

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/07/17

DEPT. 28

HONORABLE YVETTE M. PALAZUELOS

JUDGE N. RAYA

DEPUTY CLERK

HONORABLE #

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. Tavakoli, C.A.

Deputy Sheriff

NONE

Reporter

8:45 am BC616804

Plaintiff
Counsel

PICO NEIGHBORHOOD ASSOCIATION E
AL
VS
CITY OF SANTA MONICA CALIFORNIA

NO APPEARANCES

Defendant
Counsel

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

On the matter previously taken under submission, the court issues its ruling.

The court's ruling, filed this date, is adopted as the final ruling of the court and incorporated herein by reference to the case file.

The clerk shall give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the

COURT'S ORDER

upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in LOS ANGELES, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

06/14/2017

MINUTES ENTERED
06/07/17
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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NATURE OF PROCEEDINGS:

Dated: JUNE 7, 2017

Sherri R. Carter, Executive Officer/Clerk

By: _____

N. RAYA

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06/14/2017

MINUTES ENTERED
06/07/17
COUNTY CLERK

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FILED **NR**
Superior Court of California
County of Los Angeles

JUN 07 2017

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,)	[TENTATIVE]
)	
vs.)	
)	RULINGS/ORDERS
CITY OF SANTA MONICA,)	
)	
Defendant.)	
)	
)	

Defendant's Demurrer to the First Amended Complaint (FAC)
is OVERRULED.

Defendants shall file and serve an Answer within 20 days of
service of the notice of ruling.

Defendant's Requests for Judicial Notice are GRANTED,
except for Defendant's Request for Judicial Notice submitted for
the first time on reply, which is DENIED.

1 Plaintiffs' Requests for Judicial Notice are GRANTED as to
2 Exhibit 1 (existence only) and Exhibit 2.

3 I.

4 INTRODUCTION

5 Plaintiffs Pico Neighborhood Association ("PNA"), Maria
6 Loya ("Loya"), and Advocates for Malibu Public Schools ("AMPS")¹
7 filed the Complaint against Defendant City of Santa Monica
8 ("City") for (1) violation of the California Voting Rights Act
9 of 2001 ("CVRA") and (2) violation of the Equal Protection
10 Clause of the California Constitution. Plaintiffs allege that
11 Defendant is in violation of the CVRA and that the provision of
12 the Santa Monica City Charter that requires at-large election of
13 the city council as well as the governing board of the Santa
14 Monica Malibu Unified School District ("SMMUSD") is
15 unconstitutional. Plaintiffs allege that the prior system of
16 district-based elections was abandoned and at-large elections
17 were adopted in 1946 to purposefully prevent non-Anglo Santa
18 Monica residents residing primarily around and south of what is
19 now Interstate 10 from achieving representation in their local
20 governments. Plaintiffs claim that at-large elections has
21 diluted Latino voting power and denied effective political
22 participation in the elections of the Santa Monica City Council.
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¹ On July 21, 2016, Plaintiff AMPS only filed a request to dismiss the Complaint, without prejudice.

1 According to Plaintiffs, the at-large method of election
2 prevents Latino residents from electing candidates of their
3 choice or influencing the outcome of Santa Monica's City Council
4 elections. Plaintiffs seek 1) declarations that the at-large
5 method of election used by Defendant violates the CVRA and the
6 California Constitution's Equal Protection Clause; 2) injunctive
7 relief enjoining Defendant from further using its current at-
8 large method of election; and 3) an order requiring Defendant to
9 implement district based elections or some other alternative
10 relief tailored to remedy the violations of the CVRA and
11 California Constitution.
12

13 Defendant demurs to the FAC on the grounds that (1) the FAC
14 does not allege a violation of the CVRA because it does allege
15 racially polarized voting in that Latinos have preferred certain
16 candidates and voted as a bloc, that whites have also voted as a
17 bloc, and that the white bloc usually outvotes the Latino bloc
18 and the FAC fails to allege injury, or causation because there
19 are no facts to show Latino-preferred candidates would have won
20 office under an alternative electoral system; and (2) the FAC
21 does not allege a claim under the Equal Protection Clause
22 because there are no facts that the adoption of Defendant's
23 current at-large electoral system was motivated by
24 discriminatory purpose or has had a discriminatory effect.

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1 In opposition, Plaintiffs argue that they adequately
2 addressed any deficiencies in the pleadings after being allowed
3 leave to amend following the motion for judgment on the
4 pleadings which challenged the Complaint. Further, Plaintiffs
5 argue that Defendant improperly argues inferences and evidence
6 which is not appropriate at the pleading stage.

7
8 In reply, Defendant argues that Plaintiffs rely on nothing
9 more than unsupported and conclusory allegations.

10 II.

11 DISCUSSION

12 A. Applicable Law - Generally

13 1. Demurrer

14 A demurrer for sufficiency tests whether the complaint
15 states a cause of action. Hahn v. Mirda (2007) 147 Cal.App.4th
16 740, 747. When considering demurrers, courts read the
17 allegations liberally and in context. In a demurrer proceeding,
18 the defects must be apparent on the face of the pleading or via
19 proper judicial notice. Donabedian v. Mercury Ins. Co. (2004)
20 116 Cal.App.4th 968, 994; Weil & Brown, Civ. Pro. Before Trial
21 (The Rutter Group 2011) ¶7:8. "A demurrer tests the pleadings
22 alone and not the evidence or other extrinsic matters.
23 Therefore, it lies only where the defects appear on the face of
24 the pleading or are judicially noticed (Code Civ. Proc., §§
25 430.30, 430.70). The only issue involved in a demurrer hearing

1 is whether the complaint, as it stands, unconnected with
2 extraneous matters, states a cause of action." Hahn 147
3 Cal.App.4th at 747. A complaint will be upheld against a
4 demurrer if it pleads facts sufficient to place the defendant on
5 notice of the issues sufficient to enable the defendant to
6 prepare a defense. Doe v. City of Los Angeles (2007) 42 Cal.4th
7 531, 549-50.

8
9 Statutory causes of action must be pled with particularity,
10 and particularity means pleading the who, where, when, what, and
11 how. Lopez v. So. Cal. Rapid Transit Dist. (1985) 40 Cal.3d
12 780, 795; Lazar v. Superior Court (1996) 12 Cal.4th 631, 645.

13 2. Declaratory Relief

14 To plead a cause of action for declaratory relief,
15 Plaintiff must plead the following elements: (1) person
16 interested under a written instrument or a contract; or (2) a
17 declaration of his or her rights or duties (a) with respect to
18 another or (b) in respect to, in, over or upon property; and (3)
19 an actual controversy. CCP §1060; Ludgate Ins. Co. v. Lockheed
20 Martin Corp. (2000) 82 Cal. App. 4th 592, 605-06; Bennett v.
21 Hibernia Bank (1956) 47 Cal. 2d 540, 549; Stonehouse Homes v.
22 City of Sierra Madre (2008) 167 Cal.App.4th 531, 542 ("For
23 declaratory relief, the party must show it has either suffered
24 or is about to suffer an injury of 'sufficient magnitude
reasonably to assure that all of the relevant facts and issues

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1 will be adequately presented."); Cal. Ins. Guar. Ass'n v. Sup.
2 Ct. (1991) 231 Cal. App. 3d 1617, 1624 ("availability of another
3 form of relief that is adequate will usually justify refusal to
4 grant declaratory relief" but "[t]he refusal to exercise the
5 power is within the court's legal discretion");
6 Pellegrini v. Weiss (2008) 165 Cal.App.4th 515, 529 ("The
7 question whether declaratory relief is appropriate in a given
8 case is addressed to the trial court's discretion.")

9
10 An action for declaratory relief lies when there is an
11 actual bona fide dispute between parties as to a legal
12 obligation arising under the circumstances specified in CCP
13 §1060 and, in addition, the controversy must be justiciable -
14 i.e., presents a question as to which there is more than one
15 answer. Western Motors Servicing Corp. v. Land Development &
16 Inv. Co. (1957) 152 Cal.App.2d 509. "Actual controversy" is a
17 controversy which admits of definitive and conclusive relief by
18 judgment within the field of judicial administration, as
19 distinguished from an advisory opinion on a particular or
20 hypothetical state of facts. The judgment must decree, not
21 suggest, what the parties may or may not do. Selby Realty Co.
22 v. San Buenaventura (1973) 10 Cal.3d 110. A mere difference of
23 opinion is not an "actual controversy" within § 1060. The
24 "actual controversy" language in CCP §1060 encompasses present
25 or probable future controversies relating to the legal rights

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1 and duties of the parties. Declaratory relief generally
2 operates prospectively to declare future rights, rather than to
3 redress past wrongs; it is used to declare rights rather than
4 execute them. County of San Diego v. State (2008) 164
5 CaI.App.4th 580, 606-608; Gafcon, Inc. v. Ponsor & Assocs.
6 (2002) 98 Cal. App. 4th 1388, 1404 ("declaratory relief operates
7 prospectively only, rather than to redress past wrongs....")

8
9 A complaint seeking declaratory relief must merely allege
10 facts which justify the declaration of rights or obligations in
11 respect of a matter of actual controversy, within the purview of
12 § 1060, and involving justiciable rights. Foster v. Masters
13 Pontiac Co. (1958) 158 Cal.App.2d 481. The rule that a
14 complaint is to be liberally construed is particularly
15 applicable to one for declaratory relief. Id.

16 B. California Voting Rights Act

17 1. Statutory Definitions

18 "At-large method of election" means one of the
19 following methods are used to elect members of the
20 governing body of the political subdivision: (1)
21 voters of the entire district elect the members of the
22 governing body; (2) candidates are required to reside
23 within given areas of the jurisdiction and voters of
the entire jurisdiction elect the members of the
governing body; or (3) one that combines at-large
elections with district-based elections."

24 Elec. Code § 14026(a)(1)-(3).

25 "'District-based elections' means a method of
electing members to the governing body of a political
subdivision in which the candidate must reside within

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1 an election district that is a divisible part of the
2 political subdivision and is elected only by voters
residing within that election district."

3 Elec. Code § 14026(b).

4 " 'Political subdivision' means a geographic area
5 of representation created for the provision of
6 government services, including, but not limited to, a
7 general law city, general law county, charter city,
8 charter county, charter city and county, school
district, community college district, or other
district organized pursuant to state law."

9 Elec. Code § 14026(c).

10 " 'Protected class' means a class of voters who
11 are members of a race, color, or language minority
12 group, as this class is referenced and defined in the
federal Voting Rights Act of 1965 (52 U.S.C. Sec.
10301 et seq.)²."

13 Elec. Code § 14026(d).

14 " 'Racially polarized voting' means voting in
15 which there is a difference, as defined in case law
16 regarding enforcement of the federal Voting Rights
Act of 1965, in the choice of candidates or other

17 ² "No voting qualification or prerequisite to voting or standard, practice, or
18 procedure shall be imposed or applied by any State or political subdivision
19 in a manner which results in a denial or abridgement of the right of any
20 citizen of the United States to vote on account of race or color, or in
21 contravention of the guarantees set forth in section 10303(f)(2) of this
22 title, as provided in subsection (b)." 52 U.S.C. § 10301(a). "A violation
23 of subsection (a) is established if, based on the totality of circumstances,
24 it is shown that the political processes leading to nomination or election in
the State or political subdivision are not equally open to participation by
members of a class of citizens protected by subsection (a) in that its
members have less opportunity than other members of the electorate to
participate in the political process and to elect representatives of their
choice. The extent to which members of a protected class have been elected to
office in the State or political subdivision is one circumstance which may be
considered: *Provided*, That nothing in this section establishes a right to
have members of a protected class elected in numbers equal to their
proportion in the population." 52 U.S.C. § 10301(b). "No voting
qualification or prerequisite to voting, or standard, practice, or procedure
shall be imposed or applied by any State or political subdivision to deny or
abridge the right of any citizen of the United States to vote because he is a
member of a language minority group." 52 U.S.C. § 10303(f)(2).

1 electoral choices that are preferred by voters in a
2 protected class, and in the choice of candidates and
3 electoral choices that are preferred by voters in the
4 rest of the electorate. The methodologies for
5 estimating group voting behavior as approved in
6 applicable federal cases to enforce the federal Voting
Rights Act of 1965 to establish racially polarized
voting may be used for purposes of this section to
prove that elections are characterized by racially
polarized voting."

7 Elec. Code § 14026(e) (internal citations removed).

8 "An at-large method of election may not be
9 imposed or applied in a manner that impairs the
10 ability of a protected class to elect candidates of
11 its choice or its ability to influence the outcome of
12 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."

13 Elec. Code § 14027.

14 "A violation of Section 14027 is established if
15 it is shown that racially polarized voting occurs in
16 elections for members of the governing body of the
17 political subdivision or in elections incorporating
other electoral choices by the voters of the political
subdivision."

18 Elec. Code § 14028(a).

19 "Elections conducted prior to the filing of an
20 action pursuant to Section 14027 and this section are
21 more probative to establish the existence of racially
polarized voting than elections conducted after the
filing of the action."

22 Elec. Code § 14028(a).

23 "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 or elections involving ballot
measures, or other electoral choices that affect the

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1 rights and privileges of members of a protected
2 class."

3 Elec. Code § 14028(b).

4 "One circumstance that may be considered in
5 determining a violation of Section 14027 and this
6 section is the extent to which candidates who are
7 members of a protected class and who are preferred by
8 voters of the protected class, as determined by an
9 analysis of voting behavior, have been elected to the
10 governing body of a political subdivision that is the
11 subject of an action based on Section 14027 and this
12 section."

13 Elec. Code § 14028(b).

14 "In multiseat at-large election districts, where
15 the number of candidates who are members of a
16 protected class is fewer than the number of seats
17 available, the relative groupwide support received by
18 candidates from members of a protected class shall be
19 the basis for the racial polarization analysis."

20 Elec. Code § 14028(b).

21 "The fact that members of a protected class are
22 not geographically compact or concentrated may not
23 preclude a finding of racially polarized voting, or a
24 violation of Section 14027 and this section, but may
25 be a factor in determining an appropriate remedy."

26 Elec. Code § 14028(c).

27 "Proof of an intent on the part of the voters or
28 elected officials to discriminate against a protected
29 class is not required."

30 Elec. Code § 14028(d).

31 "Other factors such as the history of
32 discrimination, the use of electoral devices or other
33 voting practices or procedures that may enhance the
34 dilutive effects of at-large elections, denial of
35 access to those processes determining which groups of
36 candidates will receive financial or other support in
37 a given election, the extent to which members of a

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1 protected class bear the effects of past
2 discrimination in areas such as education, employment,
3 and health, which hinder their ability to participate
4 effectively in the political process, and the use of
5 overt or subtle racial appeals in political campaigns
6 are probative, but not necessary factors to establish
7 a violation of Section 14027 and this section."

8 Elec. Code § 14028(e).

9 "Any voter who is a member of a protected class
10 and who resides in a political subdivision where a
11 violation of Sections 14027 and 14028 is alleged may
12 file an action pursuant to those sections in the
13 superior court of the county in which the political
14 subdivision is located."

15 Elec. Code § 14032.

16 2. The Allegations Are Sufficient

17 Defendant argues that the FAC again fails to allege
18 racially polarized voting ("RPV") because the FAC does not
19 identify (1) Latino-preferred candidates for Santa Monica's City
20 Council, (2) how the Latino and white voters voted as a bloc,
21 and (3) that the white bloc usually acted to defeat the Latino-
22 preferred candidates. But Defendant argues that Plaintiffs rely
23 on a conclusory statement that a white bloc "usually" outvotes a
24 Latino bloc without providing sufficient facts to show what
25 "usually" happens by making specific allegations of facts that
26 show a pattern which proves that "over a period of years, whites
27 vote sufficiently as a bloc to defeat minority candidates most
28 of the time." Uno v. City of Holyoke (1st Cir. 1995) 72 F.3d
29 973, 985 (the electoral history relied upon to show RPV must

1 cover "a series of elections" and cannot be "an isolated
2 snapshot of a single election" because otherwise nothing is
3 shown more than that "just those elections that, taken in
4 isolation, reveal...[RPV]"). Defendant argues the FAC is "over-
5 inclusive" and that to the extent Plaintiffs rely on elections
6 that occurred before the 2003 enactment of the CVRA such
7 elections are irrelevant because statutes are ordinarily
8 interpreted to operate prospectively in the absence of contrary
9 legislative intent³, but that the FAC is also "under-inclusive"
10 because the election history cited by Plaintiffs makes
11 allegations regarding the electoral defeat of four candidates
12 out of 159 total over a 22 year period. FAC ¶¶ 21-25;
13 Defendant's Request for Judicial Notice ("DRJN") Exh. B.
14 Defendant argues the scattershot of elections in 1994, 2002,
15 2004, and 2016 does not meet the standard set by the statute and
16 the federal case law it incorporates because it cannot show a
17 white bloc "usually" outvotes a Latino bloc. Lewis v. Alamance
18 County, N.C. (4th Cir. 1996) 99 F.3d 600, 606 n. 4 (terms such
19 as "usually", "normally", and "generally" "mean something more
20 than just 51%" because the white bloc must vote to defeat the
21 minority-preferred candidates "most of the time"). Defendant
22 argues that Plaintiffs were specifically given the opportunity
23

³ Quarry v. Doe I (2012) 53 Cal.4th 945, 955-56.

1 on amendment to allege specific examples and if they cannot
2 allege anything more, one must conclude Plaintiffs in good faith
3 could not allege any more elections. Defendant argues that the
4 FAC is silent about nine City Council elections that occurred
5 between 1994 and 2006⁴ and neglects to mention one of the four
6 named losing candidates that lost a reelection bid in 1994, Tony
7 Vasquez, won two elections in 2012 and 2016 and served a term as
8 mayor. DRJN Exh. A.

9
10 By Plaintiff's own allegations, there are no facts to show
11 whites or Latinos voted cohesively or that a white voting bloc
12 acted to usually defeat a Latino voted bloc. Defendant argues
13 while Plaintiffs allege in 2004 that Bobby Shriver received the
14 most votes citywide and won the most votes in six of seven of
15 the City's neighborhood, and that Loya received the most votes
16 in the Pico neighborhood, there is nothing more than a
17 conclusory assertion that Loya was "strongly preferred" by
18 voters in that neighborhood and by Latinos throughout the city
19 because Plaintiffs do not allege total or Latino population
20 figures in 2004 and if the population figures resemble those
21 from the 2000 census, then the majority of Latinos then, as they
22 do now, lived outside of the Pico neighborhood. FAC ¶¶ 15, 23;
23 DRJN Exh. D. Defendant urge that it is therefore just as

⁴ Occurring in 1996, 1998, 1999, 2000, 2006, 2008, 2010, 2012, and 2014.

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1 possible that Shriver won because of citywide Latino support and
2 the same could be true for any of the candidates that actually
3 won the elections at issue and no facts are alleged to the
4 contrary. Defendant note that voting in 2004 was fragmented as
5 sixteen candidates ran for only four City Council seats and nine
6 of those candidates; including Loya, received at least 5% of the
7 vote and that although Shriver had the highest vote total, he
8 won only about 16% of the vote. DRJN Exh. B. Similarly in
9 2016, there were eleven candidates for City Council and
10 Plaintiffs state in a conclusory manner that Oscar de la Torre
11 was the preferred candidate of Latino voters without observing
12 there were four seats available and that Tony Vazquez, who
13 Plaintiffs allege was the Latino-preferred candidate in 1994,
14 won a council seat in 2016 for the second time with the second
15 highest total of 16% of the vote, and that voting was again
16 fragmented because seven of the eleven candidates received at
17 least 5% of the vote. FAC ¶¶ 21, 24; DRJN Exh. B. Defendant
18 states that there are similarly no allegations to show who was
19 the "preferred candidate" of any supposed white voting bloc and
20 that Vasquez, who was once alleged to be the Latino-preferred
21 candidate, received the second highest vote total in 2016.
22 Defendant argues that Plaintiffs again merely parrot language of
23 statutory authority and case law that provides nothing more than
mere labels and conclusions, but are not specific factual

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1 allegations required to state a claim. Plaintiffs fail to
2 allege what "alternative system" Latino-preferred candidates
3 would have fared better under and in any event, such assertion
4 is belied by the fact Vasquez won multiple elections and was the
5 second highest vote-getter in 2016.

6 Plaintiffs respond that the FAC alleges that Defendant uses
7 an at-large method of election for selecting members of the city
8 governing board and there has been RPV in elections for Santa
9 Monica's City Council in which Latino voters preferred Tony
10 Vazquez in 1994, Josefina Aranda in 2002, Maria Loya in 2004,
11 and Oscar de la Torre in 2016, only for each Latino-preferred
12 candidate to lose because the non-Hispanic white majority of the
13 electorate voted as a bloc against them. FAC ¶¶ 1-2, 16-17, 20-
14 25, 30-32, 49-50. In each of these elections, the non-Hispanic
15 white majority's top three choices were instead victorious. FAC
16 ¶¶ 21-24. Any argument as to whether Vasquez remained the
17 "Latino-preferred" candidate in subsequent elections is a
18 disputed fact or an inference that is not appropriate to be
19 decided on demurrer. And Plaintiffs argue that the FAC alleges
20 examples that show the "probative but not necessary factors"
21 listed in Section 14028(e) of the CVRA, including (1) a history
22 of discrimination; (2) denial of access to the processes that
23 determine what candidates will receive financial or other
24 support in an election; (3) the extent Latinos bear the effects

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1 of past discrimination in areas such as education, employment,
2 and health and that such effects hinder the ability to
3 participate effectively in the political process; (4) and the
4 use of overt or subtle racial appeals in political campaigns.
5 FAC ¶¶ 26-29. The FAC alleges such factors contribute to the
6 dilutive effect of at-large elections in Santa Monica such that
7 the high cost of City Council campaigns combined with RPV
8 impairs Latinos, who tend to have more modest financial means
9 compared to non-Hispanic whites, from electing candidates of
10 their choice or to influence the outcome of City Council
11 elections. FAC ¶¶ 26-29.

12
13 Defendant's arguments as to whether Plaintiff can show
14 Latino voter cohesiveness and majority bloc voting to defeat
15 Latino-preferred candidates and whether the four specific
16 "exemplary" elections cited in the FAC are sufficient to show
17 RPV, goes not to the sufficiency of the pleadings, but to the
18 sufficiency of Plaintiff's evidence. FAC ¶¶ 1-2, 20-25, 30-33,
19 50. Plaintiff argues that such analysis, including what
20 preferred voting districts should be implemented or would result
21 in more success for Latino-preferred candidates, requires expert
22 analysis and more than can be expected at the pleading stage.
23 Plaintiffs further argue that they can rely on evidence of
24 elections prior to the CVRA. According to Plaintiffs, it would
25 frustrate the purpose of the CVRA if a government could not be
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1 challenged on the basis of continuing violations and if an
2 action was limited only to post-2004 elections. How much weight
3 to give the November 2016 election, which occurred after the
4 lawsuit was filed, is not a matter for demurrer. Plaintiffs
5 argue that Defendant's position that there may be other or
6 different Latino-preferred candidates than those identified
7 again goes to the evidence and the Court cannot draw inferences
8 against Plaintiffs at this stage. Plaintiffs state that RPV
9 itself is recognized as harmful.
10

11 Here, Plaintiffs have sufficiently alleged a violation of
12 the CVRA. The FAC alleges that Defendant uses an at-large
13 method of election for selecting members of the city governing
14 board and that there has been RPV in elections for Santa
15 Monica's City Council in which Latino voters preferred Tony
16 Vazquez in 1994, Josefina Aranda in 2002, Maria Loya in 2004,
17 and Oscar de la Torre in 2016, only for each Latino-preferred
18 candidate to lose because the non-Hispanic white majority of the
19 electorate voted as a bloc against them. FAC ¶¶ 1-2, 16-17, 20-
20 25, 30-32, 49-50. In each of these elections, the non-Hispanic
21 white majority's top three choices were victorious. FAC ¶¶ 21-
22 24. Whether such allegations ultimately end up being true, and
23 the weight that should be afforded to certain allegations and
24 evidence, such as whether Vasquez was also the "Latino-
preferred" candidate and experienced later electoral success,

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1 are matters of evidence and not matters for demurrer. Much of
2 the arguments raised by Defendants addresses the weight or
3 sufficiency of Plaintiffs' evidence. Whether such arguments
4 will carry the day is not a matter the Court can determine on
5 the pleadings.

6 The FAC also alleges examples that show the "probative but
7 not necessary factors" listed in Section 14028(e) of the CVRA,
8 including (1) a history of discrimination; (2) denial of access
9 to the processes that determine what candidates will receive
10 financial or other support in an election; (3) the extent
11 Latinos bear the effects of past discrimination in areas such as
12 education, employment, and health and that such effects hinder
13 the ability to participate effectively in the political process;
14 (4) and the use of overt or subtle racial appeals in political
15 campaigns. FAC ¶¶ 26-29. The FAC alleges such factors
16 contribute to the dilutive effect of at-large elections in Santa
17 Monica such as that the high cost of City Council campaigns
18 combined with RPV impairs Latinos, who tend to have more modest
19 financial means compared to non-Hispanic whites, from electing
20 candidates of their choice or to influence the outcome of City
21 Council elections. FAC ¶¶ 26-29. Arguments as to whether
22 Plaintiff can show Latino voter cohesiveness and majority bloc
23 voting to defeat Latino-preferred candidates and whether the
four specific "exemplary" elections cited in the FAC are

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1 sufficient to show RPV goes not to the sufficiency of the
2 pleadings, but the sufficiency of Plaintiff's evidence. And
3 Plaintiffs can rely on allegations of RPV in elections before
4 the CVRA was passed. Kizer v. Hanna (1989) 48 Cal.3d 1, 7-8 (a
5 law is not retroactive just because some facts or conditions of
6 the law's application came into existence prior to the
7 enactment); In re E.J. (2010) 47 Cal.4th 1237, 1258
8 (retroactivity is usually determined by whether the last act
9 necessary for the law's application occurred before or after the
10 effective date); People v. Grant (1999) 20 Cal.4th 150 (a
11 statute requiring three violations was not retroactive as long
12 as one of the required acts occurred after the effective date).
13 There is nothing in the CVRA that limits evidence and
14 allegations of RPV to elections occurring after the CVRA was
15 passed and it would frustrate the purpose of the CVRA if, before
16 RPV could be challenged, there was a "waiting" period to
17 challenge RPV in which enough elections would need to be
18 accumulated to show RPV that occurred only after the CVRA was
19 passed.
20

21 Plaintiffs have properly alleged an injury and the fact
22 that Latinos in Santa Monica may not be concentrated in a
23 certain neighborhood or divisible "district" does not mean the
claim fails. Rey v. Madera Unified School Dist. (2012) 203
Cal.App.4th 1223, 1229 (proving a violation of the CVRA requires

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1 a showing that voting was racially polarized, but there is no
2 requirement to show members of a protected class live in a
3 geographically compact area or that there was discriminatory
4 intent on the part of voters or officials); Elec. Code §
5 14028(a) ("A violation of Section 14027 is established if it is
6 shown that racially polarized voting occurs in elections for
7 members of the governing body of the political subdivision or in
8 elections incorporating other electoral choices by the voters of
9 the political subdivision."); Elec. Code § 14028(c) ("The fact
10 that members of a protected class are not geographically compact
11 or concentrated may not preclude a finding of racially polarized
12 voting, or a violation of Section 14027 and this section, but
13 may be a factor in determining an appropriate remedy.")

15 C. California's Equal Protection Clause

16 The equal protection clause prohibits a state from denying
17 any person equal protection of the laws and prohibits
18 discriminatory classifications of persons or groups. Clark v.
19 Jeter (1988) 486 U.S. 456, 461. While discriminatory
20 classifications are usually lawful if rationally based,
21 discriminatory classifications based on "suspect"
22 classifications, such as race or national origin, are subject to
23 heightened judicial scrutiny. Id. Explicit discrimination and
24 discrimination by "disparate impact" are unconstitutional only
when motivated at least in part by the purpose or intent to harm

1 a protected group. Kim v. Workers' Comp. Appeals Bd. ("Kim")
2 (1999) 73 Cal.App.4th 1357, 1361.

3 Defendant argues that the FAC fails to allege facts that
4 the law is discriminatory on its face as the City's Charter,
5 which establishes the at-large method, is facially neutral.
6 There is no allegation that despite being facially neutral, the
7 law was applied in a racially discriminatory way. Yick Wo v.
8 Hopkins (1886) 118 U.S. 356, 374 (a facially neutral ordinance
9 that prohibited operation of laundries in wooden buildings was
10 applied in a racially discriminatory manner when only white
11 laundry owners and no Chinese laundry owners were granted
12 variances to operate such laundries). There is no allegation
13 that the facially neutral and evenhandedly applied law had a
14 disparate impact on ethnic minorities and that this was intended
15 by decision makers. Spurlock v. Fox (6th Cir. 2013) 716 F.3d
16 383, 401. The FAC alleges that only one individual of seventy-
17 one City Council members has been Latino. Defendant argues that
18 the allegation does not support a disparate impact because the
19 ethnicity of City Council members does not address what
20 candidates have been preferred by certain minorities. FAC ¶ 41.
21 Defendant argues that Plaintiffs "continue to misunderstand"
22 when the at-large election system was adopted versus when the
23 number of seats were expanded. From 1914 until 1946, voters

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1 elected three commissioners on an at-large basis⁵ and candidates
2 could only run for one of these three offices. The greatest
3 number of votes won and thus a bare majority could control all
4 three spots. However in 1946, Defendant created the present
5 seven-council member at-large system which expanded voting power
6 for cohesive voting groups because candidates no longer ran for
7 one seat, but now ran for three or four vacancies. FAC ¶¶ 2, 4,
8 19, 35-36, 38-42, 45; DRJN Exh. E. Defendant argues that this
9 "first past the post" system made it easier for small groups of
10 voters to select a candidate of their choice.
11

12 And Defendant argues that Plaintiffs, even if some
13 disparate impact is assumed, cannot show discriminatory intent
14 because disparate impact is only unconstitutional when motivated
15 at least in part by a purpose or intent to harm a protected
16 group. Kim v. Workers' Comp. Appeals Bd. (1999) 73 Cal.App.4th
17 1357, 1361-62. According to Defendant, there are no facts
18 alleged that those who amended the City's Charter were aware
19 that the process could have a disparate impact on minorities and
20 intended for it to do so. Defendant argues that if anything,
21 the 1946 change strengthened minority voting rights. In the
22 FAC, Plaintiffs reliance upon an advertisement that called for
23 the rejection of the 1946 amendment which warned that such

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⁵ For safety, finance, and public works.

1 system could be used to discriminate against minority groups
2 does not identify the decision makers and their motivations were
3 for putting forth the 1946 amendment. FAC ¶¶ 35-37, 40, 42.
4 Defendant argues that whatever discriminatory animus may have
5 been present when the system was amended in 1946, voters have
6 twice reaffirmed the current system in 1975 and 2002 and there
7 are no allegations such actions were motivated by any
8 discriminatory intent. DRJN Exh. B.

9
10 Plaintiffs respond that the current election model was
11 adopted with the intent to prevent racial minorities from
12 electing candidates of their choice to the City Council and that
13 such model has been effective at accomplishing its goal. FAC ¶¶
14 19-25, 35-43, 56-59. Despite Latinos being 13.1% of Santa
15 Monica's population, only one of 71 council members since the
16 current election model was adopted has been Latino. FAC ¶¶ 15,
17 19, 41. Plaintiffs urge that the allegations are sufficient to
18 place Defendant on notice of the nature of the claims, take
19 discovery, and prepare a case for trial. Plaintiffs conclude
20 that the current election mode has had a disparate impact
21 because of the lack of success of Latino-preferred candidates.
22 FAC ¶¶ 19-25, 41. Contemporary newspaper articles reflect the
23 opinions of the time, as well as the historically racially
24 hostile climate. FAC ¶¶ 36, 40, 42. The current election model
has remain unchanged since 1946. The fact that an intentionally

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1 discriminatory model may have later been ratified by those
2 without the same animus does not render the current election
3 model legal. Hunter v. Underwood (1985) 471 U.S. 222, 232-33
4 (the original enactment was motivated by the desire to
5 discriminate against blacks and that effect continued).

6 Plaintiffs argue that whether the current election model is
7 "worse" or "better" than that from 1914 also does not render the
8 current election model legal if the current model was
9 implemented with a discriminatory motive.

10
11 The court finds that Plaintiffs have alleged a violation of
12 the Equal Protection Clause. Similar to above, much of
13 Defendant's arguments goes to the sufficiency or the weight of
14 the evidence, which may or may not ultimately be successful, but
15 is not appropriate to consider at the pleading stage when
16 inferences are not drawn against the pleadings. CrossTalk
17 Productions, Inc. v. Jacobson (1998) 65 Cal.App.4th 631, 635 (a
18 demurrer is not the appropriate place to determine the truth of
19 disputed facts or what inferences should be drawn when competing
20 inferences are possible). Plaintiffs allege that the current
21 election model was adopted with the intent to prevent racial
22 minorities from electing candidates of their choice to the City
23 Council and that such model has been effective at accomplishing
its goal, as despite Latinos being 13.1% of Santa Monica's
population, only one of 71 council members since the current

1 election model was adopted has been Latino. Plaintiffs further
2 allege that there has been a disparate impact on Latino-
3 preferred candidates, as discussed above in the four specific
4 elections identified in the FAC. FAC ¶¶ 15, 19-25, 35-43, 56-
5 59. Whether Plaintiffs can ultimately prove such allegations is
6 not a matter for demurrer, but is a matter of the evidence that
7 cannot be decided on the pleadings.

8
9 III.

10 CONCLUSION

11 Based upon the foregoing, the court orders that:

12 1) Defendant's Demurrer to the First Amended Complaint
13 (FAC) is OVERRULED.

14 2) Defendants shall file and serve an Answer within 20 days
15 of service of the notice of ruling.

16 3) Defendant's Requests for Judicial Notice are GRANTED,
17 except for Defendant's Request for Judicial Notice submitted for
18 the first time on reply, which is DENIED.

19 4) Plaintiffs' Requests for Judicial Notice are GRANTED as
20 to Exhibit 1 (existence only) and Exhibit 2.

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Clerk

MOVING PARTY TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: June 7, 2017


YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

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