR [sic].

And so this is a SMRR mailer urging votes for the SMRR team in the November 1994 election for city council. Do you see that?

A Yes.

Q And do you see that SMRR endorses Tony Vazquez

for city council?
A Yes.
Q And you see that Mr. Vazquez is Latino?
A Yes.
Q And at one time, at least, back in the '90s, Mr. Vazquez supported districts. Do you see that?
A I'm sorry, I don't see where --
Q I mean, do you recall that --
A I know that he supported districts.
Q Thank you.
So let me now --
MR. McRAE: Your Honor, I'd like to move in Exhibit 1697 at page 4.
THE COURT: Received.
(Exhibit 1697-4 was received into evidence.)
MR. McRAE: Let me show you now, sir, Exhibit 1679.
THE COURT: 1679?
MR. McRAE: Yeah, 1679.
THE WITNESS: Thank you, ma'am.
(Exhibit 1679 identified.)
BY MR. McRAE:
Q And, sir, this is a SMRR flier urging votes for the SMRR team in the November 2000 election. Do you see that?
It's on page 6, sir, of Exhibit 1679.
A I don't see where it says "2000 election."

Q It says "The 2000 SMRR team." 1679, page 6.
A Okay. Sorry.
Q You got it?
A Yes.
(Exhibit 1679-6 identified.)
BY MR. McRAE:
Q Okay. And do you see here that SMRR endorses Ken Genser for city council?
A Yes.
Q And you understand that Ken Genser, at least in --
A In 1992, supported districts --
Q Supported districts? Right.
A Yes.
Q Thank you.
And SMRR also endorses Margaret Quinones. Do you see that here, for college board?
A Yes.
Q And Ms. Quinones is a Latino, right?
A Yes.
Q And you see that SMRR endorses Maria Leon Vazquez and Jose Escarce for school board?
A Yes.
Q And both of those individuals are Latino?
A Yes.
Q And you see that SMRR endorses M. Douglas Willis for Rent Control Board, right?
A Yes.

EXHIBIT V

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 28 HON. YVETTE M. PALAZUELOS, JUDGE

PICO NEIGHBORHOOD ASSOCIATION, ET AL., PLAINTIFFS, VS. CITY OF SANTA MONICA, ET AL., DEFENDANTS.	CASE NO. BC616804

REPORTER's TRANSCRIPT OF PROCEEDINGS

TRIAL

TUESDAY, SEPTEMBER 4, 2018

A.M. SESSION

APPEARANCES:

FOR PLAINTIFFS:

SHENKMAN & HUGHES, PC
BY: KEVIN SHENKMAN, ESQ.
ANDREA A. ALARCON, ESQ.
28905 WIGHT ROAD
MALIBU, CALIFORNIA 90265
kishenkman@shenkmanhughes.com

PARRIS LAW
BY: R. REX PARRIS, ESQ.
ELLERY S. GORDON, ESQ.
RUTGER R. PARRIS, ESQ.
43364 10TH STREET WEST
LANCASTER, CALIFORNIA 93534

LAW OFFICES OF MILTON C. GRIMES
BY: MILTON C. GRIMES, ESQ.
3774 WEST 54TH STREET
LOS ANGELES, CALIFORNIA 90043
miltgrim@aol.com

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REPORTED BY: RHONA S. REDDIX, CSR RPR CRR RMR NO. 10807
OFFICIAL REPORTER

solve all my family's problems with a wave of my starting salary. So I was told engineers make good money and that's what I thought I'd do.

I went into physics 51 and got a D in that class and began to think differently about this. So I thought more about what I could do for more families than just my own and took up public policy and had a focus in social policy, principally on housing and homelessness.

Q Did you earn your degree from Stanford?

A I did, uh-huh.

Q Did you work while you were in college?

A I worked about 30 hours a week, and the school was very helpful in finding grants and loans so my parents didn't have any financial responsibility at all. I did it myself.

Q Have you had any other formal education?

A After college I came to L.A. for the Coro Public Affairs Fellowship Program, which is a one year program with a series of assignments in government, business, media, labor, politics, and community service, and then worked while I was getting an M.B.A. at UCLA.

Q What was the connection between your public policy studies and getting an M.B.A.?

A After that Coro program, I started my first job with Edison International and it was in electric car charging, which happens to be where I am again today, back to my future. And the power that electric cars and

technology and the opportunity to turn business models towards social problems was really compelling to me. So I've been fortunate for most of my career to use business models to solve problems, mostly around environmental issues and environmental justice issues.

Q Where do you currently live?

A I live on Euclid Street, 1753 Euclid Street in Santa Monica. It's in the Pico Neighborhood.

Q How long have you lived in Santa Monica?

A 20 years.

Q And how long have you lived in the Pico Neighborhood?

A All those 20 years.

Q Have you lived in any other neighborhood in Santa Monica?

A No.

Q And have you lived in the same house in the Pico Neighborhood since you lived there?

A No. In 1998, my wife and I got married, started my first company, and bought our first house, all within the same three months, and that was on 17th Street across from the cemetery.

Q When did you move into your current home?

A Just before our first daughter was born, and so that was December 2004. She was born in '05. I moved my wife twice at nine months pregnant; so you can see how we do things, stack it up.

Q And where is your house now in relation to

A It's up here.
Q And so you're pointing to the gray roof on the right-hand side, upper right quadrant?
A That's right.
Q Thank you.
MS. MARYOTT: Your Honor, we'd like to move this into evidence subject to replacing the photo with the full version.
THE COURT: Okay. It's received.

(Exhibit Number 1914, received.)

MS. MARYOTT: Thank you.
BY MS. MARYOTT:
Q While we're looking at this, it looks like there's a circle at the intersection. What is that?
A That's a relatively new traffic circle that was installed. There's three or four of those on Michigan Ave., with more coming, as part of our MANGo Avenue Greenway project, neighborhood Greenway.
Q Sorry. What is the MANGo Avenue Greenway project?
A MANGo. I'm sorry. It's Michigan Avenue Neighborhood Greenway project, is the acronym. So that is a planning project that was intended to provide increased safety for this Michigan Avenue corridor where a number of kids go to school. To the left, off of the picture, is Santa Monica High School and to the right is

EXHIBIT W

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION, et al. Plaintiffs, vs. CITY OF SANTA MONICA, Defendant.	Case No.: BC616804 TENTATIVE DECISION; ORDERS

Pursuant to CCP §632 and CRC Rule 3.1590(a), the court issues a Tentative Decision as follows:

1. On the first and second causes of action, in favor of Plaintiffs Pico Neighborhood Association and Maria Loya and against Defendant City Of Santa Monica.

2. The Court also orders as follows:

a) A post-trial hearing regarding the appropriate/preferred remedy for violation of the California Voting Rights Act on December 7, 2018, 9:30 a.m., Dept. 28. All counsel are ordered to appear.

b) Plaintiffs shall file and serve an Opening brief (no more than 15 pages) as if a moving party per the Code of Civil Procedure;

c) Responding brief (no more than 15 pages) and Reply brief (no more than 7 pages) shall be filed and served per the Code of Civil Procedure.

d) A courtesy copy of each brief must be delivered to the courtroom.

CLERK TO GIVE WRITTEN NOTICE.

IT IS SO ORDERED.

DATED: November 5, 2018

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

EXHIBIT X

CITY OF SANTA MONICA
LANE DILG, SBN 277220
City Attorney
Lane.Dilg@smgov.net
GEORGE S. CARDONA, SBN 135439
Special Counsel
George.Cardona@smgov.net
SUSAN COLA, SBN 178360
Deputy City Attorney
Susan.Cola@smgov.net
1685 Main Street, Room 310
Santa Monica, CA 90401
Telephone: 310.458.8336

GIBSON, DUNN & CRUTCHER LLP
THEODORE J. BOUTROUS JR., SBN 132099
tboutrous@gibsondunn.com
MARCELLUS MCRAE, SBN 140308
mmcrae@gibsondunn.com
WILLIAM E. THOMSON, SBN 187912
wthomson@gibsondunn.com
KAHN SCOLNICK, SBN 228686
kscolnick@gibsondunn.com
TIAUNIA N. HENRY, SBN 254323
thenry@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

Attorneys for Defendant,
CITY OF SANTA MONICA

Gov. Code, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA,

Defendant.

CASE NO. BC616804

CITY OF SANTA MONICA'S REQUEST FOR STATEMENT OF DECISION RE FIRST AMENDED TENTATIVE DECISION (CODE CIV. PROC. § 632; CAL. RULES OF COURT, RULE 3.1590(d))

Complaint Filed: April 12, 2016
Trial Date: August 1, 2018

Assigned to Judge Yvette Palazuelos

Dep't 28

Following the Court's December 12, 2018 First Amended [Tentative] Decision, Defendant City of Santa Monica ("City") submits the following request for a statement of decision under Code of Civil Procedure section 632 and California Rules of Court, rule 3.1590, subdivision (d).

Request for Statement of Decision

Trial in this case began on August 1, 2018. The presentation of evidence was completed on September 11, 2018, and post-trial briefing was completed on October 25, 2018. On November 8, 2018, the Court issued a Tentative Decision (the "Original Tentative Decision"), a copy of which is attached as Exhibit A. On November 15, 2018, the City filed a Request for Statement of Decision (the "Original Request") requesting that the Court issue "a statement of decision explaining the factual and legal bas[es] for its decision as to each of the principal controverted issues at trial," and, as required, specifying those principal controverted issues. (Code Civ. Proc., § 632; Rules of Court, Rule 3.1590(d).) A copy of the Original Request is attached as Exhibit B.

On December 7, 2018, the Court held a hearing regarding remedies. Thereafter, on December 12, 2018, the Court issued a First Amended [Tentative] Decision (the "Amended Tentative Decision"), a copy of which is attached as Exhibit C. That same day, the Court issued a Minute Order that stated, among other things, "The court deems Defendants' previously filed Request for a Statement of Decision to be a Request for a Statement of Decision as to the First Amended [Tentative] Decision." A copy of the Court's December 12, 2018 Minute Order is attached as Exhibit D.

The first paragraph of the Amended Tentative Decision is the same as the Court's tentative merits ruling in the Original Tentative Decision. The Amended Tentative Decision, however, includes two additional paragraphs that set forth the Court's tentative choice of remedy—namely, a requirement that the City move to district-based elections for its City Council with one district (the "Pico Neighborhood District") defined as set forth in the map (Trial Exhibit 162-1) attached to the Amended Tentative Decision. Given the additional tentative rulings contained in the Amended Tentative Decision, the City requests that the Court add to its forthcoming statement of decision a specification of "the factual and legal bas[es] for its decision" relating to the Court's tentative choice of remedy set forth in the Amended Tentative Decision.

The principal controverted issues at trial specified by the City in paragraphs 1 through 16 of the Original Request (Exhibit B) are incorporated herein by reference. The additional principal controverted issues at trial posed by the Court's tentative choice of remedy set forth in the Amended Tentative Decision include the following:

17. In determining that district-based elections should be ordered as a remedy, did the Court resolve the following questions identified in *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 690, as issues not yet resolved by the Courts of Appeal, and, if so, how:

a. "Is the court precluded from employing crossover or coalition districts (i.e., districts in which the plaintiffs' protected class does not comprise a majority of voters) as a remedy?"

b. Does the Court's order to move to district-based elections "conform to the Supreme Court's vote-dilution-remedy cases?"

18. In determining that district-based elections should be ordered as a remedy, did the Court consider the undisputed fact that in Santa Monica, Latinos are not geographically compact or concentrated, with the result being that no district can be drawn in which Latinos constitute a majority of the citizen-voting-age population ("CVAP"), as permitted by California Elections Code § 14028(c)? If not, why not? If so, how did this factor into the Court's choice of remedy?

19. What compelling interest supports the Court's determination to order a district (the Pico Neighborhood District, Ex. 162-1) drawn to maximize that district's percentage of Latino voters?

a. In determining whether there is any such compelling interest, did the Court consider that Latinos will not constitute a majority of the CVAP within the Pico Neighborhood District? If not, why not? If so, how did this factor into the Court's determination?

b. In determining whether there is any such compelling interest, did the Court consider that the analysis of plaintiffs' own expert confirmed that Latinos do not vote cohesively with other minority groups in Santa Monica, the result being that Latino voters in the Pico Neighborhood District will still require substantial crossover voting from white voters to elect candidates of their choice? If not, why not? If so, how did this factor into the Court's determination?

c. In determining whether there is any such compelling interest, did the Court consider the Supreme Court's plurality decision in *Bartlett v. Strickland* (2009) 556 U.S. 1, which held that Section 2 of the federal Voting Rights Act cannot mandate the formation of influence districts? If not, why not? If so, how did this factor into the Court's consideration?

20. If the Court found that a compelling interest supports the remedy here, did the Court find that the chosen remedy was narrowly tailored to serve that compelling interest? If not, why? If so, how?

21. If there is no compelling interest supporting the Court's determination to order a move to district-based elections, what justifies the order and how does it conform to the Supreme Court's requirements in vote-dilution remedy cases, given that the only conceivable basis for the ordered change in the City's election system would be to attempt to enhance Latino voting power?

22. In determining that district-based elections should be ordered as a remedy, did the Court consider that the majority of Latino voters in Santa Monica will be in districts other than the Pico Neighborhood District? If not, why not? If so, how did this factor into the Court's determination?

a. Did the Court consider that the majority of Latino voters in districts other than the Pico Neighborhood District will, unlike under the current at-large election system, be unable to join with Latino voters outside their own districts, including the Pico Neighborhood District, to elect City Council candidates of their choice? If not, why not? If so, how did this factor into the Court's determination?

b. Did the Court consider that in most districts other than the Pico Neighborhood District, the percentage of Latino voters within the district will be less than the approximately 13.6% of CVAP that Latino voters currently constitute in Santa Monica as a whole? If not, why not? If so, how did this factor into the Court's determination?

23. In determining that district-based elections should be ordered as a remedy, did the Court consider the effect of district-based elections on other minority groups in Santa Monica—namely, African Americans and Asians? If not, why not? If so, how did this factor into the Court's determination?

24. Does the Pico Neighborhood District (Ex. 162-1) serve to remedy the violations found

by the Court? If so, how?

25. In ordering the City's district-based elections to be "in accordance" with the map identifying the Pico Neighborhood District, did the Court consider the effect of that district on other minority groups in Santa Monica—namely, African Americans and Asians? If not, why not? If so, how did this factor into the Court's determination?

26. Section 10010 of the Elections Code requires a political subdivision to, among other things, hold a series of public meetings and receive public input concerning proposed district maps, in the event that a court imposes a change from at-large elections to districted elections. Did the Court find that the Pico Neighborhood District drawn by plaintiffs' expert and identified in Exhibit 162-1 was drawn in accordance with section 10010?

a. If so, how?

b. If not, did the Court find that there is an exception to section 10010 that applies here? What is that exception, and on what basis did the Court find it applicable here?

27. With respect to determining the remaining districts for City Council elections going forward, does the Court order the City to comply with Elections Code section 10010? If not, why not?

DATED: December 21, 2018

Respectfully submitted,
GIBSON, DUNN & CRUTCHER LLP

By: _____

Theodore J. Boutrous, Jr.

Attorneys for Defendant
City of Santa Monica

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION, et al. Plaintiffs, vs. CITY OF SANTA MONICA, Defendant.	Case No.: BC616804 TENTATIVE DECISION; ORDERS

Pursuant to CCP §632 and CRC Rule 3.1590(a), the court issues a Tentative Decision as follows:

1. On the first and second causes of action, in favor of Plaintiffs Pico Neighborhood Association and Maria Loya and against Defendant City Of Santa Monica.

2. The Court also orders as follows:

a) A post-trial hearing regarding the appropriate/preferred remedy for violation of the California Voting Rights Act on December 7, 2018, 9:30 a.m., Dept. 28. All counsel are ordered to appear.

b) Plaintiffs shall file and serve an Opening brief (no more than 15 pages) as if a moving party per the Code of Civil Procedure;

c) Responding brief (no more than 15 pages) and Reply brief (no more than 7 pages) shall be filed and served per the Code of Civil Procedure.

d) A courtesy copy of each brief must be delivered to the courtroom.

CLERK TO GIVE WRITTEN NOTICE.

IT IS SO ORDERED.

DATED: November 5, 2018

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

EXHIBIT B

CITY OF SANTA MONICA
LANE DILG, SBN 277220
City Attorney
Lane.Dilg@smgov.net
GEORGE S. CARDONA, SBN 135439
Special Counsel
George.Cardona@smgov.net
SUSAN COLA, SBN 178360
Deputy City Attorney
Susan.Cola@smgov.net
1685 Main Street, Room 310
Santa Monica, CA 90401
Telephone: 310.458.8336

GIBSON, DUNN & CRUTCHER LLP
THEODORE J. BOUTROUS JR., SBN 132099
tboutrous@gibsondunn.com
MARCELLUS MCRAE, SBN 140308
mmcrae@gibsondunn.com
WILLIAM E. THOMSON, SBN 187912
wthomson@gibsondunn.com
KAHN SCOLNICK, SBN 228686
kscolnick@gibsondunn.com
TIAUNIA N. HENRY, SBN 254323
thenry@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

Attorneys for Defendant,
CITY OF SANTA MONICA

Gov. Code, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA,

Plaintiffs,

v.

CITY OF SANTA MONICA,

Defendant.

CASE NO. BC616804

CITY OF SANTA MONICA'S REQUEST FOR STATEMENT OF DECISION (CODE CIV. PROC. § 632; CAL. RULES OF COURT, RULE 3.1590(d))

Complaint Filed: April 12, 2016
Trial Date: August 1, 2018

Assigned to Judge Yvette Palazuelos

Dep't 28

Defendant City of Santa Monica ("City") submits the following request for a statement of decision under Code of Civil Procedure section 632 and California Rule of Court 3.1590, subdivision (d).

Request for Statement of Decision

Trial in this case began on August 1, 2018. The presentation of evidence was completed on September 11, 2018, and post-trial briefing was completed on October 25, 2018. On November 8, 2018, the Court issued a tentative decision, a copy of which is attached as Exhibit A. With respect to the merits, the Court's tentative decision states in full as follows: "On the first and second causes of action, in favor of Plaintiffs Pico Neighborhood Association and Maria Loya and against Defendant City of Santa Monica." The City hereby requests that the Court issue "a statement of decision explaining the factual and legal bas[es] for its decision as to each of the principal controverted issues at trial." (Code Civ. Proc., § 632). The principal controverted issues at trial were the following:

1. What are the elements of a claim under the California Voting Rights Act (CVRA)?
2. What must a CVRA plaintiff prove in order to show racially polarized voting? Must such a plaintiff satisfy the second and third preconditions from *Thornburg v. Gingles* (1986) 478 U.S. 30, 51, namely: (2) "the minority group must be able to show that it is politically cohesive," and (3) "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed [citation]—usually to defeat the minority's preferred candidate"?
3. Which City Council elections did the Court consider? What is the Court's rationale for considering those elections and not others?
4. Did the Court give some City Council elections more weight than others? If so, which elections, and why?
5. How did the Court determine which candidates were preferred by the voters of the relevant minority group (here, Latinos)?

a. Must a candidate be Latino in order to be preferred by Latino voters, or is it the status of the candidate as the chosen representative of Latino voters, rather than the race of the candidate, that is relevant?

b. If the race of the candidate does matter, which candidates did the Court find to be Latino for purposes of the CVRA? On what basis did the Court draw its conclusions concerning candidates' race and ethnicity? Did it take into account voter perceptions of candidates' race and ethnicity?

c. Can Latino voters, who may cast up to three or four votes in a single election, prefer more than one candidate? If not, why not?

d. In each relevant election, how does the Court differentiate between candidates preferred by Latino voters and those not preferred by Latino voters?

i. Is the first step in identifying whether a candidate is Latino-preferred to determine which candidates would have won had Latinos been the only voters? If not, why not?

ii. If the Court differentiates Latino-preferred candidates from non-Latino-preferred candidates by determining that some candidates received "significantly higher" Latino voter support than others, how does it define "significantly higher"? For example, did Josefina Aranda receive "significantly higher" support from Latino voters in 2002 than Kevin McKeown?

iii. Can a candidate be Latino-preferred if fewer than 50 percent of Latino voters vote for that candidate? If so, is there any numerical cutoff for voter preference or non-numerical method of differentiating preferred from non-preferred candidates?

iv. In considering the differences in Latino and non-Latino voter support for candidates, did the Court consider that small differences between ecological-regression and ecological-inference estimates may not be meaningful in this case, because Santa Monica's Latino population is

now and always has been too small and too dispersed for statistical techniques to produce point estimates as accurate as those in the typical federal voting-rights case, where members of the minority group necessarily would account for a majority of eligible voters in a potential district?

v. In considering the differences in Latino and non-Latino voter support for candidates, did the Court also consider that estimates produced by ecological regression and ecological inference in this case may be systematically less accurate or inaccurate?

6. Who were the Latino-preferred candidates in each City Council election considered by the Court? In particular, who were the Latino-preferred candidates in each of the seven City Council elections analyzed by plaintiffs' expert, Dr. J. Morgan Kousser?

	First Latino-preferred Candidate	**Second Latino-preferred candidate**	**Third Latino-preferred candidate**	**Fourth Latino-preferred candidate**
1994				
1996				
2002				
2004				
2008				
2012				
2016				

7. Must white bloc voting cause a Latino-preferred candidate to lose in order for that candidate's defeat to be part of a pattern of racially polarized voting? If not, why not? If so, in each of the City Council elections considered by the Court, how many Latino-preferred candidates lost, and how many did so because of white bloc voting? In particular, in each of the seven City Council elections analyzed by plaintiffs' expert, Dr. J. Morgan Kousser, how many Latino-preferred candidates lost, and how many did so because of white bloc voting?