

| | # of Latino-preferred candidate(s) | # of Latino-preferred candidates who lost | # of Latino-preferred candidates who lost because of white bloc voting |
|--------------|------------------------------------|-------------------------------------------|------------------------------------------------------------------------|
| 1994 | | | |
| 1996 | | | |
| 2002 | | | |
| 2004 | | | |
| 2008 | | | |
| 2012 | | | |
| 2016 | | | |
| Total | | | |

8. Did the Court consider the results of exogenous elections (e.g., School Board) or voting on ballot initiatives? If not, why not? If so:
- Who were the Latino-preferred candidates in each exogenous election considered by the Court?
 - In each exogenous election considered by the Court, how many Latino-preferred candidates lost, and how many did so because of white bloc voting?
 - How much weight did the Court give exogenous elections in its analysis, relative to the weight given to City Council elections?
 - For each ballot initiative considered by the Court, what was the Latino-preferred outcome?
 - For each ballot initiative considered by the Court, did sufficient numbers of white voters join with Latino voters to enable the ballot initiative to garner a majority of votes within the City in favor of the Latino-preferred outcome?
9. Did plaintiffs prove that Latino voters in Santa Monica cohesively prefer certain candidates?
10. Did plaintiffs prove that the white majority in Santa Monica votes sufficiently as a bloc to—in the absence of special circumstances—usually defeat candidates cohesively preferred by Latino voters? If so, how?

- 1 a. How did the Court define the word “usually,” as it is used in *Thornburg v.*
2 *Gingles*?
- 3 b. What fraction reflects the Court’s conclusion on this issue? In other words,
4 which losing Latino-preferred candidates defeated by white bloc voting are in
5 the numerator, and which Latino-preferred candidates are in the denominator?
- 6 c. Did the Court conclude that Oscar de la Torre’s deliberate attempt to lose the
7 2016 City Council election after his wife filed this lawsuit amounted to a
8 “special circumstance”?
- 9 11. Must a CVRA plaintiff prove vote dilution by showing that voters in the relevant
10 minority group would have a greater opportunity to elect candidates of their choice
11 under an alternative electoral system?
- 12 a. If so, against what objective and workable benchmark did the Court measure
13 actual Latino voting strength?
- 14 b. Did plaintiffs prove vote dilution through Mr. Ely’s estimate of vote totals in the
15 hypothetical Pico District?
- 16 c. Did plaintiffs prove vote dilution through Mr. Levitt’s opinions concerning
17 alternative at-large electoral schemes? If so, did the Court consider historical
18 levels of Latino voter cohesion or turnout? Or did the Court estimate actual
19 Latino voter turnout in order to determine whether Latino voters’ share of actual
20 voters would exceed the threshold of exclusion under a destaggered alternative
21 at-large electoral scheme?
- 22 12. Under what circumstances are the factors enumerated in Elections Code section
23 14028(e) relevant?
- 24 a. Were those factors part of the Court’s analysis of liability under the CVRA?
- 25 b. If so, what were the specific factors considered by the Court, and what factual
26 findings did the Court make relating to those factors?
- 27 c. What causal connection, if any, did the Court find between (i) any factors
28 considered by the Court and (ii) vote dilution?

- 1 13. Did plaintiffs prove that Santa Monica's method of election has caused a disparate
2 impact on minority voters?
- 3 a. Were plaintiffs required to prove, for purposes of their Equal Protection claim,
4 that minority voters would have a greater electoral opportunity under some other
5 electoral system?
- 6 b. When did the minority populations in Santa Monica become large and
7 concentrated enough that an alternative electoral system could have enhanced
8 minority voting strength? Which system(s), specifically, would have done so?
- 9 c. Did the 1946 Charter amendment—which put in place the system under which
10 seven City Council members are elected at-large in staggered elections, and
11 which eliminated designated posts—strengthen or weaken minority voting
12 power?
- 13 14. Did plaintiffs prove that the relevant decisionmakers affirmatively intended to
14 discriminate against minority voters by adopting and maintaining the current at-large
15 electoral system? If so, what were the relevant decisions, who were the relevant
16 decisionmakers, and what evidence did plaintiffs present showing that those
17 decisionmakers intended to discriminate?
- 18 a. Did the Court find intentional discrimination relative to Santa Monica's election
19 system at any point before 1946? If so, on which events, statements, or other
20 facts did the Court rely?
- 21 b. Did the Court find intentional discrimination relative to Santa Monica's 1946
22 Charter amendment? If so, on which events, statements, or other facts did the
23 Court rely?
- 24 c. Did the Court find intentional discrimination relative to Santa Monica voters'
25 rejection of Proposition 3 in 1975? If so, on which events, statements, or other
26 facts did the Court rely?
- 27 d. Did the Court find intentional discrimination relative to Santa Monica's
28 rejection of district elections in 1992? If so, on which events, statements, or

1 other facts did the Court rely?

2 i. If the Court found an affirmative intent to discriminate in 1992, is it
3 premising that finding on what was said or decided at the 1992 Council
4 meeting concerning the City's electoral system? If so, what specific
5 statements or decisions support the Court's conclusion?

6 ii. Has the Court found that any councilmembers intended to weaken
7 minority voting strength in order to preserve their seats, as was found in
8 *Garza v. County of Los Angeles*? If so, which councilmember(s)?

9 e. Did the Court find intentional discrimination relative to Santa Monica voters'
10 rejection of Measure HH in 2002? If so, on which events, statements, or other
11 facts did the Court rely?

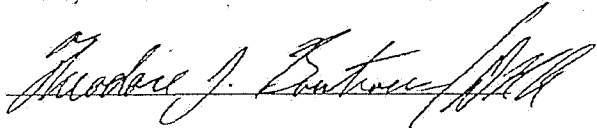
12 f. Did the Court find intentional discrimination relative to Santa Monica's election
13 system at any point after 2002? If so, on which events, statements, or other facts
14 did the Court rely?

15 15. Did the Court make findings under the five-factor framework set out in the United States
16 Supreme Court's decision in *Village of Arlington Heights v. Metropolitan Housing*
17 *Development Corporation* (1977) 429 U.S. 252? If so, what specific findings did the
18 Court make and what evidence supports those findings?

19 16. In assessing whether the City's at-large electoral system was adopted or maintained with
20 a discriminatory purpose, and whether the system has had a disparate impact on minority
21 voters, did the Court consider the legitimate, non-discriminatory purposes of the City's
22 at-large electoral system, including but not limited to (i) ensuring that all
23 councilmembers focus on all issues citywide, rather than only those issues facing their
24 particular districts; (ii) giving every voter a say concerning all seven Council seats, not
25 just one; and (iii) affording voters the opportunity to vote for Council seats every two
26 years, not every four years.

1 DATED: November 15, 2018

2 Respectfully submitted,
3 GIBSON, DUNN & CRUTCHER LLP

4 By: 

5 Theodore J. Boutrous, Jr.

6 Attorneys for Defendant
7 *City of Santa Monica*

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EXHIBIT A

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FILED
Superior Court of California
County of Los Angeles

NOV 08 2018

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

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

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

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:

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

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

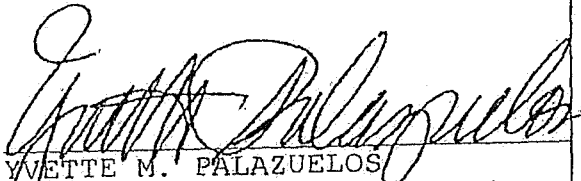
8 c) Responding brief (no more than 15 pages) and Reply
9 brief (no more than 7 pages) shall be filed and served per the
10 Code of Civil Procedure.

11 d) A courtesy copy of each brief must be delivered to the
12 courtroom.
13

14 CLERK TO GIVE WRITTEN NOTICE.

15 IT IS SO ORDERED.

16 DATED: November 5, 2018

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18 
19 YVETTE M. PALAZUELOS
20 JUDGE OF THE SUPERIOR COURT
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25

1 PROOF OF SERVICE

2 I, Cynthia Britt, declare:

3 I am employed in the County of Los Angeles, State of California. My business address is 333
4 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a
party to the action in which this service is made.

5 On November 15, 2018, I served the

6 CITY OF SANTA MONICA'S REQUEST FOR STATEMENT OF DECISION

7 on the interested parties in this action by causing the service delivery of the above document as
8 follows:

9 Kevin I. Shenkman, Esq.
10 Mary R. Hughes, Esq.
11 John L. Jones, Esq.
12 SHENKMAN & HUGHES PC
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mrhughes@shenkmanhughes.com
jjones@shenkmanhughes.com

R. Rex Parris
Robert Parris
Jonathan Douglass
PARRIS LAW FIRM
43364 10th Street West
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rrparris@parrislawyers.com
jdouglass@parrislawyers.com

13 Milton Grimes
14 LAW OFFICES OF MILTON C. GRIMES
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15 Los Angeles, California 90043
miltgrim@aol.com

Robert Rubin
LAW OFFICE OF ROBERT RUBIN
131 Steuart Street, Suite 300
San Francisco, California 94105
robertrubinsf@gmail.com

16 **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the
17 above-mentioned date. I am "readily familiar" with the firm's practice of collection and pro-
18 cessing correspondence for mailing. It is deposited with the U.S. Postal Service on that same
19 day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of
20 business. I am aware that on motion of party served, service is presumed invalid if postal can-
21 cellation date or postage meter date is more than one day after date of deposit for mailing an
22 affidavit.

BY ELECTRONIC SERVICE: I also caused the documents to be emailed to the persons at
the electronic service addresses listed above.

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

24 Executed on November 15, 2018, in Los Angeles, California.

25 
26 _____
Cynthia Britt

EXHIBIT C

FILED
Superior Court of California
County of Los Angeles

DEC 12 2018

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

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

| | | |
|--------------------------------|---|---------------------------|
| PICO NEIGHBORHOOD ASSOCIATION, |) | Case No.: BC616804 |
| et al. |) | |
| |) | |
| Plaintiffs, |) | FIRST AMENDED [TENTATIVE] |
| |) | DECISION; ATTACHMENT |
| vs. |) | |
| |) | |
| CITY OF SANTA MONICA, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

Pursuant to CCP §632 and CRC Rule 3.1590(a), the court issues a First Amended 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 enjoins and restrains Defendant from imposing, applying, holding, tabulating, and/or certifying any




1 at-large elections, and/or the results thereof, for any
2 positions on its City Council.

3 3. The Court commands and orders that from the date of
4 entry of this judgment, Defendant's elections for, and any seats
5 on, the City Council shall be district-based elections, as
6 defined by the California Voting Rights Act, and in accordance
7 with the map attached hereto.

8 CLERK TO GIVE WRITTEN NOTICE.

9 IT IS SO ORDERED.

10 DATED: December 12, 2018

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14 YVETTE M. PALAZUELOS
15 JUDGE OF THE SUPERIOR COURT
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EXHIBIT D

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 28

BC616804

December 12, 2018

**PICO NEIGHBORHOOD ASSOCIATION ET AL VS CITY
OF SANTA MONICA**

1:36 PM

Judge: Honorable Yvette M. Palazuelos

CSR: None

Judicial Assistant: Neli Raya

ERM: None

Courtroom Assistant: M. Tavakoli

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order

The court issued a First Amended [Tentative] Decision on December 12, 2018 and served it by mail.

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.

Plaintiff's counsel shall file and serve a [Proposed] Statement of Decision and [Proposed] Judgment on or before January 2, 2019. Concurrent with the filing of the proposed documents, Plaintiff's counsel shall also lodge with the court a CD disk or USB drive containing a Microsoft Word compatible version of the [Proposed] Statement of Decision and [Proposed] Judgment.

The Court issues its First Amended [Tentative] Decision; Attachment.

Non-Appearance Case Review is scheduled for 01/09/19 at 08:30 AM in Department 28 at Stanley Mosk Courthouse.

Certificate of Mailing is attached.

1 **PROOF OF SERVICE**

2 I, Cynthia Britt, declare:

3 I am employed in the County of Los Angeles, State of California. My business address is 333
4 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a
party to the action in which this service is made.

5 On December 21, 2018, I served the

6 **CITY OF SANTA MONICA'S REQUEST FOR STATEMENT OF DECISION**

7 on the interested parties in this action by causing the service delivery of the above document as
8 follows:

9 Kevin I. Shenkman, Esq.
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John L. Jones, Esq.
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Robert Rubin
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San Francisco, California 94105
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17 **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above, on the
18 above-mentioned date. I am "readily familiar" with the firm's practice of collection and
19 processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same
20 day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of
business. I am aware that on motion of party served, service is presumed invalid if postal can-
21 cellation date or postage meter date is more than one day after date of deposit for mailing an
affidavit.

22 **BY ELECTRONIC SERVICE:** I also caused the documents to be emailed to the persons at
23 the electronic service addresses listed above.

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

26 Executed on December 21, 2018, in Los Angeles, California.

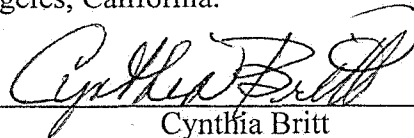
27 
28 _____
Cynthia Britt

EXHIBIT Y

1 Kevin I. Shenkman (SBN 223315)
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14 Telephone: (415) 298-4857

15 Attorneys for Plaintiffs

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

18 PICO NEIGHBORHOOD ASSOCIATION and
19 MARIA LOYA,

20 Plaintiffs,

21 v.

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

23 Defendants.
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CASE NO. BC616804

[PROPOSED] JUDGMENT

Dept.: 28

[Assigned to the Honorable Yvette Palazuelos]

1 This cause came on for trial pursuant to notice and order of the Court on August 1, 2018, in
2 Department 28 of the Los Angeles Superior Court, Hon. Yvette M. Palazuelos, judge presiding. The
3 trial concluded on September 13, 2013. Plaintiffs, Maria Loya and Pico Neighborhood Association,
4 appeared through their attorneys of record: Kevin I. Shenkman and Andrea Alarcon of Shenkman &
5 Hughes PC; R. Rex Parris and Ellery Gordon of the Parris Law Firm; Milton Grimes and Robert
6 Rubin. Defendant, City of Santa Monica, California, appeared through its attorneys of record:
7 Marcellus McRae, Kahn Scolnick, Tiaunia Henry, Daniel Adler and Michelle Maryott of Gibson Dunn
8 & Crutcher LLP and George Cardona of the Santa Monica City Attorney’s Office.

9 At the conclusion of the trial on September 13, 2018, the parties submitted briefing in lieu of
10 closing statements. On November 8, 2018, this Court issued its Tentative Decision, finding in favor of
11 Plaintiffs on both of their causes of action: 1) violation of the California Voting Rights Act of 2001
12 (“CVRA”); and 2) violation of the Equal Protection Clause of the California Constitution. Defendant
13 requested a Statement of Decision on November 15, 2018. On November 8, 2018, this Court also
14 ordered the parties to address proposed remedies through briefing and at a hearing on December 7,
15 2018. At that hearing, in addition to the counsel who appeared at the August 1 – September 13, 2018
16 trial, Theodore Boutrous of Gibson Dunn & Crucher LLP appeared on behalf of Defendant. On
17 December 12, 2018, this Court issued a First Amended Tentative Decision, prohibiting Defendant
18 from employing any further at-large elections for any seats on its city council and ordered that all
19 future elections for any seats on Defendant’s city council shall be district-based elections (as defined
20 by the CVRA) in accordance with the map attached thereto. On December 12, 2018 this Court also
21 directed Plaintiffs to prepare a proposed judgment for this Court. On January 2, 2019, this Court
22 provided further clarification of its First Amended Tentative Decision, specifically regarding the
23 selection of appropriate remedies.

24 After hearing and considering all of the testimony, evidence and arguments presented, and
25 having issued its Statement of Decision, the Court now enters its Judgment in the above-captioned
26 case.

27 ///

28 ///

1 The Court finds as follows:

2 1. Plaintiff Maria Loya is registered to vote, and resides within the City of Santa Monica,
3 California. She is a member of a “protected class” as that term is defined in California Elections Code
4 Section 14026. Plaintiff Pico Neighborhood Association is an organization with members who, like
5 Maria Loya, reside in Santa Monica, are registered to vote, and are members of a protected class.
6 Plaintiff Pico Neighborhood Association’s organizational mission is germane to the subject of this
7 case – namely, advocating for the interests of Pico Neighborhood residents, including to the city
8 government, where Latinos are concentrated in Santa Monica.

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

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

- 17 • Analyzing elections over the past twenty-four years, a consistent pattern of racially-
18 polarized voting emerges. In most elections where the choice is available, Latino
19 voters strongly prefer a Latino candidate running for Defendant’s city council, but,
20 despite that support, the preferred Latino candidate loses. As a result, though Latino
21 candidates are generally preferred by the Latino electorate in Santa Monica, only one
22 Latino has been elected to the Santa Monica City Council in the 72 years of the current
23 election system – 1 out of 71 to serve on the city council.
- 24 • Though not necessary to show a CVRA violation, Plaintiffs have also demonstrated
25 other factors supporting the finding of a violation of the CVRA, pursuant to Elections
26 Code section 14028(e), including a history of discrimination in Santa Monica; the use
27 of electoral devices or other voting practices or procedures that may enhance the
28 dilutive effects of at-large elections; that Latinos in Santa Monica bear the effects of

1 past discrimination in areas such as education, employment, and health, which hinder
2 their ability to participate effectively in the political process; the use of overt or subtle
3 racial appeals in political campaigns; and a lack of responsiveness by the Santa Monica
4 city government to the Latino community concentrated in the Pico Neighborhood.

5 4. In the face of racially polarized voting patterns of the Santa Monica electorate, Defendant
6 has imposed an at-large method of election in a manner that impairs the ability of Latinos to elect
7 candidates of their choice or influence the outcome of elections, as a result of the dilution or the
8 abridgment of the rights of Latino voters.

9 5. The City of Santa Monica amended its charter in 1946, adopting its current council-
10 manager form government and current at-large election system. The precise terms of that charter
11 amendment, and specifically the form of elections to be employed, were decided upon by a Board of
12 Freeholders. In 1992, Defendant's city council rejected the recommendation of the Charter Review
13 Committee to scrap the at-large election system. In each instance, the adoption and/or maintenance of
14 at-large elections was done with a discriminatory purpose, and has had a discriminatory impact.

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

23 7. During the trial, Plaintiffs' expert presented a district plan. That district plan included a
24 district principally composed of the Pico Neighborhood, where Santa Monica's Latino community is
25 concentrated. Districts drawn to remedy a violation of the CVRA should be nearly equal in
26 population, and should not be drawn in a manner that may violate the federal Voting Rights Act.
27 Other factors may also be considered -- the topography, geography and communities of interest of the
28 city should be respected, and the districts should be cohesive, contiguous and compact. *See* Elections

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

9 8. The current members of the Santa Monica City Council were elected through unlawful
10 elections. The residents of the City of Santa Monica deserve to have a lawfully elected city council as
11 soon as is practical. The residents of the City of Santa Monica are entitled to have a council that truly
12 represents all members of the community. Latino residents of Santa Monica, like all other residents of
13 Santa Monica, deserve to have their voices heard in the operation of their city. This can only be
14 accomplished if all members of the city council are lawfully elected. To permit some members of the
15 council to remain who obtained their office through an unlawful election may be a necessary and
16 appropriate interim remedy but will not cure the clear violation of the CVRA and Equal Protection
17 Clause.

18
19 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that
20 Defendant has violated the California Voting Rights Act (California Elections Code Sections 14025 –
21 14032).

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant's plurality at-
23 large elections for its City Council violate Elections Code Sections 14027 and 14028.

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant has violated
25 the Equal Protection Clause of the California Constitution (California Constitution, Article I Section
26 7).

27 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant's plurality at-
28 large elections for its City Council violate the Equal Protection Clause of the California Constitution.

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant is
2 permanently enjoined from imposing, applying, holding, tabulating, and/or certifying any further at-
3 large elections, and/or the results thereof, for any positions on its City Council.

4 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant is
5 permanently enjoined from imposing, applying, holding, tabulating, and/or certifying any elections,
6 and/or the results thereof, for any positions on its City Council, except an election in conformity with
7 this judgment.

8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that all further elections,
9 from the date of entry of this judgment for any seats on the Santa Monica City Council, shall be
10 district-based elections, as defined by the California Voting Rights Act, in accordance with the map
11 attached hereto as Exhibit A. The metes and bounds of each district, as depicted in the map attached
12 as Exhibit A, are described using TIGER line segments (used to define census block geography) as
13 follows:

14
15 District #1

16 The region bounded and described as follows:
17 Beginning at the point of intersection of Alley between Princeton and Harvard and Broadway, and
18 proceeding southerly along Alley between Princeton and Harvard to Colorado Ave, and proceeding
19 northerly along Colorado Ave to Stewart St, and proceeding southerly along Stewart St to Olympic
20 Blvd, and proceeding easterly along Olympic Blvd to City Boundary, and proceeding easterly along
21 City Boundary to Pico Blvd, and proceeding westerly along Pico Blvd to 22nd St, and proceeding
22 southerly along 22nd St to Alley south of Pico Blvd, and proceeding westerly along Alley south of
23 Pico Blvd to 20th St, and proceeding northerly along 20th St to Pico Blvd, and proceeding westerly
24 along Pico Blvd to Lincoln Blvd, and proceeding northerly along Lincoln Blvd to Broadway, and
25 proceeding easterly along Broadway to Alley between 9th and 10th St, and proceeding northerly along
26 Alley between 9th and 10th St to Santa Monica Blvd, and proceeding easterly along Santa Monica
27 Blvd to 16th St, and proceeding southerly along 16th St to Broadway, and proceeding easterly along
28 Broadway to Alley between 17th and 18th St, and proceeding southerly along Alley between 17th and

1 18th St to Colorado Ave, and proceeding northerly along Colorado Ave to Alley between 19th and
2 20th St, and proceeding northerly along Alley between 19th and 20th St to Broadway, and proceeding
3 northerly along Broadway to the point of beginning.

4
5 District #2

6 The region bounded and described as follows:

7 Beginning at the point of intersection of City Boundary and Pico Blvd, and proceeding southerly along
8 City Boundary to NE boundary of Census Block 060377022021010, and proceeding westerly along
9 NE boundary of Census Block 060377022021010 to 11th St, and proceeding northerly along 11th St
10 to Marine Pl N, and proceeding westerly along Marine Pl N to Alley east of Lincoln Blvd, and
11 proceeding westerly along Alley east of Lincoln Blvd to Pier Ave, and proceeding westerly along Pier
12 Ave to Lincoln Blvd, and proceeding westerly along Lincoln Blvd to Hill Pl N, and proceeding
13 easterly along Hill Pl N to 11th St, and proceeding northerly along 11th St to Pico Blvd, and
14 proceeding easterly along Pico Blvd to 20th St, and proceeding southerly along 20th St to Alley south
15 of Pico Blvd, and proceeding easterly along Alley south of Pico Blvd to 22nd St, and proceeding
16 northerly along 22nd St to Pico Blvd, and proceeding easterly along Pico Blvd to the point of
17 beginning.

18
19 District #3

20 The region bounded and described as follows:

21 Beginning at the northmost point of City Boundary, and proceeding southeasterly along City
22 Boundary to Montana Ave, and proceeding westerly along Montana Ave to 20th St, and proceeding
23 southerly along 20th St to Idaho Ave, and proceeding westerly along Idaho Ave to 9th St, and
24 proceeding northerly along 9th St to Montana Ave, and proceeding westerly along Montana Ave to
25 Montana Ave Extension, and proceeding southerly along Montana Ave Extension to City Boundary,
26 and proceeding northerly along City Boundary to the point of beginning.

27 ///

28 ///

1 District #4

2 The region bounded and described as follows:

3 Beginning at the City Boundary at the intersection of Montana Ave and 26th St, and proceeding
4 easterly along City Boundary to Olympic Blvd, and proceeding westerly along Olympic Blvd to
5 Stewart St, and proceeding westerly along Stewart St to Colorado Ave, and proceeding westerly along
6 Colorado Ave to Alley between Princeton and Harvard, and proceeding northerly along Alley between
7 Princeton and Harvard to Broadway, and proceeding westerly along Broadway to Princeton St, and
8 proceeding northerly along Princeton St to Santa Monica Blvd, and proceeding westerly along Santa
9 Monica Blvd to Chelsea Ave, and proceeding northerly along Chelsea Ave to Wilshire Blvd, and
10 proceeding westerly along Wilshire Blvd to 17th St, and proceeding northerly along 17th St to Idaho
11 Ave, and proceeding easterly along Idaho Ave to 20th St, and proceeding northerly along 20th St to
12 Montana Ave, and proceeding easterly along Montana Ave to Unlabeled, and proceeding northerly
13 along Unlabeled to Montana Ave, and proceeding easterly along Montana Ave to the point of
14 beginning.

15
16 District #5

17 The region bounded and described as follows:

18 Beginning at the point of intersection of Chelsea Ave and Wilshire Blvd, and proceeding easterly
19 along Chelsea Ave to Santa Monica Blvd, and proceeding easterly along Santa Monica Blvd to
20 Princeton St, and proceeding southerly along Princeton St to Broadway, and proceeding westerly
21 along Broadway to Alley between 19th and 20th St, and proceeding southerly along Alley between
22 19th and 20th St to Colorado Ave, and proceeding westerly along Colorado Ave to Alley between 17th
23 and 18th St, and proceeding northerly along Alley between 17th and 18th St to Broadway, and
24 proceeding westerly along Broadway to 16th St, and proceeding northerly along 16th St to Santa
25 Monica Blvd, and proceeding southerly along Santa Monica Blvd to Alley between 9th and 10th St,
26 and proceeding southerly along Alley between 9th and 10th St to Broadway, and proceeding westerly
27 along Broadway to 7th St, and proceeding northerly along 7th St to Wilshire Blvd, and proceeding
28 easterly along Wilshire Blvd to Lincoln Blvd, and proceeding westerly along Lincoln Blvd to Montana

1 Ave, and proceeding easterly along Montana Ave to 9th St, and proceeding southerly along 9th St to
2 Idaho Ave, and proceeding easterly along Idaho Ave to 17th St, and proceeding easterly along 17th St
3 to Wilshire Blvd, and proceeding easterly along Wilshire Blvd to the point of beginning.
4

5 District #6

6 The region bounded and described as follows:

7 Beginning at the point of intersection of Lincoln Blvd and Montana Ave, and proceeding southerly
8 along Lincoln Blvd to Wilshire Blvd, and proceeding westerly along Wilshire Blvd to 7th St, and
9 proceeding southerly along 7th St to Broadway, and proceeding easterly along Broadway to Lincoln
10 Blvd, and proceeding southerly along Lincoln Blvd to Bay St, and proceeding westerly along Bay St
11 to Ocean Front Walk, and proceeding northerly along Ocean Front Walk to Pico Blvd Extension, and
12 proceeding westerly along Pico Blvd Extension to City Boundary, and proceeding westerly along City
13 Boundary to Montana Ave Extension, and proceeding easterly along Montana Ave Extension to
14 Montana Ave, and proceeding northerly along Montana Ave to Unlabeled, and proceeding easterly
15 along Unlabeled to Montana Ave, and proceeding easterly along Montana Ave to the point of
16 beginning.
17

18 District #7

19 The region bounded and described as follows:

20 Beginning at the point of intersection of 11th St and Pico Blvd, and proceeding southerly along 11th St
21 to Hill Pl N, and proceeding westerly along Hill Pl N to Lincoln Blvd, and proceeding easterly along
22 Lincoln Blvd to Pier Ave, and proceeding easterly along Pier Ave to Alley east of Lincoln Blvd, and
23 proceeding easterly along Alley east of Lincoln Blvd to Marine Pl N, and proceeding easterly along
24 Marine Pl N to 11th St, and proceeding southerly along 11th St to NE boundary of Census Block
25 060377022021010, and proceeding easterly along NE boundary of Census Block 060377022021010 to
26 City Boundary, and proceeding westerly along City Boundary to Unlabeled, and proceeding westerly
27 along Unlabeled to City Boundary, and proceeding westerly along City Boundary to Pico Blvd
28 Extension, and proceeding easterly along Pico Blvd Extension to Ocean Front Walk, and proceeding

1 southerly along Ocean Front Walk to Bay St, and proceeding easterly along Bay St to Lincoln Blvd,
2 and proceeding northerly along Lincoln Blvd to Pico Blvd, and proceeding easterly along Pico Blvd to
3 the point of beginning.
4

5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant shall hold a
6 district-based special election, consistent with the district map attached as Exhibit A, on July 2, 2019
7 for each of the seven seats on the Santa Monica City Council, and the results of said special election
8 shall be tabulated and certified in compliance with applicable sections of the Elections Code.

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that any person, other than a
10 person who has been duly elected to the Santa Monica City Council through a district-based election
11 in conformity with this judgment, is prohibited from serving on the Santa Monica City Council after
12 August 15, 2019.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Court retains
14 jurisdiction to interpret and enforce this judgment and the Settlement Agreement and to adjudicate any
15 disputes regarding implementation or interpretation of this judgment.

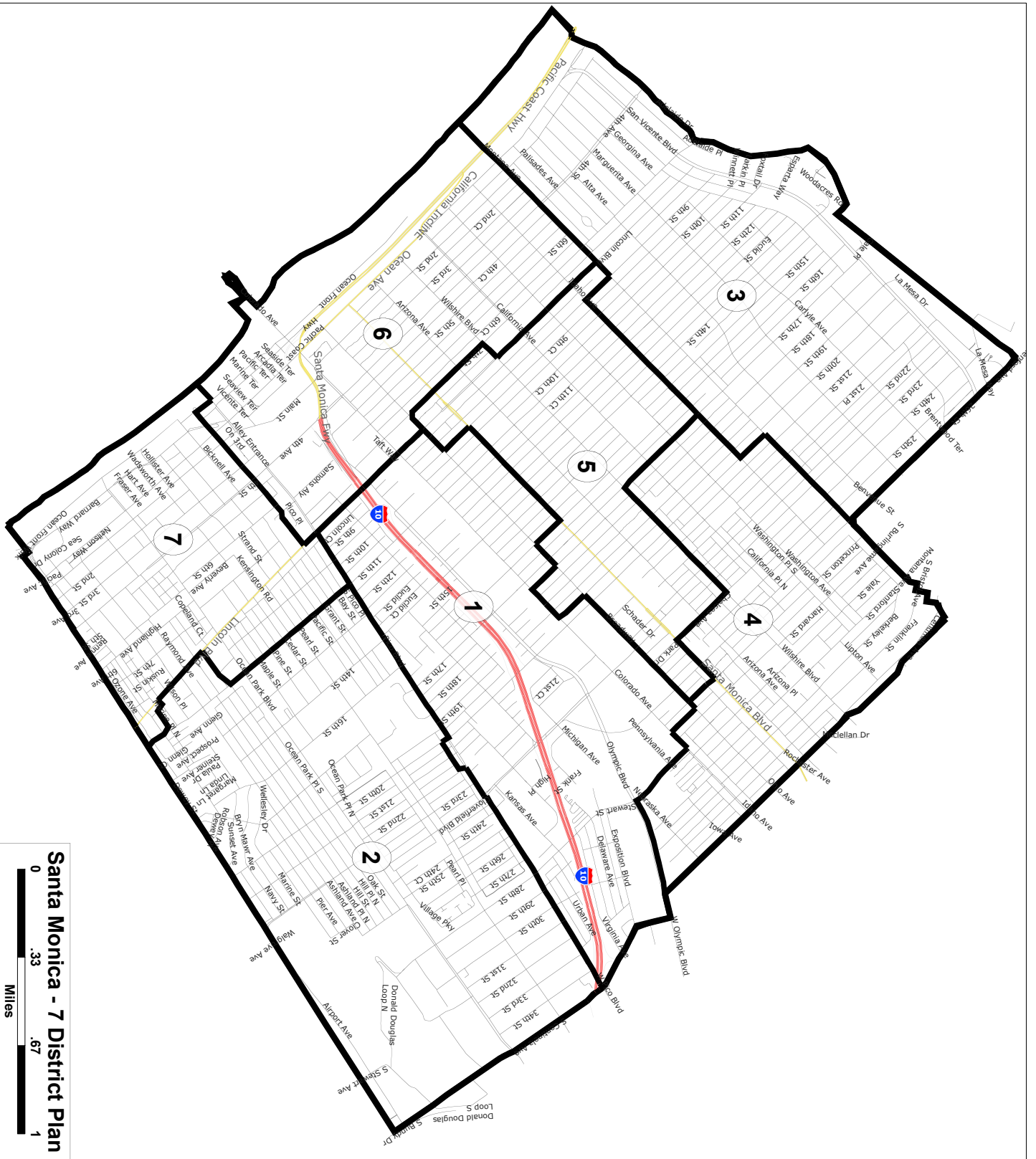
16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, pursuant to Elections
17 Code Section 14030 and Code of Civil Procedure Section 1021.5, Plaintiffs are the prevailing and
18 successful parties and are entitled to recover reasonable attorneys' fees and costs, including expert
19 witness fees and expenses, in an amount to be determined by noticed motion for an award of
20 attorneys' fees and a memorandum of costs for an award of costs, including expert witness fees and
21 expenses.

22 The Clerk is directed to enter this Judgment.

23
24 Dated: _____

25 _____
26 Hon. Yvette M. Palazuelos
27 Judge of the Los Angeles Superior Court
28

EXHIBIT "A"



1 **PROOF OF SERVICE**
2 1013A(3) CCP Revised 5/1/88

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

7 On January 3, 2019, I served the foregoing document described as **[PROPOSED]**
8 **JUDGEMENT** as follows:

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

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

17 **BY PERSONAL SERVICE as follows:**

18 I delivered such envelope by hand to the addressees at 111 North
19 Hill Street, Los Angeles, CA 90012. _____

20 I caused the foregoing document described hereinabove to be
21 personally delivered by hand by placing it in a sealed envelope or
22 package addressed to the persons at the addresses listed on the
23 attached service list and provided it to a professional messenger
24 service whose name and business address is Team Legal, Inc.,
25 40015 Sierra Highway, Suite B220, Palmdale, CA 93550.

26 I caused the foregoing document described hereinabove to be
27 personally delivered by hand by placing it in a sealed envelope or
28 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.

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[] **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 January 3, 2019, 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.



Marci Cussimonio

1 **SERVICE LIST**

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15 Attorneys for Plaintiffs

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

18
19 PICO NEIGHBORHOOD ASSOCIATION and
MARIA LOYA,

20 Plaintiffs,

21 v.

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

24 Defendants.

CASE NO. BC616804

**[PROPOSED] STATEMENT OF
DECISION**

Trial Date: August 1, 2018
Dept.: 28

[Assigned to the Honorable Yvette Palazuelos]

1 **I. SUMMARY**

2 The action was tried before the Court on August 1, 2018 through September 13, 2018.
3 Plaintiffs submitted their closing argument on September 25, 2018. Defendant submitted its closing
4 augment on October 15, 2018. On October 25, 2018 Plaintiffs submitted their rebuttal argument. The
5 Court issued its Tentative Decision on November 8, 2018. On November 15, 2018 Defendant
6 requested a statement of decision. The parties submitted further briefing regarding proposed remedies,
7 and on December 7, 2018 a hearing was held on the issue of remedies. On December 12, 2018 the
8 Court issued its Amended Tentative Decision.

9 Plaintiffs’ First Amended Complaint alleges two causes of action: 1) Violation of the California
10 Voting Rights Act of 2001 (“CVRA”); and 2) Violation of the Equal Protection Clause of the
11 California Constitution (“Equal Protection Clause”). In response, Defendant denied that it has violated
12 either the CVRA or the Equal Protection Clause, and asserted various affirmative defenses.

13 The Court finds in favor of Plaintiffs on both causes of action. Accordingly, the Court orders
14 that Defendant may no longer elect its city council, or any members thereof, through the at-large
15 election structure responsible for the injuries; rather all future elections for any seat(s) on Defendant’s
16 city council shall be district-based elections (as defined in the CVRA) as specified herein.

17 **II. THE CALIFORNIA VOTING RIGHTS ACT**

18 The CVRA disfavors the use of so-called “at-large” voting—an election method that permits
19 voters of an entire jurisdiction to elect candidates to the seats of its governing board and which permits
20 a plurality of voters to capture all of the available seats. (See generally *Sanchez v. City of Modesto*
21 (2006) 145 Cal.App.4th 660 (*Sanchez*.) The U.S. Supreme Court “has long recognized that multi-
22 member districts and at-large voting schemes may operate to minimize or cancel out the voting
23 strength” of minorities. (*Thornburg v. Gingles* (1986) 478 U.S. 30, 46 (*Gingles*) at p. 47; see also *id.*
24 at p. 48, n. 14 [at-large elections may also cause elected officials to “ignore [minority] interests without
25 fear of political consequences”], citing *Rogers v. Lodge* (1982) 458 U.S. 613, 623; *White v. Regester*
26 (1973) 412 U.S. 755, 769.) In at-large elections, “the majority, by virtue of its numerical superiority,
27 will regularly defeat the choices of minority voters.” (*Gingles*, at p. 47).

28 Section 2 of the federal Voting Rights Act (“FVRA”), 52 U.S.C. § 10101, et seq., which

1 Congress enacted in 1965 and amended in 1982, targets, among other things, discriminatory at-large
2 election schemes. (*Gingles, supra*, 478 U.S. at p. 37; see also Boyd & Markman, *The 1982*
3 *Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347,
4 1402.) By enacting the CVRA, the California “Legislature intended to expand protections against vote
5 dilution over those provided by the federal Voting Rights Act of 1965.” (*Jauregui v. City of Palmdale*
6 (2014) 226 Cal.App.4th 781, 808 (*Jauregui*).

7 The CVRA “was enacted to implement the equal protection and voting guarantees of article I,
8 section 7, subdivision (a) and article II, section 2” of the California Constitution. (*Jauregui* at 793,
9 citing § 14031)¹. “Section 14027 [of the CVRA] sets forth the circumstances where an at-large
10 electoral system may not be imposed ...: ‘An at-large method of election may not be imposed or
11 applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its
12 ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights
13 of voters who are members of a protected class, as defined pursuant to Section 14026.’” (*Id.*, citing
14 *Sanchez* at p. 669). Section 14028 of the CVRA provides more clarity on how a violation of the
15 CVRA is established: “A violation of Section 14027 is established if it is shown that racially polarized
16 voting occurs in elections for members of the governing body of the political subdivision or in
17 elections incorporating other electoral choices by the voters of the political subdivision.” “Section
18 14026, subdivision (e) defines racially polarized voting thusly: ‘Racially polarized voting means voting
19 in which there is a difference, as defined in case law regarding enforcement of the federal Voting
20 Rights Act ([52 U.S.C. Sec. 10301 et seq.]), in the choice of candidates or other electoral choices that
21 are preferred by voters in a protected class, and in the choice of candidates and electoral choices that
22 are preferred by voters in the rest of the electorate.” (*Jauregui* at 793). “Proof of racially polarized
23 voting patterns are established by examining voting results of elections where at least one candidate is
24 a member of a protected class; elections involving ballot measures; or other ‘electoral choices that
25 affect the rights and privileges’ of protected class members.” (*Id.*, citing § 14028 subd. (b)). Racially
26 polarized voting can be shown through quantitative statistical evidence, using the methods approved in
27

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

1 federal Voting Rights Act cases. (*Jauregui* at 794, quoting § 14026, subd. (e). [“The methodologies for
2 estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting
3 Rights Act ([52 U.S.C. Sec. 10301 et seq.]) to establish racially polarized voting may be used for
4 purposes of this section to prove that elections are characterized by racially polarized voting.”]).
5 Additionally, “[t]here are a variety of [other] factors a court may consider in determining whether an
6 at-large electoral system impairs a protected class's ability to elect candidates or otherwise dilute their
7 voting power,” including “the extent to which candidates who are members of a protected class and
8 who are preferred by voters of the protected class, as determined by an analysis of voting behavior,
9 have been elected to the governing body of a political subdivision that is the subject of an action” (§
10 14028, subd. (b)) and the qualitative factors listed in Section 14028 subd. (e) which “are probative, but
11 not necessary factors to establish a violation of [the CVRA]”.² (*Jauregui* at 794).

12 Equally important to an understanding of the CVRA as what the CVRA directs the Court to
13 consider is acknowledging what need *not* be shown to establish a violation of the CVRA. While the
14 CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the
15 Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.”
16 (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9,
17 2002, at p. 2.) Unlike the FVRA, to establish a violation of the CVRA, plaintiffs need not show that a
18 “majority-minority” district can be drawn. (§ 14028, subd. (c); *Sanchez, supra*, 145 Cal.App.4th at p.
19 669). Likewise, the factors enumerated in section 14028 subd. (e), which are modeled on, but also
20 differ from, the FVRA’s “Senate factors,” are “not necessary [] to establish a violation” (§ 14028,
21 subd. (e)). “[P]roof of an intent to discriminate is [also] not an element of a violation of [the CVRA].”
22

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

1 (*Jauregui* at 794, citing § 14028, subd. (d)).

2 The appellate courts that have addressed the CVRA have noted that showing racially polarized
3 voting establishes the at-large election system dilutes minority votes and therefore violates the CVRA.
4 (*Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1229 [“To prove a CVRA
5 violation, the plaintiffs must show that the voting was racially polarized. However, they do not need to
6 either show that members of a protected class live in a geographically compact area or demonstrate a
7 discriminatory intent on the part of voters or officials.”]; *Jauregui* at p. 798 [“The trial court’s
8 unquestioned findings [concerning racially polarized voting] demonstrate that defendant’s at-large
9 system dilutes the votes of Latino and African American voters.”]; see also Assem. Com. on Judiciary,
10 Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 2 [The CVRA
11 “addresses the problem of racial block voting, which is particularly harmful to a state like California
12 due to its diversity.”]) The key element under the CVRA—“racially polarized voting”—consists of
13 two interrelated elements: (1) “the minority group . . . is politically cohesive[;]” and (2) “the white
14 majority votes sufficiently as a bloc to enable it—in the absence of special circumstances—usually to
15 defeat the minority’s preferred candidate.” (*Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d
16 1407, 1413, quoting *Gingles, supra*, 478 U.S. at pp. 50–51.) It is the combination of plurality-winner
17 at-large elections and racially polarized voting that yields the harm the CVRA is intended to combat.
18 (*Jauregui, supra*, 226 Cal.App.4th at p. 789 [describing how vote dilution is proven in FVRA cases
19 and how vote dilution is differently proven in CVRA cases].) To an even greater extent than the
20 FVRA, the CVRA expressly directs the courts, in analyzing “elections for members of the governing
21 body of the [defendant]” to focus on those “elections in which at least one candidate is a member of a
22 protected class.” (§ 14028, subds. (a), (b).)

23 Once liability is established under the CVRA, the Court has a broad range of remedies from
24 which to choose in order to provide greater electoral opportunity, including both district and non-
25 district solutions. (See § 14029; *Sanchez, supra*, 145 Cal.App.4th at p. 670; *Jauregui, supra*, 226
26 Cal.App.4th at p. 808 [“The Legislature intended to expand protections against vote dilution over those
27 provided by the federal Voting Rights Act. It is incongruous to intend this expansion of vote dilution
28 liability but then constrict the available remedies in the electoral context to less than those in the Voting

1 Rights Act. The Legislature did not intend such an odd result.”].) In light of the broad range of
2 remedies available to the Court, a plaintiff need not demonstrate the desirability of any particular
3 remedy to establish a violation of the CVRA. (See § 14028, subd. (a); Assem. Com. on Judiciary,
4 Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 [“Thus, this bill
5 puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart
6 (what type of remedy is appropriate once racially polarized voting has been shown.”].)

7 **III. DEFENDANT’S AT-LARGE ELECTION SYSTEM VIOLATES THE CVRA**

8 **A. Defendant Employs An “At Large” Method of Electing Its City Council, and**
9 **Plaintiffs Have Standing to Challenge That At-Large Method Pursuant to the**
10 **CVRA.**

11 The CVRA defines “[a]t-large method of election” as including any method”in which the voters
12 of the entire jurisdiction elect the members to the governing body.” (§ 14026 subd. (a)). All of the
13 voters residing in Santa Monica elect every member of its city council, and the candidates with a
14 plurality of the votes win the available seats. Though the parties did not stipulate to this element,
15 Defendant has never disputed that it employs an at-large method of electing its city council.

16 Likewise, though the parties did not stipulate to Plaintiffs’ standing to challenge Defendant’s at-
17 large method of election under the CVRA, the requisite facts establishing their standing were presented
18 at trial without any rebuttal by Defendant. The CVRA explicitly grants standing to “any voter who is a
19 member of a protected class and who resides in a political subdivision where a violation of [the CVRA]
20 is alleged.” (§ 14032). Plaintiff Maria Loya resides in Santa Monica, is registered to vote, and is Latina
21 – the “protected class” principally at issue in this case. Plaintiff Pico Neighborhood Association is an
22 organization with members who, like Maria Loya, reside in Santa Monica, are registered to vote, and
23 are Latino/a. Some of those members testified at trial – e.g. Oscar de la Torre and Berenice Onofre.
24 Plaintiff Pico Neighborhood Association’s organizational mission is germane to the subject of this case
25 – namely, advocating for the interests of residents of the Pico Neighborhood (where Latinos are
26 concentrated in Santa Monica), including to the city government. “[E]ven in the absence of injury to
27 itself, an association may have standing solely as the representative of its members.” (*Property*
28 *Owners of Whispering Palms, Inc. v. Newport Pacific, Inc.* (2005) 132 Cal. App. 4th 666, 672). “An

1 association has standing to bring suit on behalf of its members when: (a) its members would otherwise
2 have standing to sue in their own right; (b) the interests it seeks to protect are germane to the
3 organization’s purpose; and (c) neither the claim asserted nor the relief request requires the
4 participation of the individual members in the lawsuit.” (*Id.* at 673, quoting *Hunt v. Washington State*
5 *Apple Advertising Com’n* (1977) 432 U.S. 333, 343). Therefore, Plaintiff Pico Neighborhood
6 Association also has standing.

7 **B. The Relevant Elections Are Consistently Plagued By Racially Polarized Voting.**

8 1. *The Definition of Racially Polarized Voting and How It Is Determined*

9 The CVRA defines “racially polarized voting” as “voting in which there is a difference, as
10 defined in case law regarding enforcement of the federal Voting Rights Act (42 U.S.C. § 1973 et seq.),
11 in the choice of candidates or other electoral choices that are preferred by voters in a protected class,
12 and in the choice of candidates and electoral choices that are preferred by voters in the rest of the
13 electorate.” (§ 14026, subd. (e).) The federal jurisprudence regarding “racially polarized voting” over
14 the past thirty-two years finds its roots in Justice Brennan’s decision in *Gingles*, and in particular, the
15 second and third “*Gingles* factors.” Justice Brennan explained that racially polarized voting is tested
16 by two criteria: (1) that the minority group is politically cohesive; and (2) the majority group votes
17 sufficiently as a bloc to enable it to usually defeat the minority group’s preferred candidates.
18 (*Thornburg v. Gingles* (1986) 478 U.S. 30, 51) A minority group is politically cohesive where it
19 supports its preferred choices to a significantly greater degree than the majority group supports those
20 same choices; in elections for office (as opposed to ballot measures), the CVRA focuses on elections in
21 which at least one candidate is a member of the protected class of interest (§ 14028(b)), because those
22 elections usually offer the most probative test of whether voting patterns are racially polarized. (See
23 *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F. 2d 1407, 1416 [“The district court expressly found
24 that predominantly Hispanic sections of Watsonville have, in actual elections, demonstrated near
25 unanimous support for Hispanic candidates. This establishes the requisite political cohesion of the
26 minority group.”].) The extent of majority “bloc voting” sufficient to show racially polarized voting is
27 that which allows the white majority to “usually defeat the minority group’s preferred candidate.”
28 (*Ibid.*) As Justice Brennan explained, it is through establishment of this element that impairment is

1 shown—i.e. that the “at-large method of election [is] imposed or applied in a manner that impairs the
2 ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an
3 election.” (§ 14027; *Gingles*, at p. 51 [“In establishing this last circumstance, the minority group
4 demonstrates that submergence in a white multimember district impedes its ability to elect its chosen
5 representatives.”].)

6 The U.S. Supreme Court in *Gingles* also set forth appropriate methods of identifying racially
7 polarized voting; since individual ballots are not identified by race, race must be imputed through
8 ecological demographic and political data. The long-approved method of ecological regression (“ER”)
9 yields statistical power to determine if there is racially polarized voting if there are not a sufficient
10 number of racially homogenous precincts (90% or more of the precinct is of one particular ethnicity).
11 (See *Benavidez v. City of Irving* (N.D. Tex. 2009) 638 F.Supp.2d 709, 723 [“HPA [(homogenous
12 precinct analysis)] and ER [(ecological regression)] were both approved in *Gingles* and have been
13 utilized by numerous courts in Voting Rights Act cases.”].) The CVRA expressly adopts method
14 methods like ER that have been used in federal Voting Rights Act cases to demonstrate racially
15 polarized voting. (§ 14026, subd. (e) [“The methodologies for estimating group voting behavior as
16 approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec.
17 10301 et seq.) to establish racially polarized voting may be used for purposes of this section to prove
18 that elections are characterized by racially polarized voting.”].)

19 2. *The Experts’ Analyses*

20 At trial, Plaintiffs and Defendant each offered the statistical analyses of their respective experts
21 – Dr. J. Morgan Kousser and Dr. Jeffrey Lewis, respectively. Though the details and methods of their
22 respective analyses differed in minor ways, the analyses by Plaintiffs’ and Defendant’s experts reveal
23 the same thing— Santa Monica elections that are legally relevant under the CVRA are racially
24 polarized.³ Analyzing elections over the past twenty-four years, a consistent pattern of racially-

25 _____
26 ³ Dr. Kousser opined that his analysis demonstrates racially polarized voting. Though he had done so
27 in other cases, Dr. Lewis reached no conclusions about racially polarized voting in this case, and
28 declined to opine about whether his analysis demonstrated racially polarized voting. Another of
Plaintiffs’ experts, Justin Levitt, evaluated the results of Dr. Lewis’ statistical analyses, and concluded,
like Dr. Kousser, that all of the relevant elections evaluated by Dr. Lewis exhibit racially polarized

1 polarized voting emerges. In most elections where the choice is available, Latino voters strongly
2 prefer a Latino candidate running for Defendant’s city council, but, despite that support, the preferred
3 Latino candidate loses. As a result, though Latino candidates are generally preferred by the Latino
4 electorate in Santa Monica, only one Latino has been elected to the Santa Monica City Council in the
5 72 years of the current election system – 1 out of 71 to serve on the city council.

6 Dr. J. Morgan Kousser, a Caltech professor who has testified in many voting rights cases
7 spanning more than 40 years, analyzed the elections specified by the CVRA: “elections for members of
8 the governing body of the political subdivision . . . in which at least one candidate is a member of a
9 protected class.” (§ 14028 subds. (a), (b)). The CVRA’s focus on elections involving minority
10 candidates is consistent with the view of a majority of federal circuit courts that racially-contested
11 elections are most probative of an electorate’s tendencies with respect to racially polarized voting.⁴

12 In those elections, Dr. Kousser focused on the level of support for minority candidates from
13 minority voters and majority voters respectively, just as the Court in *Gingles*, and many lower courts
14

15 voting, including in some instances racial polarization that is so “stark” that it is similar to the
16 polarization “in the late ‘60s in the Deep South.”

17 ⁴ See *U.S. v. Blaine Cty.* (9th Cir. 2004) 363 F.3d 897, 911 [rejecting defendant’s argument that trial
18 court must give weight to elections involving no minority candidates]; *Ruiz v. Santa Maria* (9th Cir.
19 1998) 160 F.3d 543, 553 [“minority v. non-minority election is more probative of racially polarized
20 voting than a non-minority v. non-minority election” because “[t]he Act means more than securing
21 minority voters’ opportunity to elect whites.”]; *Westwego Citizens for Better Gov’t v. City of Westwego*
22 (5th Cir.1991) 946 F.2d 1109, 1119, n. 15 [“[T]he evidence most probative of racially polarized voting
23 must be drawn from elections including both black and white candidates.”]; *LULAC v. Clements* (5th
24 Cir. en banc 1993) 999 F.2d 831, 864 [“This court has consistently held that elections between white
25 candidates are generally less probative in examining the success of minority-preferred candidates . . .
26 .”]; *Citizens for a Better Gretna v. City of Gretna* (5th Cir.1987) 834 F.2d 496, 502 [“That blacks also
27 support white candidates acceptable to the majority does not negate instances in which white votes
28 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.”].)

1 since then, have done. (See *Gingles*, *supra*, 478 U.S. at pp. 58–61 [“We conclude that the District
2 Court's approach, which tested data derived from three election years in each district, and which
3 revealed that blacks strongly supported black candidates, while, to the black candidates' usual
4 detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard.”]; *Id.* at 81
5 [Appendix A – providing Dr. Grofman’s ecological regression estimates for support for black
6 candidates from, respectively, white and black voters]; see also, e.g., *Garza v. County of Los Angeles*,
7 756 F. Supp. 1298, 1335-37 (C.D. Cal. 1990), *aff'd*, 918 F.2d 763 (9th Cir. 1990) [summarizing the
8 bases on which the court found racially polarized voting: “The results of the ecological regression
9 analyses demonstrated that for all elections analyzed, Hispanic voters generally preferred Hispanic
10 candidates over non-Hispanic candidates. ... Of the elections analyzed by plaintiffs' experts non-
11 Hispanic voters provided majority support for the Hispanic candidates in only three elections, all
12 partisan general election contests in which party affiliation often influences the behavior of voters”];
13 *Benavidez v. Irving Indep. Sch. Dist.* 2014 WL 4055366, *11-12 (N.D. Tex. 2014) [finding racially
14 polarized voting based on Dr. Engstrom’s analysis which the court described as follows: “Dr.
15 Engstrom then conducted a statistical analysis ... to estimate the percentage of Hispanic and non-
16 Hispanic voters who voted for the Hispanic candidate in each election. ... Based on this analysis, Dr.
17 Engstrom opined that voting in Irving ISD trustee elections is racially polarized.”)]⁵

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19 ⁵ In its closing brief, Defendant argued that the Supreme Court in *Gingles* held that the race of a
20 candidate is “irrelevant,” but what Defendant fails to recognize is that the portion of *Gingles* it relies
21 upon did not command a majority of the Court, and Defendant’s reading of *Gingles* has been rejected
22 by federal circuit courts in favor of a more practical race-sensitive analysis. (See *Ruiz v. City of Santa*
23 *Maria* (9th Cir. 1998) 160 F.3d 543, 550-53 [collecting other cases rejecting Defendant’s view and
24 noting that “non-minority elections do not provide minority voters with the choice of a minority
25 candidate and thus do not fully demonstrate the degree of racially polarized voting in the
26 community.”]). To the extent there is any doubt about whether the race of a candidate impacts the
27 analysis in FVRA cases, there can be no doubt under the CVRA; the statutory language mandates a
28 focus on elections involving minority candidates. (§14028(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 ... One circumstance that may be considered ... is the extent to which
candidates who are members of a protected class and who are preferred by voters of the protected
class ... have been elected to the governing body of the political subdivision that is the subject of an
action ...”]). In this analysis, it is not that minority support for minority candidates is presumed; to the

1 Dr. Kousser provided the details of his analysis, and concluded those elections demonstrate
 2 legally significant racially polarized voting.⁶ Specifically, Dr. Kousser evaluated the 7 elections for
 3 Santa Monica City Council between 1994 and 2016 that involved at least one Spanish-surnamed
 4 candidate⁷ and provided both the point estimates of group support for each candidate as well as the
 5 corresponding statistical errors (in parentheses in the charts below):

6 **Weighted Ecological Regression⁸**

| 7 Year | Latino Candidate(s) | % Latino Support | % Non-Hispanic White Support | Polarized | Won? |
|----------------|----------------------------|-------------------------|-------------------------------------|------------------|-------------|
| 8 1994 | Vazquez | 145.5 (28.0) | 34.9 (1.9) | Yes | No |
| 9 1996 | Alvarez | 22.2 (12.9) | 15.8 (1.1) | No | No |
| 10 2002 | Aranda | 82.6 (12.6) | 16.5 (1.3) | Yes | No |
| 11 2004 | Loya | 106.0 (12.3) | 21.2 (2.0) | Yes | No |
| 12 2008 | Piera-Avila | 33.3 (5.2) | 5.7 (0.8) | Yes | No |
| 13 2012 | Vazquez | 92.7 (9.0) | 19.1 (2.0) | Yes | Yes |
| | Gomez | 30.4 (3.3) | 2.9 (0.7) | Yes | No |
| | Duron | 5.0 (2.6) | 4.4 (0.6) | No | No |
| 14 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 |

15 contrary, it must be demonstrated. But both the CVRA and federal caselaw recognize that the most
 16 probative test for minority voter support and cohesion usually involves an election with the option of a
 17 minority candidate.

18 ⁶ At trial, Dr. Kousser presented his analyses using unweighted ER, weighted ER and ecological
 19 inference (“EI”). Dr. Kousser explained that, of these three statistical methods, weighted ER is
 20 preferable in this case. Dr. Kousser’s conclusions were the same for each of these three methods, so,
 for the sake of brevity, only his weighted ER analysis is duplicated here.

21 ⁷ One of Defendant’s city council members, Gleam Davis, testified that she considers herself Latina
 22 because her biological father was of Hispanic descent (she was adopted at an early age by non-
 23 Hispanic white parents). Though that may be true, the Santa Monica electorate does not recognize her
 24 as Latina, as demonstrated by the telephone survey of registered voters conducted by Jonathan Brown;
 25 even her fellow council members did not realize she considered herself to be Latina until after the
 present case was filed. Consistent with the purpose of considering the race of a candidate in assessing
 26 racially polarized voting, it is the electorate’s perception that matters, not the unknown self-
 identification of a candidate. (See footnote 5, *supra*)

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

1 Non-Hispanic whites voted statistically significantly differently from Latinos in 6 of the 7 elections.
2 The ecological regression analyses of these elections also reveals that when serious Latino candidates
3 run for the Santa Monica City Council, Latino voters cohesively support those Latino candidates – in
4 all but one of those six elections, a Latino candidate received the most Latino votes, often by a large
5 margin. And in all but one of those six elections, the Latino candidate most favored by Latino voters
6 lost, making the racially polarized voting legally significant. (*Gingles* at p. 56 [“in general, a white
7 bloc vote that normally will defeat the combined strength of minority support plus white ‘crossover’
8 votes rises to the level of legally significant white bloc voting.”]). Even in that one instance (2012 –
9 Tony Vazquez) the Latino candidate barely won, coming in fourth in a four-seat race in that unusual
10 election, in which none of the incumbents who had won four years earlier sought re-election. (*Id.*; see
11 also *Gingles, supra*, 478 U.S. at p. 57, fn. 26 [“Furthermore, the success of a minority candidate in a
12 particular election does not necessarily prove that the district did not experience polarized voting in
13 that election; special circumstances, such as the absence of an opponent, incumbency, or the utilization
14 of bullet voting, may explain minority electoral success in a polarized contest. This list of special
15 circumstances is illustrative, not exclusive.”].)

16 In 1994, Latino voters heavily favored the lone Latino candidate—Tony Vazquez-- but he lost.
17 In 2002, the lone Latina candidate and resident of the Pico Neighborhood—Josefina Aranda—was
18 heavily favored by Latino voters, but she lost. In 2004, the lone Latina candidate and resident of the
19 Pico Neighborhood—Maria Loya—was heavily favored by Latino voters, but she lost. In 2008, the
20 lone Latina candidate and resident of the Pico Neighborhood—Linda Piera-Avila—received significant
21 support from Latino voters, even though she was not a particularly serious candidate.⁹ In 2012, two
22 incumbents—Richard Bloom and Bobby Shriver—decided not to run for re-election, and the two other
23 incumbents who had prevailed in 2008 – Ken Genser and Herb Katz – died during their 2008-12 terms.

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

1 The leading Latino candidate—Tony Vazquez—was heavily favored by Latino voters but did not
2 receive nearly as much support from non-Hispanic white voters. He was able to eke out a victory,
3 coming in fourth place in this four-seat race. Finally, in 2016, a race for four city council positions,
4 Oscar de la Torre—a Latino resident of the Pico Neighborhood—was heavily favored by Latinos, but
5 lost. In 2016, Mr. de la Torre received more support from Latinos than did Mr. Vazquez.¹⁰ This is the
6 prototypical illustration of legally significant racially polarized voting – Latino voters favor Latino
7 candidates, but non-Latino voters vote against those candidates, and therefore the favored candidates
8 of the Latino community lose. (See *Gingles, supra*, 478 U.S. at pp. 58–61 [“We conclude that the
9 District Court's approach, which tested data derived from three election years in each district, and
10 which revealed that blacks strongly supported black candidates, while, to the black candidates' usual
11 detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard.”]). All of
12 this led Dr. Kousser to conclude: “[b]etween 1994 and 2016 [] Santa Monica city council elections
13 exhibit legally significant racially polarized voting” and “the at-large election system in Santa Monica
14 result[s] in Latinos having less opportunity than non-Latinos to elect representatives of their choice” to
15 the city council. This Court agrees.

16 Defendant’s expert, Dr. Lewis, did not disagree. In fact, he confirmed all of the indicia of
17 racially polarized voting in all of the Santa Monica City Council elections he analyzed involving at
18 least one Latino candidate, as well as in other elections. Specifically, Dr. Lewis confirmed that his ER
19 and EI results demonstrate: (1) that the Latino candidates for city council generally received the most
20 votes from Latino voters; (2) that those Latino candidates received far less support from non-Hispanic
21 whites; and (3) the difference in levels of support between Latino and non-Hispanic white voters were
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23
24 ¹⁰ Defendant argues that the Court should disregard Mr. de la Torre’s 2016 candidacy because,
25 according to Defendant, Mr. de la Torre intentionally lost that election. But Defendant presented no
26 evidence that Mr. de la Torre did not try to win that election, and Mr. de la Torre unequivocally denied
27 that he deliberately attempted to lose that election. And, the ER analysis by Dr. Lewis further
28 undermines Defendant’s assertion – Mr. de la Torre received essentially the same level of support from
Latino voters in the 2016 council election as he did in his 2014 election for school board, an odd result
if Mr. de la Torre had tried to win one election and lose the other.

1 statistically significant applying even a 95% confidence level (with the lone exception of Steve
2 Duron):

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

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10 Dr. Lewis also analyzed elections for other local offices (e.g. school board and college board)
11 and ballot measures such as Propositions 187 (1994), 209 (1996) and 227 (1998). The instant case
12 concerns legal challenges to the election structure for the Santa Monica City Council; where there exist
13 legally relevant election results concerning the Santa Monica City Council, those elections will
14 necessarily be most probative. Consistent with FVRA cases that have addressed the relevance and
15 weight of “exogenous” elections, this Court gives exogenous elections less weight than the endogenous
16 elections discussed above. (See, e.g. *Bone Shirt v. Hazeltine* (8th Cir. 2006) 461 F.3d
17 1011[acknowledging that exogenous elections are of much less probative value than endogenous
18 elections, some federal courts have relied upon exogenous elections involving minority candidates to
19 *further support* evidence of racially polarized voting in endogenous elections]; *Jenkins v. Red Clay*
20 *Consol. School Dist. Bd. of Educ.* (3d Cir. 1993) 4 F.3d 1103, 1128–1129 [same]; *Rodriguez v. Harris*
21 *Cnty, Texas* (2013) 964 F.Supp.2d 686 [same]; *Citizens for a Better Gretna v. City of Gretna, La.* (5th
22 Cir. 1987) 834 F.2d 496, 502–503 [“Although exogenous elections alone could not prove racially
23 polarized voting in Gretna aldermanic elections, the district court properly considered them as
24 additional evidence of bloc voting— particularly in light of the sparsity of available data.”]; *Clay v.*
25 *Board of Educ. of City of St. Louis* (8th Cir. 1996) 90 F.3d 1357 [exogenous elections “should be used
26 only to supplement the analysis of” endogenous elections]; *Westwego Citizens for Better Gov’t v. City*
27 *of Westwego* (5th Cir.1991) 946 F.2d 1109 [analysis of exogenous elections appropriate because no
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1 minority candidates had ever run for the governing board of the defendant])¹¹ Regardless of the weight
 2 given to exogenous elections, they may not be used to undermine a finding of racially polarized voting
 3 in endogenous elections. (See *Cottier v. City of Martin* (8th Cir.2006) 445 F.3d 1113, 1121–1122
 4 [reversing district court’s reliance on exogenous elections to undermine racially polarized voting in
 5 endogenous elections]; *Rural West Tenn. African American Affairs Council v. Sundquist* (W.D. Tenn.
 6 1998) 29 F.Supp.2d 448, 457 [“Certainly, the voting patterns in exogenous elections cannot defeat
 7 evidence, statistical or otherwise, about endogenous elections.”], quoting *Cofield v. City of LaGrange*
 8 (N.D.Ga.1997) 969 F.Supp. 749, 773.) To hold otherwise would only serve to perpetuate the sort of
 9 glass ceiling that the CVRA and FVRA are intended to eliminate. Nonetheless, exogenous elections in
 10 Santa Monica further support the conclusion that the levels of support for Latino candidates from
 11 Latino and non-Hispanic white voters, respectively, is always statistically significantly different, with
 12 non-Hispanic white voters consistently voting against the Latino candidates who are overwhelmingly
 13 supported by Latino voters.

| Election | Latino Candidate(s) | % Latino Support | % Non-Hispanic White Support |
|-----------------------------|----------------------------|-------------------------|-------------------------------------|
| 2002 – school board | de la Torre | 107 (13) | 34 (2) |
| 2004 – school board | Jara | 113 (13) | 37 (2) |
| | Leon-Vazquez | 98 (9) | 44 (2) |
| | Escarce | 74 (8) | 44 (1) |
| 2004 – college board | Quinones-Perez | 55 (5) | 21 (1) |
| 2006 – school board | de la Torre | 95 (12) | 40 (1) |
| 2008 – school board | Leon-Vazquez | 101 (8) | 40 (1) |
| | Escarce | 68 (6) | 36 (1) |
| 2008 – college board | Quinones-Perez | 58 (6) | 35 (1) |
| 2010 – school board | de la Torre | 94 (8) | 33 (1) |
| 2012 – school board | Leon-Vazquez | 92 (7) | 32 (1) |

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

| | | | |
|---|-----------------------------|-----------------------|--------|
| | Escarce | 62 (6) | 29 (1) |
| 1 | 2014 – school board | de la Torre | 88 (7) |
| 2 | 2014 – college board | Loya | 84 (3) |
| 3 | 2014 – rent board | Duron | 46 (8) |
| 4 | 2016 – college board | Quinones-Perez | 85 (5) |
| | | | 36 (1) |

While he provided his estimates based on ER and EI, Dr. Lewis also questioned the propriety of using those methods. Dr. Lewis showed that the “neighborhood model” yields different estimates, but the neighborhood model does not fit real-world patterns of voting behavior for particular candidates and the use of the neighborhood model to undermine ER has been rejected by other courts. (See, e.g., *Garza* at p. 1334). Dr. Lewis claimed that the lack of data from predominantly Hispanic precincts in Santa Monica renders the ER and EI estimates unreliable, but that argument too has been rejected by the courts. (See, e.g., *Fabela v. Farmers Branch* (N.D. Tex. Aug. 2, 2012) 2012 WL 3135545, *10-11, n. 25, n. 33 [relying on EI despite the absence of “precincts with a high concentration of Hispanic voters”]; *Benavidez v. City of Irving* (N.D. Tex. 2009) 638 F.Supp.2d 709, 724-25 [approving use of ER and EI where the precincts analyzed all had “less than 35%” Spanish-surnamed registered voters]; *Perez v. Pasadena Indep. Sch. Dist.* (S.D. Tex. 1997) 958 F.Supp. 1196, 1205, 1220-21, 1229, *aff’d* (5th Cir. 1999) 165 F.3d 368 [relying on ER to show racially polarized voting where the polling place with the highest Latino population was 35% Latino]).¹² To disregard ER and EI estimates because of a lack of predominantly minority precincts would also be contrary to the intent of the Legislature in expressly disavowing a requirement that the minority group is concentrated. (§ 14028 subd. (c) [“[t]he fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting.”]). Dr. Lewis argued that using Spanish-surname matching to estimate the Latino proportion of voting precincts causes a “skew,” but he also acknowledged that Spanish surname matching is the best method for estimating the

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

1 Latino proportion of each precinct, and the conclusion of racially polarized voting in this case would
2 not change even if the estimates were adjusted to account for any skew. Finally, Dr. Lewis showed
3 that ER and EI do not produce accurate estimates of Democratic party *registration* among Latinos in
4 Santa Monica, but that does not undermine the validity or propriety of ER and EI to estimate *voting*
5 behavior in this case. (See *Luna v. County of Kern* (E.D. Cal. 2018) 291 F.Supp.3d 1088, 1123-25
6 [rejecting the same argument]). Most importantly, the CVRA directs this Court to credit the statistical
7 methods accepted by federal courts in FVRA cases, including ER and EI, and Dr. Lewis did not
8 suggest or employ any method that could more accurately estimate group voting behavior in Santa
9 Monica. (§ 14026 subd. (e) [“The methodologies for estimating group voting behavior as approved in
10 applicable federal cases to enforce the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et
11 seq.) to establish racially polarized voting may be used for purposes of this section to prove that
12 elections are characterized by racially polarized voting.”].)

13 In its closing brief, Defendant argues that there is no racially polarized voting because at least
14 half of what Defendant calls “Latino-preferred” candidacies have been successful in Santa Monica.
15 But that mechanical approach suggested by Defendant – treating a Latino candidate who receives the
16 most votes from Latino voters (and loses, based on the opposition of the non-Hispanic white
17 electorate) the same as a white candidate who receives the second, third or fourth-most votes from
18 Latino voters (and wins, based on the support of the non-Hispanic white electorate) - has been
19 expressly rejected by the courts. (*Ruiz*, 160 F.3d at 554 [rejecting the district court’s “mechanical
20 approach” that viewed the victory of a white candidate who was the second-choice of Latinos in a
21 multi-seat race as undermining a finding of racially polarized voting where Latinos’ first choice was a
22 Latino candidate who lost: “The defeat of Hispanic-preferred Hispanic candidates, however, is more
23 probative of racially polarized voting and is entitled to more evidentiary weight. The district court
24 should also consider the order of preference non-Hispanics and Hispanics assigned Hispanic-preferred
25 Hispanic candidates as well as the order of overall finish of these candidates.”]; see also *id.* at 553
26 [“But the Act’s guarantee of equal opportunity is not met when . . . [c]andidates favored by
27 [minorities] can win, but only if the candidates are white.” (citations and internal quotations omitted)];
28 *Smith v. Clinton* (E.D. Ark. 1988) 687 F.Supp. 1310, 1318, *aff’d*, 488 U.S. 988 (1988) [it is not enough

1 to avoid liability under the FVRA that “candidates favored by blacks can win, but only if the
2 candidates are white.”]; also see *Clarke v. City of Cincinnati* (6th Cir. 1994) 40 F.3d 807, 812 [voting
3 rights laws’ “guarantee of equal opportunity is not met when [] candidates favored by [minority voters]
4 can win, but only if the candidates are white.”)]. A more holistic approach that accounts for the
5 political realities of the jurisdiction is required, particularly in light of purpose of the CVRA.
6 (*Jauregui* at at p. 807 [“Thus, the Legislature intended to expand the protections against vote dilution
7 provided by the federal Voting Rights Act of 1965.”]; Assem. Com. on Judiciary, Analysis of Sen. Bill
8 No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 2 [the Legislature sought to remedy
9 what it considered “restrictive interpretations given to the federal act.”]; Cf. *Gingles* at 62-63
10 [“appellants’ theory of racially polarized voting would thwart the goals Congress sought to achieve
11 when it amended § 2, and would prevent courts from performing the ‘functional’ analysis of the
12 political process, and the ‘searching practical evaluation of the past and present reality’”]). To
13 disregard or discount both the order of preference of minority voters and the demonstrated salience of
14 the races of the candidates, as Defendant suggests, would actually exculpate discriminatory at-large
15 election systems where there is a paucity of serious minority candidates willing to run in the at-large
16 system – itself a symptom of the discriminatory election system. (See *Westwego Citizens for Better
17 Government v. City of Westwego* (5th Cir. 1989) 872 F. 2d 1201, 1208-1209, n. 9 [“it is precisely this
18 concern that underpins the refusal of this court and of the Supreme Court to preclude vote dilution
19 claims where few or no black candidates have sought offices in the challenged electoral system. To
20 hold otherwise would allow voting rights cases to be defeated at the outset by the very barriers to
21 political participation that Congress has sought to remove.”].)

22 No doubt, a minority group can prefer a non-minority candidate and, in a multi-seat plurality
23 at-large election, can prefer more than one candidate, perhaps to varying degrees, but that does not
24 mean that this Court should blind itself to the races of the candidates, the order of preference of
25 minority voters, and the political realities of Defendant’s elections. When serious Latino candidates
26 have run for Santa Monica’s city council, they have been overwhelmingly supported by Latino voters,
27 receiving more votes from Latino voters than any other candidates. And absent unusual circumstances,
28 because the remainder of the electorate votes against the candidates receiving overwhelming support

1 from Latino voters, those candidates generally still lose. That demonstrates legally relevant racially
2 polarized voting under the CVRA. (See *Gingles, supra*, 478 U.S. at pp. 58–61 [“We conclude that the
3 District Court's approach, which tested data derived from three election years in each district, and
4 which revealed that blacks strongly supported black candidates, while, to the black candidates' usual
5 detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard.”])

6 **C. The Qualitative Factors Further Support a Finding of Racially Polarized**
7 **Voting and a Violation of the CVRA.**

8 Section 14028(e) allows plaintiffs to supplement their statistical evidence with other evidence
9 that is “probative, but not necessary [] to establish a violation” of the CVRA, specifically:

10 “[a] history of discrimination, the use of electoral devices or other voting
11 practices or procedures that may enhance the dilutive effects of at-large
12 elections, denial of access to those processes determining which groups of
13 candidates will receive financial or other support in a given election, the
14 extent to which members of a protected class bear the effects of past
15 discrimination in areas such as education, employment, and health, which
16 hinder their ability to participate effectively in the political process, and the
17 use of overt or subtle racial appeals in political campaigns.”

18 (see also Assembly Committee Analysis of SB 976 (Apr. 2, 2002)). These “probative, but not
19 necessary” factors further support a finding of racially polarized voting in Santa Monica and a violation
20 of the CVRA.

21 *1. History of discrimination.*

22 In *Garza, supra*, 756 F.Supp. at pp. 1339-1340, the court detailed how “[t]he Hispanic
23 community in Los Angeles County has borne the effects of a history of discrimination.” The court
24 described the many sources of discrimination endured by Latinos in Los Angeles County: “restrictive
25 real estate covenants [that] have created limited housing opportunities for the Mexican-origin
26 population”; the “repatriation” program in which “many legal resident aliens and American citizens of
27 Mexican descent were forced or coerced out of the country”; segregation in public schools; exclusion
28 of Latinos from “the use of public facilities” such as public swimming facilities; and “English language
literacy [being] a prerequisite for voting” until 1970. (*Id.* at 1340-41). 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

1 discrimination, which affects the exercise of the right to vote in all elections under state law, must be
2 proved anew in each case under the Voting Rights Act.”.) Nonetheless, at trial Plaintiffs presented
3 evidence that this same sort of discrimination was perpetuated specifically against Latinos *in Santa*
4 *Monica* – e.g. restrictive real estate covenants, and approximately 70% of Santa Monica voters voting
5 in favor of Proposition 14 in 1964 to repeal the Rumford Fair Housing Act and therefore again allow
6 racial discrimination in housing; segregation in the use of public swimming facilities; repatriation and
7 voting restrictions applicable to all of California, including Santa Monica.

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

10 Defendant stresses that its elections are free of many devices that dilute (or have diluted)
11 minority votes in other jurisdictions, such as numbered posts and majority vote requirements.
12 Nevertheless, the staggering of Defendant’s city council elections enhances the dilutive effect of its at-
13 large election system. (See *City of Lockhart v. United States* (1983) 460 U.S. 125, 135 [“The use of
14 staggered terms also may have a discriminatory effect under some circumstances, since it . . . might
15 reduce the opportunity for single-shot voting or tend to highlight individual races.”]; *City of Rome v.*
16 *United States* (1980) 446 U.S. 156, 183 [same].)

17 3. *The extent to which members of a protected class bear the effects of past*
18 *discrimination in areas such as education, employment, and health, which hinder*
19 *their ability to participate effectively in the political process.*

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

26 As revealed by the most recent Census, Whites enjoy significantly higher income levels than
27 their Hispanic and African American neighbors in Santa Monica—a difference far greater than the
28 national disparity. This is particularly problematic for Latinos in Santa Monica’s at-large elections

1 because of how expensive those elections have become – more than one million dollars was spent in
2 pursuit of the city council seats available in 2012, for example. There is also a severe achievement gap
3 between White students and their African American and Hispanic peers in Santa Monica’s schools that
4 may further contribute to lingering turnout disparities.

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

6 In 1994, after opponents of Tony Vazquez advertised that he had voted to allow “Illegal Aliens
7 to Vote” and characterized him as the leader of a Latino gang, causing Mr. Vazquez to lose that
8 election, he let his feelings be known to the Los Angeles Times: “Vazquez blamed his loss on ‘the
9 racism that still exists in our city. ... The racism that came out in this campaign was just unbelievable.’”
10 More recent racial appeals, though less overt, have been used to defeat other Latino candidates for
11 Santa Monica’s city council. For example, when Maria Loya ran in 2004, she was frequently asked
12 whether she could represent all Santa Monica residents or just “her people” – a question that non-
13 Hispanic white candidates were not asked. These sorts of racial appeals are particularly caustic to
14 minority success, because they not only make it more difficult for minority candidates to win, but they
15 also discourage minority candidates from even running.

16 *5. Lack of responsiveness to the Latino Community.*

17 Although not listed in section 14028(e), the unresponsiveness of Defendant to the needs of the
18 Latino community is a factor probative of impaired voting rights. (See *Gingles*, 478 U.S. at 37, 45; see
19 also §14028(e) [indicating that list of factors is not exhaustive – “Other factors *such as* the history of
20 discrimination ...”] (emphasis added)). That unresponsiveness is a natural, perhaps inevitable,
21 consequence of the at-large election system that tends to cause elected officials to “ignore [minority]
22 interests without fear of political consequences.” (*Gingles* 478 U.S. at 48, n. 14).

23 The elements of the city that most residents would want to put at a distance - the freeway, the
24 trash facility, the city’s maintenance yard, a park that continues to emit poisonous methane gas,
25 hazardous waste collection and storage, and, most recently, the train maintenance yard – have all been
26 placed in the Latino-concentrated Pico Neighborhood. At least some of these undesirable elements –
27 e.g the 10-freeway and train maintenance yard – were placed in the Pico Neighborhood at the direction,
28 or with the agreement, of Defendant or members of its city council.

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

7 **D. The At-Large Election System Dilutes the Latino Vote in Santa Monica City**
8 **Council Elections.**

9 Defendant argues that, in addition to racially polarized voting, “dilution” is a separate
10 element of a violation of the CVRA. Even if “dilution” were an element of a CVRA claim,
11 separate and apart from a showing of racially polarized voting, the evidence still demonstrates
12 dilution by the standard proposed by Defendant in its closing brief – “that some alternative
13 method of election would enhance Latino voting power.” At trial, Plaintiffs presented several
14 available remedies (district-based elections, cumulative voting, limited voting and ranked choice
15 voting), each of which would enhance Latino voting power over the current at-large system.

16 While it is impossible to predict with certainty the results of future elections, this Court
17 considered the national, state and local experiences with district elections, particularly those involving
18 districts in which the minority group is not a majority of the eligible voters, other available remedial
19 systems replacing at-large elections, and the precinct-level election results in past elections for Santa
20 Monica’s city council. Based on that evidence, this Court finds that the district map developed by Mr.
21 Ely, and adopted by this Court as an appropriate remedy, will likely be effective, improving Latinos’
22 ability to elect their preferred candidate or influence the outcome of such an election.

23 **IV. THE CVRA IS NOT UNCONSTITUTIONAL**

24 Defendant argues that the CVRA is unconstitutional, pursuant to a line of cases beginning
25 with *Shaw v. Reno* (1993), 509 U.S. 630. As the court in *Sanchez* held, the CVRA is not
26 unconstitutional; *Shaw* is simply not applicable. (*Sanchez, supra*, 145 Cal.App.4th at pp. 680–
27 682.)

1 **A. The CVRA Is Not Subject to Strict Scrutiny.**

2 Defendant’s argument that the CVRA is unconstitutional begins with the already-rejected
3 notion that the CVRA is subject to strict scrutiny because it employs a racial classification.
4 (Motion, pp. 10-11). The court in *Sanchez* rejected that very argument. (*Sanchez, supra*, 145
5 Cal.App.4th at pp. 680–682.) Rather, although “the CVRA involves race and voting, ... it does
6 not allocate benefits or burdens on the basis of race”; it is race-neutral in that it neither singles out
7 members of any one race nor advantages or disadvantages members of any one race. (*Sanchez*, at
8 p. 680) Accordingly, the CVRA is not subject to strict scrutiny; it is subject to the more
9 permissive rational basis test, which the *Sanchez* court held it easily passes. (*Ibid.*)

10 Defendant seems to suggest that even though the CVRA was not subject to strict scrutiny
11 in Modesto, it must be subject to strict scrutiny in Santa Monica under *Shaw*, because any remedy
12 in Santa Monica will inevitably be based predominantly on race. But, as discussed below, the
13 remedy selected by this Court was not based predominantly on race – the district map was drawn
14 based on the non-racial criteria enumerated in Elections Code section 21620. Moreover, *Shaw*
15 and its progeny do not require strict scrutiny every time that race is pertinent in electoral
16 proceedings. Instead, the *Shaw* line of cases, which focus on the expressive harm to voters
17 conveyed by particular district lines, require strict scrutiny when “race was the predominant factor
18 motivating the legislature’s decision to place a significant number of voters within or without a
19 particular district[.]” (*Alabama Legislative Black Caucus v. Alabama* (2015) 135 S. Ct. 1257,
20 1267, quoting *Miller v. Johnson* (1995) 515 U.S. 900, 916.) This standard does not govern
21 liability under the CVRA, and does not govern the imposition of a remedy in the abstract (e.g.,
22 whether district lines should be drawn or an alternative voting system imposed), but rather it
23 governs the imposition of particular lines in particular places affecting particular voters. The
24 CVRA is silent on *how* district lines must be drawn, or even if districts are necessarily the
25 appropriate remedy. *Sanchez*, at p. 687 [“Upon a finding of liability, [the CVRA] calls only for
26 appropriate remedies, not for any particular, let alone any improper, use of race.”].) This Court is
27 not aware of any applicable case, finding a *Shaw* violation based on the adoption of district
28 elections, as opposed to where lines are drawn (and as explained below, the appropriate remedial

1 lines in this case were not drawn predominantly based on race). That is precisely why the *Sanchez*
2 court rejected the City of Modesto’s similar reliance on *Shaw* in that case. (*Sanchez, supra*, 145
3 Cal.App.4th at pp. 682–683.)

4 **B. The CVRA Easily Satisfies the Rational Basis Test.**

5 The State of California has a legitimate—indeed compelling—interest in preventing race
6 discrimination in voting and in particular curing demonstrated vote dilution. This interest is
7 consistent with and reflects the purposes of the California Constitution as well as the Fourteenth
8 and Fifteenth Amendments to the United States Constitution. (See § 14027 [identifying the
9 abridgment of voting rights as the end to be prohibited]; § 14031 [indicating that the CVRA was
10 “enacted to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the
11 California Constitution”]; see also Cal. Const., Art. I, § 7 [guaranteeing, among other rights, the
12 right to equal protection of the laws]; *id.* Art. II, § 2 [guaranteeing the right to vote]; *Sanchez* at p.
13 680 [identifying “[c]uring vote dilution” as a purpose of the CVRA].) The CVRA, which
14 provides a private right of action to seek remedies for vote dilution, is rationally related to the
15 State’s interest in curing vote dilution, protecting the right to vote, protecting the right to equal
16 protection of the laws, and protecting the integrity of the electoral process. (*Jauregui* at pp. 799-
17 801; *Sanchez*, at p. 680). As discussed above, Defendant’s election system has resulted in vote
18 dilution – the very injury that the CVRA is intended to prevent and remedy – and, though not
19 required by the CVRA, the evidence explored below even indicates that the dilution remedied in
20 this case was the product of intentional discrimination. And, as discussed below, there are several
21 remedial options to effectively remedy that vote dilution in this case. Accordingly, the CVRA is
22 constitutional and easily satisfies the rational basis test, on its face and in its specific application to
23 Defendant.

24 **C. The CVRA Would Also Satisfy Strict Scrutiny.**

25 Even if strict scrutiny were found to apply to the CVRA, the CVRA is narrowly tailored to
26 achieve a compelling state interest and therefore also satisfies that test. First, California has
27 compelling state interests in protecting all of its citizens’ rights to vote and to participate equally
28 in the political process, protecting the integrity of the electoral process, and in ensuring that its

1 laws and those of its subdivisions do not result in vote dilution in violation of its robust
2 commitment to equal protection of the laws. See Cal. Const., Art. I, § 7, Art. II, § 2; Elec. Code §§
3 14027, 14031; *Sanchez*, at p. 680; *Jauregui*, at pp. 799-801).

4 Second, the CVRA is narrowly tailored to achieve its compelling interests in preventing
5 the abridgment of the right to vote. The CVRA requires a person to demonstrate the existence of
6 racially polarized voting to prove a violation. (§ 14028 subd. (a)). Where racially polarized voting
7 does not exist, the CVRA will not require a remedy. As with the FVRA, both the findings of
8 liability and the establishment of a remedy under the CVRA do not rely on assumptions about
9 race, but rather on factual patterns specific to particular communities in particular geographic
10 regions, based on electoral evidence. (Compare *Shaw v. Reno* (1993) 509 U.S. 630, 647-648
11 [unconstitutional racial gerrymandering is based on the *assumption* that “members of the same
12 racial group—regardless of their age, education, economic status, or the community in which they
13 live—think alike, share the same political interests, and will prefer the same candidates at the
14 polls” with *id.* at 653 [distinguishing the Voting Rights Act, in which “racial bloc voting and
15 minority-group political cohesion never can be assumed, but specifically must be proved in each
16 case” based on evidence of group voting behavior].) And though federal cases have not
17 considered the CVRA specifically in this regard, the Supreme Court has repeatedly implied that
18 remedies narrowly drawn to combat racially polarized voting and discriminatory vote dilution will
19 survive strict scrutiny.¹³ As a result, the CVRA sweeps no wider than necessary to equitably
20 secure for Californians their rights to vote and to participate in the political process. (*Jauregui*, at

21
22 ¹³ See, e.g., *League of United Latin Am. Citizens v. Perry* (2006) 548 U.S. 399, 475 & n.12 (Stevens,
23 J., joined by Breyer, J., concurring in part and dissenting in part); *id.* at p. 518–519 (Scalia, J., joined
24 by Thomas, J., Alito, J., and Roberts, C.J., concurring in the judgment in part and dissenting in part);
25 *Bush v. Vera* (1996) 517 U.S. 952, 990, 994 (O’Connor, J., concurring); *Shaw v. Reno* (1993) 509 U.S.
26 630, 653-54. Indeed, just last year, in *Bethune-Hill v. Va. State Bd. of Elections* (2017) 137 S. Ct. 788,
27 the Supreme Court upheld a Virginia state Senate district against challenge on the theory that it was
28 predominantly driven by race, but in a manner designed to meet strict scrutiny through compliance
with the Voting Rights Act. (*Id.* at 802.) Neither party contested that compliance with the Voting
Rights Act would satisfy strict scrutiny, but the Court does not usually permit the litigants to concede
the justification for its most exacting level of scrutiny.

1 p. 802) And if the CVRA generally satisfies strict scrutiny, it a fortiori satisfies strict scrutiny in
2 application here, where as described below, the dilution remedied was proven to be the product of
3 intentional discrimination.

4 **V. THE EQUAL PROTECTION CLAUSE OF THE CALIFORNIA CONSTITUTION**

5 Article I, section 7 of the California Constitution mirrors the Equal Protection Clause of the
6 U.S. Constitution (Fourteenth Amendment).¹⁴ Where governmental actions or omissions are motivated
7 by a racially discriminatory purpose they violate the Equal Protection Clause, and when voting rights
8 are implicated, “[t]he Supreme Court has established that official actions motivated by discriminatory
9 intent ‘have no legitimacy at all’ (*N. Carolina NAACP v. McCrory* (4th Cir. 2016) 831 F.3d 204,
10 239 [surveying Supreme Court cases]; see also generally *Garza v. County of Los Angeles* (9th Cir.
11 1990) 918 F.2d 763, cert. denied (1991) 111 S.Ct. 681). Neither the passage of time, nor the
12 modification of the original enactment, can save a provision enacted with discriminatory intent. (*Id.*;
13 *Hunter v. Underwood* (1985) 471 U.S. 222 [invalidating a provision of the 1901 Alabama Constitution
14 because it was motivated by a desire to disenfranchise African Americans, even though its “more
15 blatantly discriminatory” portions had since been removed].)

16 “Determining whether invidious discriminatory purpose was a motivating factor demands
17 a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. ...
18 [including] the historical background of the decision.” *Village of Arlington Heights v. Metro.*
19 *Housing Dev. Corp.* (1977) 429 U.S. 252, 266-68. Sometimes, racially discriminatory intent can
20 be demonstrated by the clear statements of one or more decisionmakers. But, recognizing that
21 these “smoking gun” admissions of racially discriminatory intent are exceedingly rare, in
22 *Arlington Heights*, the U.S. Supreme Court described a number of *potential, non-exhaustive*,
23 sources of evidence that might shed light on the question of discriminatory intent in the absence
24 of a smoking gun admission:

25 _____
26
27 ¹⁴ Other than provisions relating exclusively to school integration, Article I section 7 provides “A
28 person may not be deprived of life, liberty, or property without due process of law or denied equal
protection of the laws.”

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

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

29 **VI. DEFENDANT’S AT-LARGE ELECTION SYSTEM VIOLATES THE EQUAL**
30 **PROTECTION CLAUSE OF THE CALIFORNIA CONSTITUTION.**

31 Defendant’s at-large election system was adopted and/or maintained with a discriminatory
32 intent on at least two occasions – in 1946 and in 1992, either of which necessitates this Court
33 invalidating the at-large election system. (See *Hunter v. Underwood* (1985) 471 U.S. 222 [invalidating

1 a provision of the 1901 Alabama Constitution because it was motivated by a desire to disenfranchise
2 African Americans, even though its “more blatantly discriminatory” portions had since been removed];
3 *Brown, supra* 722 F. Supp. at p. 389 [striking at-large election system based on discriminatory intent in
4 1911 even absent discriminatory intent in maintaining that system in decisions of 1957, the late 1960s
5 and early 1970s]). In the early 1990s, the Charter Review Commission, impaneled by Defendant’s
6 city council, concluded that “a shift from the at-large plurality system currently in use” was necessary
7 “to distribute empowerment more broadly in Santa Monica, particularly to ethnic groups ...” Even
8 back in 1946, it was understood that at-large elections would “starve out minority groups,” leaving “the
9 Jewish, colored [and] Mexican [no place to] go for aid in his special problems” “with seven
10 councilmen elected AT-LARGE ... mostly originat[ing] from [the wealthy white neighborhood] North
11 of Montana [and] without regard [for] minorities.” Yet, in each instance Defendant chose at-large
12 elections.

13 **A. 1946**

14 Defendant’s current at-large election system has a long history that has its roots in 1946.¹⁵ As
15 Dr. Kousser’s testimony at trial, and his report to the Santa Monica Charter Review Committee in
16 1992, explained, proponents and opponents of the at-large system alike, bluntly recognized that the at-
17 large system would impair minority representation. And, another ballot measure involving a pure
18 racial issue was on the ballot at the same time in 1946 – Proposition 11, which sought to ban racial
19 discrimination in employment. Dr. Kousser’s statistical analysis shows a strong correlation between
20 voting in favor of the at-large charter provision and against the contemporaneous Proposition 11,
21 further demonstrating the understanding that at-large elections would prevent minority representation.

22 When the *Arlington Heights* factors are each considered, those non-exhaustive factors militate
23 in favor of finding discriminatory intent in the 1946 adoption of the current at large election system.

24
25
26 ¹⁵ In 1946, Defendant adopted its current council-manager form of government, and chose an at-large
27 elected city council and school board. The at-large election feature remains in Defendant’s city
28 charter. (Santa Monica Charter § 600 [“The City Council shall consist of seven members elected from
the City at large ...”], § 900)

1 The discriminatory impact of the at-large election system was felt immediately after its
2 adoption in 1946. Though several ran, no candidates of color were elected to the Santa Monica City
3 Council in the 1940s, 50s or 60s. (See *Bolden v. City of Mobile* (S.D. Ala. 1982) 542 F.Supp. 1070,
4 1076 [relying on the lack of success of black candidates over several decades to show disparate impact,
5 even without a showing that black voters voted for each of the particular black candidates going back
6 to 1874].) Moreover, the impact on the minority-concentrated Pico Neighborhood over the past 72
7 years, discussed in Section III(C)(5) above, also demonstrates the discriminatory impact of the at-large
8 election system in this case. (*Gingles* 478 U.S. at 48, n. 14 [describing how at-large election systems
9 tend to cause elected officials to “ignore [minority] interests without fear of political consequences.”].)

10 The historical background of the decision in 1946 also militates in favor of a finding of
11 discriminatory intent. At-large elections are well known to disadvantage minorities, and that was well
12 understood in Santa Monica in 1946. The non-white population in Santa Monica was growing at a
13 faster rate than the white population – enough that the chief newspaper in Santa Monica, the Evening
14 Outlook, was alarmed by the rate of increase in the non-white population. The fifteen Freeholders,
15 who proposed only at-large elections to the Santa Monica electorate in 1946, were all white, and all but
16 one lived on the wealthier whiter side of Wilshire Boulevard. At-large elections were, therefore, in
17 their self-interest, and at least three of the Freeholders successfully ran for seats on the city council in
18 the years that followed. The Santa Monica commissioners had adopted a resolution calling for all
19 Japanese Americans to be deported to Japan rather than being allowed to return to their homes after
20 being interned, Los Angeles County had been marred by the zoot suit riots, and racial tensions were
21 prevalent enough in Santa Monica that a Committee on Interracial Progress was necessary. At the
22 same time as the 1946 Santa Monica charter amendment was approved, a significant majority of Santa
23 Monica voters voted against Proposition 11, which would have outlawed racial discrimination in
24 employment, and Dr. Kousser’s EI analysis shows a very strong correlation between voting for the
25 charter amendment and against Proposition 11.

26 The sequence of events leading up to the adoption of the at-large system in 1946 likewise
27 supports a finding of discriminatory intent. As Dr. Kousser detailed, in 1946, the Freeholders waffled
28 between giving voters a choice of having some district elections or just at-large elections, and

1 ultimately chose to only present an at-large election option despite the recognition that district elections
2 would be better for minority representation.

3 The substantive and procedural departures from the norm also support a finding of
4 discriminatory intent. In 1946, the Freeholders' reversed course on offering to the voters a hybrid
5 system (some district, and some at-large, elected council seats) in the wake of discussion of minority
6 representation, and, after a series of votes the local newspaper called "unexpected," offered the voters
7 only the option of at-large elections.

8 The legislative and administrative history in 1946 is difficult to discern. There appears to have
9 been no report of the Freeholders' discussions, but the statements by proponents and opponents of the
10 charter amendment demonstrate that all understood that at-large elections would diminish minorities'
11 influence on elections.

12 **B. 1992**

13 After winning a FVRA case ending at-large elections in Watsonville in 1989, Joaquin Avila
14 (later principally involved in drafting the CVRA) and other attorneys began to file and threaten to file
15 lawsuits challenging at-large elections throughout California on the grounds that they discriminated
16 against Latinos. The Santa Monica Citizens United to Reform Elections (CURE) specifically noted the
17 Watsonville case in urging the Santa Monica City Council to place the issue of substituting district for
18 at-large elections on the ballot, allowing Santa Monica voters to decide the question. With the issue of
19 at-large elections diluting minority vote receiving increased attention in Santa Monica and throughout
20 California, Defendant appointed a 15-member Charter Review Commission to study the matter and
21 make recommendations to the City Council. As part of their investigation, the Charter Review
22 Commission sought the analysis of Dr. Kousser, who had just completed his work in *Garza* regarding
23 discriminatory intent in the way Los Angeles County's supervisorial districts had been drawn. Dr.
24 Kousser was asked whether Santa Monica's at-large election system was adopted or maintained for a
25 discriminatory purpose, and Dr. Kousser concluded that it was, for all of the reasons discussed above.
26 Based on their extensive study and investigations, the near-unanimous Charter Review Commission
27 recommended that Defendant's at-large election system be eliminated. The principal reason for that
28

1 recommendation was that the at-large system prevents minorities and the minority-concentrated Pico
2 Neighborhood from having a seat at the table.

3 That recommendation went to the City Council in July 1992, and was the subject of a public
4 city council meeting. Excerpts from the video of that hours-long meeting were played at trial, and
5 provide direct evidence of the intent of the then-members of Defendant’s City Council. One speaker
6 after another – members of the Charter Review Commission, the public, an attorney from the Mexican
7 American Legal Defense and Education Fund, and even a former councilmember – urged Defendant’s
8 City Council to change its at-large election system. Many of the speakers specifically stressed that the
9 at-large system discriminated against Latino voters and/or that courts might rule that they did in an
10 appropriate case. Though the City Council understood well that the at-large system prevented racial
11 minorities from achieving representation – that point was made by the Charter Review Commission’s
12 report and several speakers and was never challenged – the members refused by a 4-3 vote to allow the
13 voters to change the system that had elected them. Councilmember Dennis Zane explained his
14 professed reasoning – in a district system, Santa Monica would no longer be able to place a
15 disproportionate share of affordable housing into the minority-concentrated Pico Neighborhood, where,
16 according to the unrefuted remarks at the July 1992 council meeting, the majority of the city’s
17 affordable housing was already located, because the Pico Neighborhood district’s representative would
18 oppose it. Mr. Zane’s comments were candid and revealing. He specifically phrased the issue as one
19 of Latino representation versus affordable housing: “So you gain the representation but you lose the
20 housing.”¹⁶ While this professed rationale could be characterized as not demonstrating that Mr. Zane
21 or his colleagues “harbored any ethnic or racial animus toward the . . . Hispanic community,” it
22 nonetheless reflects intentional discrimination—Mr. Zane understood that his action would harm

23
24 ¹⁶ Mr. Zane’s insistence on a tradeoff between Latino representation and policy goals that he believed
25 would be more likely to be accomplished by an at-large council echoed comments of the *Santa Monica*
26 *Evening Outlook*, the chief sponsor of and spokesman for the charter change to an at-large city council
27 in 1946. “[G]roups such as organized labor and the colored people,” the newspaper announced, should
28 realize that “The interest of minorities is always best protected by a system which favors the election
of liberal-minded persons who are not compelled to play peanut politics. Such liberal-minded persons,
of high caliber, will run for office and be elected if elections are held at large.”

1 Latinos’ voting power, and he took that action to maintain the power of his political group to continue
2 dumping affordable housing in the Latino-concentrated neighborhood despite their opposition. (See
3 *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763, 778 (J. Kozinski, concurring) [finding
4 that incumbents preserving their power by drawing district lines that avoided a higher proportion of
5 Latinos in one district was intentionally discriminatory despite the lack of any racial animus], cert.
6 denied (1991) 111 S.Ct. 681)

7 In addition to Mr. Zane’s “smoking gun” contemporaneous explanation of his own decisive
8 vote, the Court also considers the circumstantial evidence of intent revealed by the *Arlington Heights*
9 factors. While those non-exhaustive factors do not each reveal discrimination to the same extent, on
10 balance, they also militate in favor of finding discriminatory intent in this case.

11 The discriminatory impact of the at-large election system was felt immediately after its
12 maintenance in 1992. The first and only Latino elected to the Santa Monica City Council lost his re-
13 election bid in 1994 in an election marred by racial appeals – a notable anomaly in Santa Monica where
14 election records establish that incumbents lose very rarely. (See *Bolden v. City of Mobile* (S.D. Ala.
15 1982) 542 F.Supp. 1070, 1076 [relying on the lack of success of black candidates over several decades
16 to show disparate impact, even without a showing that black voters voted for each of the particular
17 black candidates going back to 1874].) Moreover, the impact on the minority-concentrated Pico
18 Neighborhood over the past 72 years, discussed in Section III(C)(5) above, also demonstrates the
19 discriminatory impact of the at-large election system in this case, and has continued well past 1992.
20 (*Gingles* 478 U.S. at 48, n. 14 [describing how at-large election systems tend to cause elected officials
21 to “ignore [minority] interests without fear of political consequences.”].)

22 The historical background of the decision in 1992 also militate in favor of finding a
23 discriminatory intent. At-large elections are well known to disadvantage minorities, and that was well
24 understood in Santa Monica in 1992. In 1992 the non-white population was sufficiently compact (in
25 the Pico Neighborhood) that Dr. Leo Estrada concluded that a council district could be drawn with a
26 combined majority of Latino and African American residents. While the Santa Monica City Council of
27 the late 1980s and early 1990s was sometimes supportive of policies and programs that benefited racial
28 minorities, as pointed out by Defendant’s expert, Dr. Lichtman, the members also supported a curfew

1 that Santa Monica’s lone Latino council member described as “institutional racism,” as pointed out by
2 Dr. Kousser, and they understood that district elections would undermine the slate politics that had
3 facilitated the election of many of them.

4 The sequence of events leading up to the maintenance of the at-large system in 1992, likewise
5 supports a finding of discriminatory intent. In 1992, the Charter Review Commission, and the CURE
6 group before that, intertwined the issue of district elections with racial justice, and the connection was
7 clear from the video of the July 1992 city council meeting, immediately prior to Defendant’s city
8 council voting to prevent Santa Monica voters from adopting district elections.

9 The substantive and procedural departures from the norm also support a finding of
10 discriminatory intent. In 1992, the Charter Review Commission recommended scrapping the at-large
11 election system, principally because of its deleterious effect on minority representation. While
12 Defendant’s City Council adopted nearly all of the Charter Review Commission’s recommendations, it
13 refused to adopt any change to the at-large elections or even submit the issue to the voters.

14 Finally, as discussed above, the legislative and administrative history in 1992, specifically the
15 Charter Review Commission report and the video of the July 1992 city council meeting, demonstrates a
16 deliberate decision to maintain the existing at-large election structure because of, and not merely
17 despite, the at-large system’s impact on Santa Monica’s minority population.

18 **VII. REMEDIES**

19 Having found that Defendant’s election system violates the CVRA and the Equal Protection
20 Clause, the Court must implement a remedy to cure those violations. The CVRA specifies that the
21 implementation of appropriate remedies is mandatory:

22 “Upon a finding of a violation of Section 14027 and Section 14028, the court *shall*
23 implement appropriate remedies, including the imposition of district-based elections, that
24 are tailored to remedy the violation.”

25 (Elec. Code § 14029 (emphasis added)). The federal courts in FVRA cases have similarly and
26 unequivocally held that once a violation is found, a remedy must be adopted. (See, e.g. *Williams v.*
27 *Texarkana, Ark.* (8th Cir. 1994) 32 F.3d 1265, 1268 [Once a violation of the FVRA is found, “[i]f [the]
28 appropriate legislative body does not propose a remedy, the district court must fashion a remedial

1 plan”]; *Bone Shirt v. Hazeltine* (D.S.D. 2005) 387 F.Supp.2d 1035, 1038 [same]; see also *Reynolds v.*
2 *Sims* (1964) 377 U.S. 533, 585 [“[O]nce a State’s legislative apportionment scheme has been found to
3 be unconstitutional, it would be the unusual case in which a court would be justified in not taking
4 appropriate action to insure that no further elections are conducted under the invalid plan.”].)
5 Likewise, in regards to an Equal Protection violation implicating voting rights, “[t]he Supreme Court
6 has established that official actions motivated by discriminatory intent ‘have no legitimacy at all’
7 Thus, the proper remedy for a legal provision enacted with discriminatory intent is invalidation.” (*N.*
8 *Carolina NAACP v. McCrory* (4th Cir. 2016) 831 F.3d 204, 239 [surveying Supreme Court cases].)

9
10 **A. The Court Has Broad Authority to Remedy Defendant’s Violation of the California**
11 **Voting Rights Act and the Equal Protection Clause.**

12 Once liability is established under the CVRA, the Court has a broad range of remedies from
13 which to choose. (§ 14029 [“Upon a finding of a violation of Section 14027 and Section 14028, the
14 court shall implement appropriate remedies, including the imposition of district-based elections, that
15 are tailored to remedy the violation.”]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 670).
16 The range of remedies from which this Court may choose is at least as broad as those remedies that
17 have been adopted in FVRA cases. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 807
18 [“Thus, the Legislature intended to expand the protections against vote dilution provided by the federal
19 Voting Rights Act of 1965. It would be inconsistent with the evident legislative intent to expand
20 protections against vote dilution to narrowly limit the scope of . . . relief as defendant asserts.
21 Logically, the appropriate remedies language in section 14029 extends to . . . orders of the type
22 approved under the federal Voting Rights Act of 1965.”].) Thus, the range of remedies available to this
23 Court includes not only the imposition of district-based elections (§ 14029), but also, for example, less
24 common at-large remedies imposed in FVRA cases such as cumulative voting, limited voting and
25 unstagging elections. (*U.S. v. Village of Port Chester* (S.D.N.Y. 2010) 704 F.Supp.2d 411 [ordering
26 cumulative voting and unstagging elections]; *U.S. v. City of Euclid* (N.D. Ohio 2008) 580 F.Supp.2d
27 584 [ordering limited voting]). This Court may also order a special election. (See *Neal v. Harris* (4th
28

1 Cir. 1987) 837 F.2d 632, 634 [affirming trial court’s order requiring a special election, during the terms
2 of the members elected under the at-large system, rather than awaiting the date of the next regularly
3 scheduled election, when their terms would have expired.]; *Ketchum v. City Council of Chicago* (N.D.
4 Ill. 1985) 630 F.Supp. 551, 564-566 [ordering special elections to replace aldermen elected under a
5 system that violated the FVRA]; *Bell v. Southwell* (5th. Cir. 1967) 376 F.2d 659, 665 [voiding an
6 unlawful election, prohibiting the winner of that unlawful election from taking office, and ordering that
7 a special election be held promptly]; *Coalition for Education in District One v. Board of Elections*
8 (S.D.N.Y. 1974) 370 F.Supp. 42, 58, aff’d (2nd Cir. 1974) 495 F.2d 1090; *Tucker v. Burford* (N.D.
9 Miss. 1985) 603 F.Supp. 276, 279; *Arbor Hill Concerned Citizens Neighborhood Ass’n v. County of*
10 *Albany* (2d Cir. 2004) 357 F.3d 260, 262-263 [applauding the district court for ordering a special
11 election.].) Indeed, courts have even used their remedial authority to remove all members of a city
12 council where necessary. (See *Bell v. Southwell* (5th Cir. 1967) 367 F.2d 659, 665; *Williams v. City of*
13 *Texarkana* (W.D. Ark. 1993) 861 F.Supp. 771, aff’d (8th Cir. 1994) 32 F.3d 1265; *Hellebust v.*
14 *Brownback* (10th Cir. 1994) 42 F.3d 1331).

15
16 The broad remedial authority granted to this Court by Section 14029 of the CVRA extends to
17 remedies that are inconsistent with a city charter (*Jauregui, supra*, 226 Cal. App. 4th at pp. 794-804)
18 and even remedies that would otherwise be inconsistent with state laws enacted prior to the CVRA.
19 (*Id.* at pp. 804-808 [affirming the trial court’s injunction, pursuant to section 14029 of the CVRA,
20 prohibiting the City of Palmdale from certifying its at-large election results despite that injunction
21 being inconsistent with Code of Civil Procedure section 526(b)(4) and Civil Code section 3423(d)]).
22 Likewise, because the California Constitution is supreme over state statutes, any remedy for
23 Defendant’s violation of the Equal Protection Clause is unimpeded by administrative state statutes.
24 (*Am. Acad. of Pediatrics v. Lungren* (1997) 16 Cal.4th 307 [invalidating a state statute because it
25 impinged upon rights guaranteed by the California Constitution]). Voting rights are the most
26 fundamental in our democratic system; when those rights have been violated, this Court has the
27 obligation to ensure that the remedy is up to the task.
28

1 **B. The Remedy Should Be Prompt and Complete, and Remedy Past Harm as Well as**
2 **Prevent Future Violations.**

3 Any remedial plan should fully remedy the violation. (See, e.g., *Dillard v. Crenshaw Cnty.,*
4 *Ala.* (11th Cir. 1987) 831 F.2d 246, 250 [“The court should exercise its traditional equitable powers to
5 fashion the relief so that it *completely* remedies the prior dilution of minority voting strength and *fully*
6 provides equal opportunity for minority citizens to participate and to elect candidates of their choice.
7 ... This Court cannot authorize an element of an election proposal that will not with certitude
8 completely remedy the [] violation.”] (italics added); see also *Harvell v. Blytheville Sch. Dist. No. 5* (8th
9 Cir. 1997) 126 F.3d 1038, 1040 [affirming trial court’s rejection of defendant’s plan because it would
10 not “completely remedy the violation”]; *LULAC Council No. 4836 v. Midland Indep. Sch. Dist.* (W.D.
11 Tex. 1986) 648 F.Supp. 596, 609; *United States v. Osceola Cnty., Fla.* (M.D. Fla. 2006) 474 F.Supp.2d
12 1254, 1256.) The United States Supreme Court has explained that the court’s duty is to both remedy
13 past harm and prevent future violations of minority voting rights:

14 [T]he court has not merely the power, but the duty, to render a decree which will, so
15 far as possible, eliminate the discriminatory effects of the past as well as bar like
16 discrimination in the future.

17 (*Louisiana v. United States* (1965) 380 U.S. 145, 154; see also *Buchanan v. City of Jackson, Tenn.,*
18 (W.D. Tenn. 1988) 683 F. Supp. 1537, 1541 [same, rejecting defendant’s hybrid at-large remedial
19 plan].)

20 The remedy for a violation of the Equal Protection Clause should likewise be prompt and
21 complete. Courts have consistently held that intentional racial discrimination is so caustic to our
22 system of government that once intentional discrimination is shown, “the ‘racial discrimination must be
23 eliminated root and branch’” by “a remedy that will fully correct past wrongs.” (*N. Carolina NAACP*
24 *v. McCrory* (4th Cir. 2016) 831 F.3d 204, 239, quoting *Green v. Cty. Sch. Bd.* (1968) 391 U.S. 430,
25 437–439, *Smith v. Town of Clarkton* (4th Cir. 1982) 682 F.2d 1055, 1068.)

26 It is also imperative that once a violation of voting rights is found, remedies be implemented
27 promptly, lest minority residents continue to be deprived of their fair representation. (See *Williams v.*
28 *City of Dallas* (N.D. Tex. 1990) 734 F.Supp. 1317 [“*In no way will this Court tell African-Americans*

1 *and Hispanics that they must wait any longer for their voting rights in the City of Dallas.”]*, emphasis
2 in original)

3 **VIII. THE APPROPRIATE REMEDY IN THIS CASE IS THE PROMPT**
4 **IMPLEMENTATION OF THE SEVEN-DISTRICT PLAN PRESENTED AT TRIAL.**

5 Though other remedies, such as cumulative voting, limited voting and ranked choice voting, are
6 possible options in a CVRA action and would improve Latino voting power in Santa Monica, the
7 parties agreed that, given the local context in this case – including socioeconomic and electoral
8 patterns, the voting experience of the local population, and the election administration practicalities
9 present here – a district-based remedy is preferable. The choice of a district-based remedy is also
10 consistent with the overwhelming majority of CVRA and FVRA cases.

11 At trial, only one district plan was presented to the Court – Trial Exhibit 261. That plan was
12 developed by David Ely, following the criteria mandated by Section 21620 of the Elections Code,
13 applicable to charter cities. The populations of the proposed districts are all within 10% of one
14 another; areas with similar demographics (e.g. socio-economic status) are grouped together where
15 possible and the historic neighborhoods of Santa Monica are intact to the extent possible; natural
16 boundaries such as main roads and existing precinct boundaries are used to divide the districts where
17 possible; and neither race nor the residences of incumbents was a predominant factor in drawing any of
18 the districts.

19 Trial testimony revealed that jurisdictions that have switched from at-large elections to district
20 elections as a result of CVRA cases have experienced a pronounced increase in minority electoral
21 power, including Latino representation. Even in districts where the minority group is one-third or less
22 of a district’s electorate, minority candidates previously unsuccessful in at-large elections have won
23 district elections. (See, e.g., Florence Adams, *Latinos and Local Representation: Changing Realities,*
24 *Emerging Theories* (2000), at pp. 49–61.) The particular demographics and electoral experiences of
25 Santa Monica suggest that the seven-district plan would similarly result in the increased ability of the
26 minority population to elect candidates of their choice or influence the outcomes of elections. First,
27
28

1 Mr. Ely’s analysis of various elections shows that the Latino candidates preferred by Latino voters
2 perform much better in the Pico Neighborhood district of Mr. Ely’s plan than they do in other parts of
3 the city – while they lose citywide, they often receive the most votes in the Pico Neighborhood district.
4 Second, the Latino proportion of eligible voters is much greater in the Pico Neighborhood district than
5 the city as a whole. In contrast to 13.64% of the citizen-voting-age-population in the city as a whole,
6 Latinos comprise 30% of the citizen-voting-age-population in the Pico Neighborhood district. That
7 portion of the population and citizen-voting-age-population falls squarely within the range the U.S.
8 Supreme Court deems to be an influence district. (*Georgia v. Ashcroft* (2003) 539 U.S. 461, 470–471,
9 482 [evaluating the impact of “influence districts,” defined as districts with a minority electorate “of
10 between 25% and 50%,”]) Third, testimony established that Latinos in the Pico Neighborhood are
11 politically organized in a manner that would more likely translate to equitable electoral strength.
12 Fourth, testimony also established that districts tend to reduce the campaign effects of wealth
13 disparities between the majority and minority communities, which are pronounced in Santa Monica.
14

15 Though given the opportunity to do so, Defendant did not propose a remedy. The six-week trial
16 of this case was not bifurcated between liability and remedies. Though Plaintiffs presented potential
17 remedies at trial, Defendant did not propose any remedy at all in the event that the Court found in favor
18 of Plaintiffs. On November 8, 2018 this Court gave Defendant another opportunity, ordering the
19 parties to file briefs and attend a hearing on December 7, 2018 “regarding the appropriate/preferred
20 remedy for violation of the [CVRA].”¹⁷ Still, Defendant did not propose a remedy, other than to say
21 that it prefers the implementation of district-based elections over the less-common at-large remedies

22 ¹⁷ The schedule set by this Court on November 8, 2018 is in line with what other courts have afforded
23 defendants to propose a remedy following a determination that voting rights have been violated. (See,
24 e.g., *Williams v. City of Texarkana* (W.D. Ark. 1992) 861 F.Supp. 756, 767 [requiring the defendant to
25 submit its proposed remedy 16 days after finding Texarkana’s at-large elections violated the FVRA],
26 aff’d (8th Cir. 1994) 32 F.3d 1265; *Larios v. Cox* (N.D. Ga. 2004) 300 F.Supp.2d 1320, 1356–1357
27 [requiring the Georgia legislature to propose a satisfactory apportionment plan and seek Section 5
28 preclearance from the U.S. Attorney General within 19 days]; *Jauregui v. City of Palmdale*, No.
BC483039, 2013 WL 7018376 (Aug. 27, 2013) [scheduling remedies *hearing* for 24 days after the
court *mailed* its decision finding a violation of the CVRA]).

1 discussed at trial. Where a defendant fails to propose a remedy to a voting rights violation on the
2 schedule directed by the court, the court must provide a remedy without the defendant’s input. (See
3 *Williams v. City of Texarkana* (8th Cir. 1994) 32 F.3d 1265, 1268 [“If [the] appropriate legislative body
4 does not propose a remedy, the district court must fashion a remedial plan.”]; *Bone Shirt v. Hazeltine*
5 (D.S.D. 2005) 387 F.Supp.2d 1035, 1038 [same]).¹⁸

6 In order to eliminate the taint of the illegal at-large election system in this case, in a prompt and
7 orderly manner, a special election for all seven council seats is appropriate. Other courts have similarly
8 held that a special election is appropriate, where an election system is found to violate the FVRA. (See
9 *Neal v. Harris* (4th Cir. 1987) 837 F.2d 632, 632-634 [“[o]nce it was determined that plaintiffs were
10 entitled to relief under section 2, ... the timing of that relief was a matter within the discretion of the
11 court.”]; *Ketchum v. City Council of Chicago* (N.D Ill. 1985) 630 F.Supp. 551, 564-566; *Bell v.*
12 *Southwell* (5th. Cir. 1967) 376 F.2d 659, 665 [voiding an unlawful election, prohibiting the winner of
13 that unlawful election from taking office, and ordering that a special election be held promptly];
14 *Coalition for Education in District One v. Board of Elections* (S.D.N.Y. 1974) 370 F.Supp. 42, 58,
15 aff’d (2nd Cir. 1974) 495 F.2d 1090; *Tucker v. Burford* (N.D. Miss. 1985) 603 F.Supp. 276, 279; *Arbor*
16 *Hill Concerned Citizens Neighborhood Ass’n v. County of Albany* (2d Cir. 2004) 357 F.3d 260, 262-63
17 [applauding the district court for ordering a special election]; *Montes v. City of Yakima* (E.D. Wash.
18 2015) 2015 WL 11120964, at p. 11, [explaining that a special election is often necessary to completely
19

20 ¹⁸ Defendant argues that section 10010 of the Elections Code constrains this Court’s ability to adopt a
21 district plan without holding a series of public hearings. On the contrary, section 10010 speaks to what
22 a political subdivision must do (e.g. a series of public hearings) in order to adopt district elections or
23 propose a legislative plan remedy in a CVRA case, not what a court must do in completing its
24 responsibility under section 14029 of the Elections Code to implement appropriate remedies tailored to
25 remedy the violation. Defendant could have completed the process specified in section 10010 at any
26 time in the course of this case, which has been pending for nearly 3 years. Even if Defendant had
27 started the process of drawing districts only upon receiving this Court’s November 8 Order (on
28 November 13), it could have held the initial public meetings required by section 10010(a)(1) by
November 19, and the additional public meetings the week of November 26, completing the process in
advance of its November 30 remedies brief. To this Court’s knowledge, even at the time of the present
statement of decision, Defendant has failed to begin any remedial process of its own.

1 eliminate the stain of illegal elections]. As the Second District Court of Appeal held in *Jauregui*, “the
2 appropriate remedies language in section 14029 extends to [remedial] orders of the type approved
3 under the federal Voting Rights Act of 1965” (*Jauregui, supra*, at p. 807), so the logic of the courts for
4 ordering special elections in all of these cases is equally applicable in this case.

5 From the beginning of the nomination period to election day, takes a little less than four
6 months. ([https://www.smvote.org/uploadedFiles/SMVote/2016\(1\)/Election%20Calendar_website.pdf](https://www.smvote.org/uploadedFiles/SMVote/2016(1)/Election%20Calendar_website.pdf)).
7 Based on the path this Court has laid out, a final judgment in this case should be entered by no later
8 than March 1, 2019. Therefore, a special election – a district-based election pursuant to the seven-
9 district map (Tr. Ex. 261) – for all seven city council positions should be held on July 2, 2019. The
10 votes can be tabulated within 30 days of the election, and the winners can be seated on the Santa
11 Monica City Council at its first meeting in August 2019, so nobody who has not been elected through a
12 lawful election consistent with this decision may serve on the Santa Monica City Council past August
13 15, 2019. Only in that way can the stain of the unlawful discriminatory at-large election system be
14 promptly erased.

15 **IX. CONCLUSION.**

16 All Santa Monica residents deserve an equitable voice in their city government. Defendant’s at-
17 large election system denies some of its residents that right in a discriminatory fashion, and violates
18 both the CVRA and the Equal Protection Clause. Accordingly, this Court orders that, from the date of
19 judgment, Defendant is prohibited from imposing its at-large election system, and must implement
20 district-based elections for its city council in accordance with the seven-district map presented at trial
21 (Tr. Ex. 261).

22
23 Dated:

By:

Hon. Yvette M. Palazuelos
Los Angeles Superior Court Judge

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 January 3, 2019, I served the foregoing document described as **[PROPOSED] STATEMENT OF DECISION** as follows:

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

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 111 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.

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[] **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 January 3, 2019, 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.


Marci Cussimono

1 **SERVICE LIST**

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EXHIBIT AA

FEB 13 2019

RULING/ORDERS

Sherri R. Carter, Executive Officer/Clerk
By N. M. Haya Deputy
Neli M. Haya

Pico Neighborhood Association, et al. v. City of Santa Monica,
Case No.: BC616804

Defendant City of Santa Monica's Objections are extensive repetitions of their closing arguments. Nonetheless, the Court rules as follows:

Defendant's Objection 1:18-20 is SUSTAINED, except as the reference to dilution only. (Section 14027 refers to dilution or abridgment: "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.")

Defendant's Objection 11:2-8 is SUSTAINED as to "serious" and "seriousness" only.

Defendant's Objection 11:8-15 is SUSTAINED as to "barely won" only.

Defendant's Objection 19:21 & fn. 9 is SUSTAINED as to "serious" only.

Defendant's Objection 17:4-21 is SUSTAINED as to "holistic" "serious" and "seriousness" only.

Defendant's Objection 17:25-18:1 is SUSTAINED as to "seriousness" only.

Defendant's Objection 28:18-21 is SUSTAINED as to Plaintiff's omission that "some members of the Committee on Interracial Progress supported the 1946 Santa Monica charter amendment and that none signed onto advertisements opposing it" only.

Defendant's Objection 13:10-14:8 is SUSTAINED as to Cottier v. City of Martin (8th Cir.2006) 445 F.3d 1113 only.

//

02/14/19

CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.



~~YVETTE M. PALAZUELOS~~
YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

02/14/19

EXHIBIT AB

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FILED
Superior Court of California
County of Los Angeles

FEB 13 2019

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

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

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

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

INTRODUCTION

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

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

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

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

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

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

19 **THE CALIFORNIA VOTING RIGHTS ACT**

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

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

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

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

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

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

14 9. "Section 14026, subdivision (e) defines racially polarized
15 voting thusly: 'Racially polarized voting means voting in which
16 there is a difference, as defined in case law regarding
17 enforcement of the federal Voting Rights Act ([52 U.S.C. Sec.
18 10301 et seq.]), in the choice of candidates or other electoral
19 choices that are preferred by voters in a protected class, and
20 in the choice of candidates and electoral choices that are
21 preferred by voters in the rest of the electorate.'" Jauregui,
22 supra, 226 Cal.App.4th at 793.
23

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

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

4 (b). Racially polarized voting can be shown through
5 quantitative statistical evidence, using the methods approved in
6 federal Voting Rights Act cases. Id. at 794, quoting § 14026,
7 subd. (e). ("The methodologies for estimating group voting
8 behavior as approved in applicable federal cases to enforce the
9 federal Voting Rights Act [52 U.S.C. Sec. 10301 et seq.] to
10 establish racially polarized voting may be used for purposes of
11 this section to prove that elections are characterized by
12 racially polarized voting.") Additionally, "[t]here are a
13 variety of [other] factors a court may consider in determining
14 whether an at-large electoral system impairs a protected class's
15 ability to elect candidates or otherwise dilute their voting
16 power," including "the extent to which candidates who are
17 members of a protected class and who are preferred by voters of
18 the protected class, as determined by an analysis of voting
19 behavior, have been elected to the governing body of a political
20 subdivision that is the subject of an action" (§ 14028, subd.
21 (b)) and the qualitative factors listed in Section 14028 subd.
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1 (e) which "are probative, but not necessary factors to establish
2 a violation of [the CVRA]".² Ibid. at 794.

3 11. Equally important to an understanding of the CVRA is what
4 the CVRA directs the Court to consider in acknowledging what
5 need not be shown to establish a violation of the CVRA. While
6 the CVRA is similar to the FVRA in several respects, it is also
7 different in several key respects, as the Legislature sought to
8 remedy what it considered "restrictive interpretations given to
9 the federal act." Assem. Com. on Judiciary, Analysis of Sen.
10 Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, at

11 2. For example: a) Unlike the FVRA, to establish a violation
12 of the CVRA, plaintiffs need not show that a "majority-minority"
13 district can be drawn. § 14028, subd. (c); Sanchez, supra, 145
14 Cal.App.4th at 669; b) Likewise, the factors enumerated in
15 section 14028 subd. (e), which are modeled on, but also differ
16 from, the FVRA's "Senate factors," are "not necessary [] to
17 establish a violation." § 14028, subd. (e); and c) "[P]roof of
18 an intent to discriminate is [also] not an element of a
19
20

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 22. Dr. Kousser, a Caltech professor who has testified in many
6 voting rights cases spanning more than 40 years, analyzed the
7 elections specified by the CVRA: "elections for members of the
8 governing body of the political subdivision . . . in which at
9 least one candidate is a member of a protected class." § 14028
10 subds. (a), (b). The CVRA's focus on elections involving
11 minority candidates is consistent with the view of a majority of
12 federal circuit courts that racially-contested elections are
13 most probative of an electorate's tendencies with respect to
14 racially polarized voting.⁵
15

16
17 ⁵ U.S. v. Blaine Cty., Mont. (9th Cir. 2004) 363 F.3d 897, 911 (rejecting
18 defendant's argument that trial court must give weight to elections involving
19 no minority candidates); Ruiz v. City of Santa Maria (9th Cir. 1998) 160 F.3d
20 543, 553 ("minority v. non-minority election is more probative of racially
21 polarized voting than a non-minority v. non-minority election" because "[t]he
22 Act means more than securing minority voters' opportunity to elect whites.");
23 Westwego Citizens for Better Gov't v. City of Westwego (5th Cir.1991) 946
24 F.2d 1109, 1119, n. 15 ("[T]he evidence most probative of racially polarized
25 voting must be drawn from elections including both black and white
candidates."); League of United Latin Am. Citizens, Council No. 4434 v.
Clements (5th Cir. en banc 1993) 999 F.2d 831, 864 ("This court has
consistently held that elections between white candidates are generally less
probative in examining the success of minority-preferred candidates . . .
."); Citizens for a Better Gretna v. City of Gretna, La. (5th Cir.1987) 834
F.2d 496, 502 ("That blacks also support white candidates acceptable to the
majority does not negate instances in which white votes defeat a black
preference [for a black candidate]."); Jenkins v. Red Clay Consol. School
Dist. Bd. of Educ. (3d Cir. 1993) 4 F.3d 1103, 1128-1129 ("The defendants
also argue that the plaintiffs may not selectively choose which elections to
analyze, but rather must analyze all the elections, including those involving
only white candidates. It is only on the basis of such a comprehensive

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

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

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

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

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

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

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

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

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

4 Weighted Ecological Regression⁸

| 5 Year | 6 Latino Candidate(s) | 7 % Latino Support | 8 % Non- Hispanic White Support | 9 Polarized | 10 Won? |
|---------|--------------------------|-----------------------|---------------------------------------|-------------|---------|
| 11 1994 | 12 Vazquez | 13 145.5 (28.0) | 14 34.9 (1.9) | 15 Yes | 16 No |
| 17 1996 | 18 Alvarez | 19 22.2 (12.9) | 20 15.8 (1.1) | 21 No | 22 No |
| 23 2002 | 24 Aranda | 25 82.6 (12.6) | 26 16.5 (1.3) | 27 Yes | 28 No |
| 29 2004 | 30 Loya | 31 106.0 (12.3) | 32 21.2 (2.0) | 33 Yes | 34 No |
| 35 2008 | 36 Piera-Avila | 37 33.3 (5.2) | 38 5.7 (0.8) | 39 Yes | 40 No |

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 History Of Discrimination.

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

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1 descent were forced or coerced out of the country"; segregation
2 in public schools; exclusion of Latinos from "the use of public
3 facilities" such as public swimming facilities; and "English
4 language literacy [being] a prerequisite for voting" until 1970.

5 Id. at 1340-41. Since Santa Monica is within Los Angeles
6 County, Plaintiffs do not need to re-prove this history of
7 discrimination in this case. Clinton, supra, 687 F.Supp. at
8 1317 ("We do not believe that this history of discrimination,
9 which affects the exercise of the right to vote in all elections
10 under state law, must be proved anew in each case under the
11 Voting Rights Act.")
12

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

22 //

23 //

24 //

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25

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

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

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

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

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

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

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

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

24
25 49. More recent racial appeals, though less overt, have been
used to defeat other Latino candidates for Santa Monica's city

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

8 Lack Of Responsiveness To The Latino Community.

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

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

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

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

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

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

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

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

17 The CVRA Is Not Unconstitutional

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **THE EQUAL PROTECTION CLAUSE OF THE CALIFORNIA CONSTITUTION**

6 63. Article I, section 7 of the California Constitution mirrors
7 the Equal Protection Clause of the U.S. Constitution (Fourteenth
8 Amendment).¹¹ Where governmental actions or omissions are
9 motivated by a racially discriminatory purpose they violate the
10 Equal Protection Clause, and when voting rights are implicated,
11 "[t]he Supreme Court has established that official actions
12 motivated by discriminatory intent 'have no legitimacy at all .
13' N.C. State Conference NAACP v. McCrory (4th Cir. 2016)
14 831 F.3d 204, 239 (surveying Supreme Court cases); see also
15 generally Garza v. County of Los Angeles (9th Cir. 1990) 918 F.2d
16 763, cert. denied (1991) 111 S.Ct. 681. Neither the passage of
17 time, nor the modification of the original enactment, can save a
18 provision enacted with discriminatory intent. Id.; Hunter v.
19 Underwood (1985) 471 U.S. 222 (invalidating a provision of the
20 1901 Alabama Constitution because it was motivated by a desire
21 to disenfranchise African Americans, even though its "more
22 blatantly discriminatory" portions had since been removed.)
23
24

25 ¹¹ Other than provisions relating exclusively to school integration, Article I section 7 provides "A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws."

1 64. "Determining whether invidious discriminatory purpose was a
2 motivating factor demands a sensitive inquiry into such
3 circumstantial and direct evidence of intent as may be
4 available. ... [including] the historical background of the
5 decision." Village of Arlington Heights v. Metro. Housing Dev.
6 Corp. (1977) 429 U.S. 252, 266-68. Sometimes, racially
7 discriminatory intent can be demonstrated by the clear
8 statements of one or more decision makers. But, recognizing
9 that these "smoking gun" admissions of racially discriminatory
10 intent are exceedingly rare, in Arlington Heights, the U.S.
11 Supreme Court described a number of potential, non-exhaustive,
12 sources of evidence that might shed light on the question of
13 discriminatory intent in the absence of a smoking gun admission:
14

15 The impact of the official action -- whether it bears
16 more heavily on one race than another, may provide an
17 important starting point. Sometimes a clear pattern,
18 unexplainable on grounds other than race, emerges from
19 the effect of the state action even when the governing
20 legislation appears neutral on its face. The
21 evidentiary inquiry is then relatively easy. But such
22 cases are rare. Absent a pattern as stark as that in
23 Gomillion or Yick Wo, impact alone is not
24 determinative, and the Court must look to other
25 evidence. The historical background of the decision

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1 is one evidentiary source, particularly if it reveals
2 a series of official actions taken for invidious
3 purposes. The specific sequence of events leading up
4 to the challenged decision also may shed some light on
5 the decision maker's purposes. ... Departures from the
6 normal procedural sequence also might afford evidence
7 that improper purposes are playing a role.

8 Substantive departures too may be relevant,
9 particularly if the factors usually considered
10 important by the decision maker strongly favor a
11 decision contrary to the one reached. The legislative
12 or administrative history may be highly relevant,
13 especially where there are contemporary statements by
14 members of the decision-making body, minutes of its
15 meetings, or reports. In some extraordinary
16 instances, the members might be called to the stand at
17 trial to testify concerning the purpose of the
18 official action, although even then such testimony
19 frequently will be barred by privilege. The foregoing
20 summary identifies, without purporting to be
21 exhaustive, subjects of proper inquiry in determining
22 whether racially discriminatory intent existed.

23
24
25 Id. at 266-268 (citations omitted). "[P]laintiffs are not
required to show that [discriminatory] intent was the sole

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1 purpose of the [challenged government decision]," or even the
2 "primary purpose," just that it was "a purpose." Brown v. Board
3 of Com'rs of Chattanooga, Tenn. (E.D. Tenn. 1989) 722 F. Supp.
4 380, 389, citing Arlington Heights at 265 and Bolden v. City of
5 Mobile (S.D. Ala. 1982) 543 F. Supp. 1050, 1072.

6 Defendant's At-Large Election System Violates The Equal
7 Protection Clause Of The California Constitution.

8 65. Defendant's at-large election system was adopted and/or
9 maintained with a discriminatory intent on at least two
10 occasions - in 1946 and in 1992, either of which necessitates
11 this Court invalidating the at-large election system. Hunter v.
12 Underwood (1985) 471 U.S. 222 (invalidating a provision of the
13 1901 Alabama Constitution because it was motivated by a desire
14 to disenfranchise African Americans, even though its "more
15 blatantly discriminatory" portions had since been removed);
16 Brown, supra 722 F. Supp. at 389 (striking at-large election
17 system based on discriminatory intent in 1911 even absent
18 discriminatory intent in maintaining that system in decisions of
19 1957, the late 1960s and early 1970s). In the early 1990s, the
20 Charter Review Commission, impaneled by Defendant's city
21 council, concluded that "a shift from the at-large plurality
22 system currently in use" was necessary "to distribute
23 empowerment more broadly in Santa Monica, particularly to ethnic
24 groups ..." Even back in 1946, it was understood that at-large
25

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1 elections would "starve out minority groups," leaving "the
2 Jewish, colored [and] Mexican [no place to] go for aid in his
3 special problems" "with seven councilmen elected AT-LARGE ...
4 mostly originat[ing] from [the wealthy White neighborhood] North
5 of Montana [and] without regard [for] minorities." Yet, in each
6 instance Defendant chose at-large elections.

7
8 1946

9 66. Defendant's current at-large election system has a long
10 history that has its roots in 1946. In 1946, Defendant adopted
11 its current council-manager form of government, and chose an at-
12 large elected city council and school board. The at-large
13 election feature remains in Defendant's city charter. Santa
14 Monica Charter § 600 ("The City Council shall consist of seven
15 members elected from the City at large ..."), § 900. As Dr.
16 Kousser's testimony at trial and his report to the Santa Monica
17 Charter Review Committee in 1992 explained, proponents and
18 opponents of the at-large system alike, bluntly recognized that
19 the at-large system would impair minority representation. And,
20 another ballot measure involving a pure racial issue was on the
21 ballot at the same time in 1946 - Proposition 11, which sought
22 to ban racial discrimination in employment. Dr. Kousser's
23 statistical analysis shows a strong correlation between voting
24 in favor of the at-large charter provision and against the
25 contemporaneous Proposition 11, further demonstrating the

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1 understanding that at-large elections would prevent minority
2 representation.

3 67. When the Arlington Heights factors are each considered,
4 those non-exhaustive factors militate in favor of finding
5 discriminatory intent in the 1946 adoption of the current at
6 large election system. The discriminatory impact of the at-
7 large election system was felt immediately after its adoption in
8 1946. Though several ran, no candidates of color were elected
9 to the Santa Monica City Council in the 1940s, 50s or 60s.

10 Bolden v. City of Mobile (S.D. Ala. 1982) 542 F.Supp. 1070, 1076
11 (relying on the lack of success of Black candidates over several
12 decades to show disparate impact, even without a showing that
13 Black voters voted for each of the particular Black candidates
14 going back to 1874.) Moreover, the impact on the minority-
15 concentrated Pico Neighborhood over the past 72 years, discussed
16 above, also demonstrates the discriminatory impact of the at-
17 large election system in this case. Gingles 478 U.S. at 48, n.
18 14 (describing how at-large election systems tend to cause
19 elected officials to "ignore [minority] interests without fear
20 of political consequences.")
21

22 68. The historical background of the decision in 1946 also
23 weighs in favor of a finding of discriminatory intent. At-large
24 elections were known to disadvantage minorities, and that was
25 understood in Santa Monica in 1946. The non-White population in

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1 Santa Monica was growing at a faster rate than the White
2 population - enough that the chief newspaper in Santa Monica,
3 the Evening Outlook, was alarmed by the rate of increase in the
4 non-white population. The fifteen Freeholders, who proposed
5 only at-large elections to the Santa Monica electorate in 1946,
6 were all White, and all but one lived on the wealthier, Whiter
7 side of Wilshire Boulevard. At-large elections were, therefore,
8 in their self-interest, and at least three of the Freeholders
9 successfully ran for seats on the city council in the years that
10 followed.

11
12 69. The Santa Monica commissioners had adopted a resolution
13 calling for all Japanese Americans to be deported to Japan
14 rather than being allowed to return to their homes after being
15 interned, Los Angeles County had been marred by the zoot suit
16 riots, and racial tensions were prevalent enough in Santa Monica
17 that a Committee on Interracial Progress was necessary.

18 However, Defendants correctly point out (in their Objections to
19 Plaintiff's proposed statement of decision) that some members of
20 the Committee on Interracial Progress supported the 1946 Santa
21 Monica charter amendment and that none signed onto
22 advertisements opposing it. Indeed, minority leaders, including
23 one the city's most prominent African Americans, Rev. W.P.
24 Carter, endorsed the charter.
25

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1 70. The Court has weighed the historical evidence, including
2 the endorsement of the charter amendment by some minority
3 leaders, and the Court finds that the evidence of discriminatory
4 intent outweighs the contrary evidence. The Court draws the
5 inferences that the creation of the Committee on Interracial
6 Progress was an acknowledgment of racial tension, that those
7 members were aware that the election of minority candidates was
8 an issue with the charter amendment, and that the members of the
9 Committee on Interracial Progress were hopeful that the charter
10 amendment (which increased the governing body from three to
11 seven, among other things) would increase the number of
12 minorities elected to the governing body. The charter amendment
13 was approved and, despite the hopefulness, did not result in the
14 election of minorities for decades.

16 71. At the same time as the 1946 Santa Monica charter amendment
17 was approved, a significant majority of Santa Monica voters
18 voted against Proposition 11, which would have outlawed racial
19 discrimination in employment, and Dr. Kousser's EI analysis
20 shows a very strong correlation between voting for the charter
21 amendment and against Proposition 11.

23 72. The sequence of events leading up to the adoption of the
24 at-large system in 1946 likewise supports a finding of
25 discriminatory intent. As Dr. Kousser detailed, in 1946, the
Freeholders waffled between giving voters a choice of having

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1 some district elections or just at-large elections, and
2 ultimately chose to only present an at-large election option
3 despite the recognition that district elections would be better
4 for minority representation.

5 73. The substantive and procedural departures from the norm
6 also support a finding of discriminatory intent. In 1946, the
7 Freeholders' reversed course on offering to the voters a hybrid
8 system (some district, and some at-large, elected council seats)
9 in the wake of discussion of minority representation, and, after
10 a series of votes the local newspaper called "unexpected,"
11 offered the voters only the option of at-large elections.

12 74. The legislative and administrative history in 1946 is
13 difficult to discern. There appears to have been no report of
14 the Freeholders' discussions, but the statements by proponents
15 and opponents of the charter amendment demonstrate that all
16 understood that at-large elections would diminish minorities'
17 influence on elections.

18
19 1992

20 75. After winning a FVRA case ending at-large elections in
21 Watsonville in 1989, Joaquin Avila (later principally involved
22 in drafting the CVRA) and other attorneys began to file and
23 threaten to file lawsuits challenging at-large elections
24 throughout California on the grounds that they discriminated
25 against Latinos. The Santa Monica Citizens United to Reform

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1 Elections (CURE) specifically noted the Watsonville case in
2 urging the Santa Monica City Council to place the issue of
3 substituting district for at-large elections on the ballot,
4 allowing Santa Monica voters to decide the question. With the
5 issue of at-large elections diluting minority vote receiving
6 increased attention in Santa Monica and throughout California,
7 Defendant appointed a 15-member Charter Review Commission to
8 study the matter and make recommendations to the City Council.
9
10 76. As part of their investigation, the Charter Review
11 Commission sought the analysis of Plaintiff's expert, Dr.
12 Kousser, who had just completed his work in Garza regarding
13 discriminatory intent in the way Los Angeles County's
14 supervisorial districts had been drawn. Dr. Kousser was asked
15 whether Santa Monica's at-large election system was adopted or
16 maintained for a discriminatory purpose, and Dr. Kousser
17 concluded that it was, for all of the reasons discussed above.
18 Based on their extensive study and investigations, the near-
19 unanimous Charter Review Commission recommended that Defendant's
20 at-large election system be eliminated. The principal reason
21 for that recommendation was that the at-large system prevents
22 minorities and the minority-concentrated Pico Neighborhood from
23 having a seat at the table.

24
25 77. That recommendation went to the City Council in July 1992,
and was the subject of a public city council meeting. Excerpts

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1 from the video of that hours-long meeting were played at trial,
2 and provide direct evidence of the intent of the then-members of
3 Defendant's City Council. One speaker after another - members
4 of the Charter Review Commission, the public, an attorney from
5 the Mexican American Legal Defense and Education Fund, and even
6 a former councilmember - urged Defendant's City Council to
7 change its at-large election system. Many of the speakers
8 specifically stressed that the at-large system discriminated
9 against Latino voters and/or that courts might rule that they
10 did in an appropriate case. Though the City Council understood
11 well that the at-large system prevented racial minorities from
12 achieving representation - that point was made by the Charter
13 Review Commission's report and several speakers and was never
14 challenged - the members refused by a 4-3 vote to allow the
15 voters to change the system that had elected them.

17 78. Councilmember Dennis Zane explained his professed
18 reasoning: in a district system, Santa Monica would no longer
19 be able to place a disproportionate share of affordable housing
20 into the minority-concentrated Pico Neighborhood, where,
21 according to the unrefuted remarks at the July 1992 council
22 meeting, the majority of the city's affordable housing was
23 already located, because the Pico Neighborhood district's
24 representative would oppose it. Mr. Zane's comments were candid
25 and revealing. He specifically phrased the issue as one of

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1 Latino representation versus affordable housing: "So you gain
2 the representation but you lose the housing."¹² While this
3 professed rationale could be characterized as not demonstrating
4 that Mr. Zane or his colleagues "harbored any ethnic or racial
5 animus toward the . . . Hispanic community," it nonetheless
6 reflects intentional discrimination—Mr. Zane understood that his
7 action would harm Latinos' voting power, and he took that action
8 to maintain the power of his political group to continue dumping
9 affordable housing in the Latino-concentrated neighborhood
10 despite their opposition. Garza, supra, 918 F.2d at 778 (J.
11 Kozinski, concurring) (finding that incumbents preserving their
12 power by drawing district lines that avoided a higher proportion
13 of Latinos in one district was *intentionally discriminatory*
14 *despite the lack of any racial animus*), cert. denied (1991) 111
15 S.Ct. 681.

17 79. In addition to Mr. Zane's contemporaneous explanation of
18 his own decisive vote, the Court also considers the
19 circumstantial evidence of intent revealed by the Arlington
20 Heights factors. While those non-exhaustive factors do not each

21 _____
22 ¹² Mr. Zane's insistence on a tradeoff between Latino representation and
23 policy goals that he believed would be more likely to be accomplished by an
24 at-large council echoed comments of the *Santa Monica Evening Outlook*, the
25 chief sponsor of and spokesman for the charter change to an at-large city
council in 1946. "[G]roups such as organized labor and the colored people,"
the newspaper announced, should realize that "The interest of minorities is
always best protected by a system which favors the election of liberal-minded
persons who are not compelled to play peanut politics. Such liberal-minded
persons, of high caliber, will run for office and be elected if elections are
held at large."

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1 reveal discrimination to the same extent, on balance, they also
2 militate in favor of finding discriminatory intent in this case.
3 The discriminatory impact of the at-large election system was
4 felt immediately after its maintenance in 1992. The first and
5 only Latino elected to the Santa Monica City Council lost his
6 re-election bid in 1994 in an election marred by racial appeals
7 - a notable anomaly in Santa Monica where election records
8 establish that incumbents lose very rarely. Bolden v. City of
9 Mobile (S.D. Ala. 1982) 542 F.Supp. 1050, 1076 (relying on the
10 lack of success of Black candidates over several decades to show
11 disparate impact, even without a showing that Black voters voted
12 for each of the particular Black candidates going back to 1874.)
13 Moreover, the impact on the minority-concentrated Pico
14 Neighborhood over the past 72 years, discussed above, also
15 demonstrates the discriminatory impact of the at-large election
16 system in this case, and has continued well past 1992. Gingles,
17 supra, 478 U.S. at 48, n. 14 (describing how at-large election
18 systems tend to cause elected officials to "ignore [minority]
19 interests without fear of political consequences.")
20
21 80. The historical background of the decision in 1992 also
22 militate in favor of finding a discriminatory intent. At-large
23 elections are well known to disadvantage minorities, and that
24 was well understood in Santa Monica in 1992. In 1992, the non-
25 White population was sufficiently compact (in the Pico

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1 Neighborhood) that Dr. Leo Estrada concluded that a council
2 district could be drawn with a combined majority of Latino and
3 African American residents. While the Santa Monica City Council
4 of the late 1980s and early 1990s was sometimes supportive of
5 policies and programs that benefited racial minorities, as
6 pointed out by Defendant's expert, Dr. Lichtman, the members
7 also supported a curfew that Santa Monica's lone Latino council
8 member described as "institutional racism," as pointed out by
9 Dr. Kousser, and they understood that district elections would
10 undermine the slate politics that had facilitated the election
11 of many of them.
12

13 81. The sequence of events leading up to the maintenance of the
14 at-large system in 1992, likewise supports a finding of
15 discriminatory intent. In 1992, the Charter Review Commission,
16 and the CURE group before that, intertwined the issue of
17 district elections with racial justice, and the connection was
18 clear from the video of the July 1992 city council meeting,
19 immediately prior to Defendant's city council voting to prevent
20 Santa Monica voters from adopting district elections.

21 82. The substantive and procedural departures from the norm
22 also support a finding of discriminatory intent. In 1992, the
23 Charter Review Commission recommended scrapping the at-large
24 election system, principally because of its deleterious effect
25 on minority representation. While Defendant's City Council

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1 adopted nearly all of the Charter Review Commission's
2 recommendations, it refused to adopt any change to the at-large
3 elections or even submit the issue to the voters.

4 83. Finally, as discussed above, the legislative and
5 administrative history in 1992, specifically the Charter Review
6 Commission report and the video of the July 1992 city council
7 meeting, demonstrates a deliberate decision to maintain the
8 existing at-large election structure because of, and not merely
9 despite, the at-large system's impact on Santa Monica's minority
10 population.
11

12 **REMEDIES**

13 84. Having found that Defendant's election system violates the
14 CVRA and the Equal Protection Clause, the Court must implement a
15 remedy to cure those violations. The CVRA specifies that the
16 implementation of appropriate remedies is mandatory.

17 85. "Upon a finding of a violation of Section 14027 and Section
18 14028, the court shall implement appropriate remedies, including
19 the imposition of district-based elections, that are tailored to
20 remedy the violation." Elec. Code § 14029. The federal courts
21 in FVRA cases have similarly and unequivocally held that once a
22 violation is found, a remedy must be adopted. Williams v.
23 Texarkana, Ark. (8th Cir. 1994) 32 F.3d 1265, 1268 (Once a
24 violation of the FVRA is found, "[i]f [the] appropriate
25 legislative body does not propose a remedy, the district court

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1 must fashion a remedial plan"); Bone Shirt, supra, 387 F.Supp.2d
2 at 1038 (same); Reynolds v. Sims (1964) 377 U.S. 533, 585
3 ("[O]nce a State's legislative apportionment scheme has been
4 found to be unconstitutional, it would be the unusual case in
5 which a court would be justified in not taking appropriate
6 action to insure that no further elections are conducted under
7 the invalid plan.") Likewise, in regards to an Equal Protection
8 violation implicating voting rights, "[t]he Supreme Court has
9 established that official actions motivated by discriminatory
10 intent 'have no legitimacy at all' Thus, the proper
11 remedy for a legal provision enacted with discriminatory intent
12 is invalidation." McCrorry, supra, 831 F.3d at 239 (surveying
13 Supreme Court cases.)

15 86. Once liability is established under the CVRA, the Court has
16 a broad range of remedies from which to choose. § 14029 ("Upon
17 a finding of a violation of Section 14027 and Section 14028, the
18 court shall implement appropriate remedies, including the
19 imposition of district-based elections, that are tailored to
20 remedy the violation."); Sanchez, supra, 145 Cal.App.4th at 670.
21 The range of remedies from which the Court may choose is at
22 least as broad as those remedies that have been adopted in FVRA
23 cases. Jauregui, supra, 226 Cal.App.4th at 807 ("Thus, the
24 Legislature intended to expand the protections against vote
25 dilution provided by the federal Voting Rights Act of 1965. It

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1 would be inconsistent with the evident legislative intent to
2 expand protections against vote dilution to narrowly limit the
3 scope of . . . relief as defendant asserts. Logically, the
4 appropriate remedies language in section 14029 extends to . . .
5 orders of the type approved under the federal Voting Rights Act
6 of 1965.") Thus, the range of remedies available to the Court
7 includes not only the imposition of district-based elections per
8 § 14029, but also, for example, less common at-large remedies
9 imposed in FVRA cases such as cumulative voting, limited voting
10 and unstagged elections. U.S. v. Village of Port Chester
11 (S.D.N.Y. 2010) 704 F.Supp.2d 411 (ordering cumulative voting
12 and unstagging elections); U.S. v. City of Euclid (N.D. Ohio
13 2008) 580 F.Supp.2d 584 (ordering limited voting). The Court
14 may also order a special election. Neal v. Harris (4th Cir.
15 1987) 837 F.2d 632, 634 (affirming trial court's order requiring
16 a special election, during the terms of the members elected
17 under the at-large system, rather than awaiting the date of the
18 next regularly scheduled election, when their terms would have
19 expired.); Ketchum v. City Council of Chicago (N.D Ill. 1985)
20 630 F.Supp. 551, 564-566 (ordering special elections to replace
21 aldermen elected under a system that violated the FVRA); Bell v.
22 Southwell (5th. Cir. 1967) 376 F.2d 659, 665 (voiding an
23 unlawful election, prohibiting the winner of that unlawful
24 election from taking office, and ordering that a special
25

1 election be held promptly); Coalition for Education in District
2 One v. Board of Elections (S.D.N.Y. 1974) 370 F.Supp. 42, 58,
3 aff'd (2nd Cir. 1974) 495 F.2d 1090; Tucker v. Burford (N.D.
4 Miss. 1985) 603 F.Supp. 276, 279; Arbor Hill Concerned Citizens
5 Neighborhood Ass'n v. County of Albany (2d Cir. 2004) 357 F.3d
6 260, 262-263 (applauding the district court for ordering a
7 special election.) Indeed, courts have even used their remedial
8 authority to remove all members of a city council where
9 necessary. Bell v. Southwell (5th Cir. 1967) 367 F.2d 659, 665;
10 Williams v. City of Texarkana (W.D. Ark. 1993) 861 F.Supp. 771,
11 aff'd (8th Cir. 1994) 32 F.3d 1265; Hellebust v. Brownback (10th
12 Cir. 1994) 42 F.3d 1331).

13
14 87. The broad remedial authority granted to the Court by
15 Section 14029 of the CVRA extends to remedies that are
16 inconsistent with a city charter, Jauregui at 794-804, and even
17 remedies that would otherwise be inconsistent with state laws
18 enacted prior to the CVRA. Id. at 804-808 (affirming the trial
19 court's injunction, pursuant to section 14029 of the CVRA,
20 prohibiting the City of Palmdale from certifying its at-large
21 election results despite that injunction being inconsistent with
22 Code of Civil Procedure section 526(b)(4) and Civil Code section
23 3423(d)). Likewise, because the California Constitution is
24 supreme over state statutes, any remedy for Defendant's
25 violation of the Equal Protection Clause is unimpeded by

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1 administrative state statutes. Am. Acad. of Pediatrics v.
2 Lungren (1997) 16 Cal.4th 307 (invalidating a state statute
3 because it impinged upon rights guaranteed by the California
4 Constitution). Voting rights are the most fundamental in our
5 democratic system; when those rights have been violated, the
6 Court has the obligation to ensure that the remedy is up to the
7 task.

8 88. Any remedial plan should fully remedy the violation.

9 Dillard v. Crenshaw Cnty., Ala. (11th Cir. 1987) 831 F.2d 246,
10 250 ("The court should exercise its traditional equitable powers
11 to fashion the relief so that it completely remedies the prior
12 dilution of minority voting strength and fully provides equal
13 opportunity for minority citizens to participate and to elect
14 candidates of their choice. ... This Court cannot authorize an
15 element of an election proposal that will not with certitude
16 completely remedy the [] violation."); Harvell v. Blytheville
17 Sch. Dist. No. 5 (8th Cir. 1997) 126 F.3d 1038, 1040 (affirming
18 trial court's rejection of defendant's plan because it would not
19 "completely remedy the violation"; LULAC Council No. 4836 v.
20 Midland Indep. Sch. Dist. (W.D. Tex. 1986) 648 F.Supp. 596, 609;
21 United States v. Osceola Cnty., Fla. (M.D. Fla. 2006) 474
22 F.Supp.2d 1254, 1256. The United States Supreme Court has
23 explained that the court's duty is to both remedy past harm and
24 prevent future violations of minority voting rights: "[T]he
25

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1 court has not merely the power, but the duty, to render a decree
2 which will, so far as possible, eliminate the discriminatory
3 effects of the past as well as bar like discrimination in the
4 future." Louisiana v. United States (1965) 380 U.S. 145, 154;
5 Buchanan v. City of Jackson, Tenn., (W.D. Tenn. 1988) 683 F.
6 Supp. 1537, 1541 (same, rejecting defendant's hybrid at-large
7 remedial plan.)

8 89. The remedy for a violation of the Equal Protection Clause
9 should likewise be prompt and complete. Courts have
10 consistently held that intentional racial discrimination is so
11 caustic to our system of government that once intentional
12 discrimination is shown, "the 'racial discrimination must be
13 eliminated root and branch'" by "a remedy that will fully
14 correct past wrongs." N. Carolina NAACP v. McCrory (4th Cir.
15 2016) 831 F.3d 204, 239, quoting Green v. Cty. Sch. Bd. (1968)
16 391 U.S. 430, 437-439, Smith v. Town of Clarkton (4th Cir. 1982)
17 682 F.2d 1055, 1068.)

18 90. It is also imperative that once a violation of voting
19 rights is found, remedies be implemented promptly, lest minority
20 residents continue to be deprived of their fair representation.
21 Williams v. City of Dallas (N.D. Tex. 1990) 734 F.Supp. 1317
22 (*"In no way will this Court tell African-Americans and Hispanics*
23 *that they must wait any longer for their voting rights in the*
24 *City of Dallas."*) (emphasis in original).
25

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1 91. Though other remedies, such as cumulative voting, limited
2 voting and ranked choice voting, are possible options in a CVRA
3 action and would improve Latino voting power in Santa Monica,
4 the Court finds that, given the local context in this case -
5 including socioeconomic and electoral patterns, the voting
6 experience of the local population, and the election
7 administration practicalities present here - a district-based
8 remedy is preferable. The choice of a district-based remedy is
9 also consistent with the overwhelming majority of CVRA and FVRA
10 cases.

11
12 92. At trial, only one district plan was presented to the Court
13 - Trial Exhibit 261. That plan was developed by David Ely,
14 following the criteria mandated by Section 21620 of the
15 Elections Code, applicable to charter cities. The populations
16 of the proposed districts are all within 10% of one another;
17 areas with similar demographics (e.g. socio-economic status) are
18 grouped together where possible and the historic neighborhoods
19 of Santa Monica are intact to the extent possible; natural
20 boundaries such as main roads and existing precinct boundaries
21 are used to divide the districts where possible; and neither
22 race nor the residences of incumbents was a predominant factor
23 in drawing any of the districts.

24
25 93. Trial testimony revealed that jurisdictions that have
switched from at-large elections to district elections as a

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1 result of CVRA cases have experienced a pronounced increase in
2 minority electoral power, including Latino representation. Even
3 in districts where the minority group is one-third or less of a
4 district's electorate, minority candidates previously
5 unsuccessful in at-large elections have won district elections.

6 Florence Adams, *Latinos and Local Representation: Changing*
7 *Realities, Emerging Theories* (2000), at 49-61.

8 94. The particular demographics and electoral experiences of
9 Santa Monica suggest that the seven-district plan would
10 similarly result in the increased ability of the minority
11 population to elect candidates of their choice or influence the
12 outcomes of elections. Mr. Ely's analysis of various elections
13 shows that the Latino candidates preferred by Latino voters
14 perform much better in the Pico Neighborhood district of Mr.
15 Ely's plan than they do in other parts of the city - while they
16 lose citywide, they often receive the most votes in the Pico
17 Neighborhood district. The Latino proportion of eligible voters
18 is much greater in the Pico Neighborhood district than the city
19 as a whole. In contrast to 13.64% of the citizen-voting-age-
20 population in the city as a whole, Latinos comprise 30% of the
21 citizen-voting-age-population in the Pico Neighborhood district.
22 That portion of the population and citizen-voting-age-population
23 falls squarely within the range the U.S. Supreme Court deems to
24 be an influence district. Georgia v. Ashcroft (2003) 539 U.S.
25

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1 461, 470-471, 482 (evaluating the impact of "influence
2 districts," defined as districts with a minority electorate "of
3 between 25% and 50%.") Testimony established that Latinos in
4 the Pico Neighborhood are politically organized in a manner that
5 would more likely translate to equitable electoral strength.
6 Testimony also established that districts tend to reduce the
7 campaign effects of wealth disparities between the majority and
8 minority communities, which are pronounced in Santa Monica.

9
10 95. Though given the opportunity to do so, Defendant did not
11 propose a remedy. The six-week trial of this case was not
12 bifurcated between liability and remedies. Though Plaintiffs
13 presented potential remedies at trial, Defendant did not propose
14 any remedy at all in the event that the Court found in favor of
15 Plaintiffs. On November 8, 2018, the Court gave Defendant
16 another opportunity, ordering the parties to file briefs and
17 attend a hearing on December 7, 2018 "regarding the
18 appropriate/preferred remedy for violation of the [CVRA]."¹³
19

20
21 ¹³ The schedule set by this Court on November 8, 2018 is in line with what
22 other courts have afforded defendants to propose a remedy following a
23 determination that voting rights have been violated. Williams v. City of
24 Texarkana (W.D. Ark. 1992) 861 F.Supp. 756, 767 (requiring the defendant to
25 submit its proposed remedy 16 days after finding Texarkana's at-large
elections violated the FVRA), aff'd (8th Cir. 1994) 32 F.3d 1265; Larios v.
Cox (N.D. Ga. 2004) 300 F.Supp.2d 1320, 1356-1357 (requiring the Georgia
legislature to propose a satisfactory apportionment plan and seek Section 5
preclearance from the U.S. Attorney General within 19 days); Jauregui v. City
of Palmdale, No. BC483039, 2013 WL 7018376 (Aug. 27, 2013) (scheduling
remedies hearing for 24 days after the court mailed its decision finding a
violation of the CVRA).

1 Still, Defendant did not propose a remedy, other than to say
2 that it prefers the implementation of district-based elections
3 over the less-common at-large remedies discussed at trial.
4 Where a defendant fails to propose a remedy to a voting rights
5 violation on the schedule directed by the court, the court must
6 provide a remedy without the defendant's input. Williams v.
7 City of Texarkana (8th Cir. 1994) 32 F.3d 1265, 1268 ("If [the]
8 appropriate legislative body does not propose a remedy, the
9 district court must fashion a remedial plan."); Bone Shirt v.
10 Hazeltine (D.S.D. 2005) 387 F.Supp.2d 1035, 1038 (same).

12 96. Defendant argues that section 10010 of the Elections Code
13 constrains the Court's ability to adopt a district plan without
14 holding a series of public hearings. On the contrary, section
15 10010 speaks to what a *political subdivision* must do (e.g. a
16 series of public hearings) in order to adopt district elections
17 or propose a legislative plan remedy in a CVRA case, not what a
18 *court* must do in completing its responsibility under section
19 14029 of the Elections Code to implement appropriate remedies
20 tailored to remedy the violation. Defendant could have
21 completed the process specified in section 10010 at any time in
22 the course of this case, which has been pending for nearly 3
23 years. Even if Defendant had started the process of drawing
24 districts only upon receiving this Court's November 8 Order (on
25 November 13), it could have held the initial public meetings

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1 required by section 10010(a)(1) by November 19, and the
2 additional public meetings the week of November 26, completing
3 the process in advance of its November 30 remedies brief. To
4 the Court's knowledge, even at the time of the present statement
5 of decision, Defendant has failed to begin any remedial process
6 of its own.

7
8 97. In order to eliminate the taint of the illegal at-large
9 election system in this case, in a prompt and orderly manner, a
10 special election for all seven council seats is appropriate.
11 Other courts have similarly held that a special election is
12 appropriate, where an election system is found to violate the
13 FVRA. Neal, supra, 837 F.2d at 632-634 ("[o]nce it was
14 determined that plaintiffs were entitled to relief under section
15 2, ... the timing of that relief was a matter within the
16 discretion of the court."); Ketchum, supra, 630 F.Supp. at 564-
17 566; Bell v. Southwell (5th. Cir. 1967) 376 F.2d 659, 665
18 (voiding an unlawful election, prohibiting the winner of that
19 unlawful election from taking office, and ordering that a
20 special election be held promptly); Coalition for Ed. in Dist.
21 One v. Board of Elections of City of N.Y. (S.D.N.Y. 1974) 370
22 F.Supp. 42, 58, aff'd (2nd Cir. 1974) 495 F.2d 1090; Tucker v.
23 Burford (N.D. Miss. 1985) 603 F.Supp. 276, 279; Arbor Hill
24 Concerned Citizens v. Cnty. of Albany (2d Cir. 2004) 357 F.3d
25 260, 262-63 (applauding the district court for ordering a

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1 special election); Montes v. City of Yakima (E.D. Wash. 2015)
2 2015 WL 11120964, at p. 11, (explaining that a special election
3 is often necessary to completely eliminate the stain of illegal
4 elections). As the Second District Court of Appeal held in
5 Jauregui, "the appropriate remedies language in section 14029
6 extends to [remedial] orders of the type approved under the
7 federal Voting Rights Act of 1965," Jauregui, supra, 226
8 Cal.App.4th at 807, so the logic of the courts for ordering
9 special elections in all of these cases is equally applicable in
10 this case.
11

12 98. From the beginning of the nomination period to election
13 day, takes a little less than four months.

14 [https://www.smvote.org/uploadedFiles/SMVote/2016\(1\)/Election%20C](https://www.smvote.org/uploadedFiles/SMVote/2016(1)/Election%20Calendar_website.pdf)
15 [alendar_website.pdf](https://www.smvote.org/uploadedFiles/SMVote/2016(1)/Election%20Calendar_website.pdf). Based on the path this Court has laid out,
16 a final judgment in this case should be entered by no later than
17 March 1, 2019. Therefore, a special election - a district-based
18 election pursuant to the seven-district map, Tr. Ex. 261, for
19 all seven city council positions should be held on July 2, 2019.
20 The votes can be tabulated within 30 days of the election, and
21 the winners can be seated on the Santa Monica City Council at
22 its first meeting in August 2019, so nobody who has not been
23 elected through a lawful election consistent with this decision
24 may serve on the Santa Monica City Council past August 15, 2019.
25 Only in that way can the stain of the unlawful discriminatory

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1 at-large election system be promptly erased.

2 CONCLUSION

3 99. Defendant's at-large election system violates both the CVRA
4 and the Equal Protection Clause of the California Constitution.

5 100. Accordingly, the Court orders that, from the date of
6 judgment, Defendant is prohibited from imposing its at-large
7 election system, and must implement district-based elections for
8 its city council in accordance with the seven-district map
9 presented at trial. Tr. Ex. 261.

10
11 CLERK TO GIVE WRITTEN NOTICE.

12 IT IS SO ORDERED.

13 DATED: February 13, 2019

14
15
16
17 
18 YVETTE M. PALAZUELOS
19 JUDGE OF THE SUPERIOR COURT
20
21
22
23
24
25

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EXHIBIT AC

RESOLUTION NO. 9822 (CCS)

(CITY COUNCIL SERIES)

RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SANTA MONICA ACCEPTING THE LOS ANGELES COUNTY
REGISTRAR RECORDER/COUNTY CLERK'S OFFICIAL CANVASS
AND OFFICIAL STATEMENT OF VOTES CAST FOR THE
CONSOLIDATED MUNICIPAL ELECTION HELD ON
NOVEMBER 5, 2002, AND DECLARING THE RESULTS THEREOF

WHEREAS, a Consolidated General Municipal Election was held in the City of Santa Monica on November 5, 2002, as required by law; and

WHEREAS, the provisions of the Elections Code of the State of California for the holding of elections in Charter cities were complied with in that notice of the election was given in the time, form and manner as provided by law; voting precincts were properly established; election officers were appointed; votes were cast, received and canvassed; and the returns were made and declared in the time, form and manner as required; and

WHEREAS, the Los Angeles Registrar Recorder/County Clerk canvassed the returns of the election and certified the results to the City Council, and those results are attached and made a part hereof as "Exhibit A",

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES RESOLVE AS FOLLOWS:

SECTION 1. The vote totals for the Consolidated Municipal Election held on November 5, 2002, in the City of Santa Monica, as certified by the Los Angeles County Registrar Recorder/County Clerk, shall be and hereby are approved and adopted as the formal vote count of the City of Santa Monica for said offices and said measures of said election.

SECTION 2. The names of the candidates on the ballot were:

**College District
Board of Trustees**

Dorothy Ehrhart-Morrison
Nancy Greenstein
Bill Winslow
Carole Currey
Nancy Cattell-Luckenbach
Herb Roney

**SM-MUSD
Board of Education**

Shane McLoud
Julia Brownley
Emily Bloomfield
Brenda Gottfried
Oscar de la Torre
Ann Cochran
Nancy Kelly (write-in)

Santa Monica Rent Control Board

Betty Smith Mueller
Jennifer F. Kennedy
Thomas David Carter
Alan Toy

Santa Monica City Council

Bob Holbrook
Kevin McKeown
Matteo Dinolfo
Abby Arnold
Josefina Santiago Aranda

Chuck Allord
Pam O'Connor
Pro Se
Jerry Rubin

SECTION 3. The number of total ballots cast for this election was:

Santa Monica Community College District Board of Trustees

| <u>REGISTERED VOTERS</u> | <u>PRECINCT BALLOTS</u> | <u>ABSENTEE BALLOTS</u> | <u>TOTAL BALLOTS</u> |
|------------------------------|-----------------------------|-----------------------------|--------------------------|
| 67,790 | 29,508 | 7,536 | 37,044 |

Santa Monica-Malibu Unified School District Board of Education:

| <u>REGISTERED VOTERS</u> | <u>PRECINCT BALLOTS</u> | <u>ABSENTEE BALLOTS</u> | <u>TOTAL BALLOTS</u> |
|------------------------------|-----------------------------|-----------------------------|--------------------------|
| 67,877 | 29,508 | 7,589 | 37,097 |

City of Santa Monica:

| <u>REGISTERED VOTERS</u> | <u>PRECINCT BALLOTS</u> | <u>ABSENTEE BALLOTS</u> | <u>TOTAL BALLOTS</u> |
|------------------------------|-----------------------------|-----------------------------|--------------------------|
| 56,501 | 24,884 | 5,969 | 30,853 |

SECTION 4. The following persons were elected to office as follows:

Santa Monica Community College Board of Trustees:

| <u>CANDIDATE</u> | <u>VOTES</u> |
|--------------------|---------------|
| D EHRHART-MORRISON | 16,581 21.7% |
| NANCY GREENSTEIN | 15,476 20.25% |
| CAROLÉ CURREY | 13,039 17.06% |
| HERB RONEY | 12,996 17.01% |

Santa Monica-Malibu Unified School District Board of Education:

| <u>CANDIDATE</u> | <u>VOTES</u> |
|------------------|---------------|
| JULIA BROWNLEY | 17,235 21.66% |
| EMILY BLOOMFIELD | 17,157 21.56% |
| SHANE MCLOUD | 14,247 17.91% |
| OSCAR DELA TORRE | 13,515 16.99% |

City of Santa Monica Rent Control Board:

| <u>CANDIDATE</u> | <u>VOTES</u> |
|--------------------|---------------|
| BETTY S MUELLER | 14,676 29.54% |
| JENNIFER F KENNEDY | 13,181 26.53% |
| ALAN TOY | 12,638 25.44% |

Santa Monica City Council:

| <u>CANDIDATE</u> | <u>VOTES</u> |
|------------------|---------------|
| PAM OCONNOR | 13,396 18.93% |
| KEVIN MCKEOWN | 13,200 18.65% |
| BOB HOLBROOK | 11,164 15.77% |

SECTION 5. The measures that appeared on the ballot read as follows:

MEASURE FF: *Shall the City Charter's provisions governing eviction from controlled rental units be amended to extend protections to the spouses, children or domestic partners of tenants who die or become incapacitated, to clarify that the term "housing service" includes the number of tenants authorized to occupy a unit, to clarify how rent increases authorized by state law are computed, to clarify the remedies for unlawful attempts to recover possession, to create specified protections against evictions for occupying tenants who replace authorized co-tenants or subtenants, and to require that the Municipal Code contain protections against tenant harassment?* The Measure was approved by the following vote:

YES: 17,090 (62.74%)
NO: 10,150 (37.26%)

MEASURE GG: *Shall the City Charter be amended to increase Rent Control Board members' compensation from \$75.00 to \$150.00 per meeting, with a limit of \$6,000.00 per year, and to provide that they shall receive health care benefits? The Measure failed by the following vote:*

YES: 10,785 (39.47%)

NO: 16,538 (60.63%)

MEASURE HH: *Shall the City Charter and Municipal Code be amended to change the system of electing City Council members by creating City Council districts, imposing term limits for Council members, and establishing a municipal primary election with runoffs in the fall, to add to the seven-member Council a mayor, who would be elected City-wide and would serve as the Council's non-voting chairperson, and to change the process for Council actions by giving the mayor the power to veto Council actions, including emergency actions, which veto could be nullified if a specified number of Council members vote to override it? The Measure failed by the following vote:*

YES: 9,732 (35.86%)

NO: 17,410 (64.14%)

MEASURE II: *Shall the City Charter be amended to establish procedures for converting apartment buildings, trailer parks and other rental housing to condominiums or other common ownership housing, which would be exempt from certain planning and zoning laws, and procedures for allowing tenants to either become owners or continue as tenants with specified rights and protections? The Measure failed by the following vote:*

YES: 9,845 (35.84%)

NO: 17,627 (64.16%)

MEASURE JJ: *Shall Ordinance No. 2015 (CCS) establishing local minimum wage requirements, initially set at \$10.50 per hour with health care benefits, or at \$12.25 per hour without health care benefits, applicable to the City, its service contractors, and private businesses, which are located in the coastal and downtown areas and have gross annual receipts over \$5 million, and establishing an exemption for businesses which show severe economic hardship, be adopted? The Measure failed by the following vote:*

| | | |
|------|--------|----------|
| YES: | 13,860 | (48.31%) |
| NO: | 14,830 | (51.69%) |

MEASURE KK: *Shall the City Charter be amended to eliminate the restriction on the percentage of TORCA tax revenues that can be used to develop or subsidize low income housing so that any portion of the TORCA revenues, except those used for administrative costs, can be used for low income housing? The Measure was approved by the following vote:*

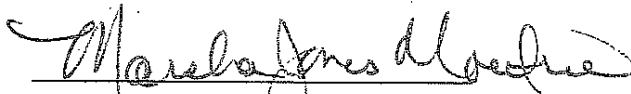
| | | |
|------|--------|----------|
| YES: | 12,989 | (50.55%) |
| NO: | 12,708 | (49.45%) |

SECTION 6. The City Clerk shall enter on the records of the Santa Monica City Council, a statement of the result of the election showing: (1) the total number of votes cast for the offices and measures in the election; (2) the names of the persons voted for; (3) the text of the measures voted upon; (4) the office that each person was running for; (5) the number of votes given at each precinct to each person, and for and against the ballot measures; and, (6) the total number of votes given to each person, and for and against the ballot measures.

SECTION 7. The City Clerk shall immediately make and deliver to each of the persons so elected a Certificate of Election signed by the City Clerk and authenticated. The City Clerk shall also administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have each person subscribe to it and file it in the office of the City Clerk. All of the persons so elected shall then be inducted into the office to which they have been elected.

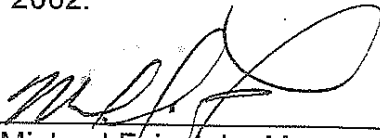
SECTION 8. The City Clerk shall certify to the adoption of this Resolution, and thenceforth and thereafter the same shall be in full force and effect.

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "Marsha Jones Moutrie", written over a horizontal line.

MARSHA JONES MOUTRIE
City Attorney

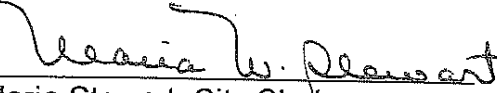
Adopted and approved this 10th day December, 2002.


Michael Feinstein, Mayor

I, Maria M. Stewart, City Clerk of the City of Santa Monica, do hereby certify that the foregoing Resolution No. 9822 (CCS) was duly adopted at a meeting of the Santa Monica City Council held on the 10th of December, 2002, by the following vote:

| | | |
|----------|------------------|---------------------------------------------------------------------------------|
| Ayes: | Council members: | Holbrook, O'Connor, Bloom, Genser, Katz, Mayor Pro Tem McKeown, Mayor Feinstein |
| Noes: | Council members: | None |
| Abstain: | Council members: | None |
| Absent: | Council members: | None |

ATTEST:


Maria Stewart, City Clerk

COSM 529

Exhibit A

COSM 530

Los Angeles County
Registrar-Recorder/County Clerk

Certificate of the canvass of the election returns

I, CONNY B. McCORMACK, Registrar-Recorder/County Clerk of the County of Los Angeles, of the State of California, DO HEREBY CERTIFY that pursuant to the provisions of Section 15300 et seq. of the California Elections Code, I did canvass the returns of the votes cast for each elective office and/or measure(s) in the

SANTA MONICA CITY

At the General Election, held on the 5th day of November, 2002.

I, FURTHER CERTIFY that the Statement of Votes Cast, to which this certificate is attached, shows the total number of ballots cast in said jurisdiction, and the whole number of votes cast for each candidate and/or measure(s) in said jurisdiction in each of the respective precincts therein, and the totals of the respective columns and the totals as shown for each candidate and/or measure(s) are full, true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 2nd day of December, 2002.



Conny B. McCormack
CONNY B. McCORMACK
Registrar-Recorder/County Clerk
County of Los Angeles

COSM 531