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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA;

Plaintiffs,

v.

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

Defendants.

CASE NO. BC616804

CITY OF SANTA MONICA'S REPLY IN SUPPORT OF CITY OF SANTA MONICA'S SEPARATE STATEMENT OF UNDISPUTED FACTS AND RESPONSES TO PLAINTIFFS' SEPARATE STATEMENT OF ADDITIONAL DISPUTED FACTS

[*Defendant's Reply in Support of Motion for Summary Judgment; Declaration of Daniel A. Adler; and Separate Evidentiary Objections filed concurrently herewith*]

Complaint Filed: April 12, 2016
Hearing Date: June 14, 2018, 8:45 am
Trial Date: July 30, 2018

Assigned to the Hon. Yvette Palazuelos, Dep't 28

Pursuant to Civil Procedure Code section 437c, subdivision (b)(4), Defendant City of Santa Monica submits this Reply In Support of the City's Separate Statement and Responses to Plaintiffs Pico Neighborhood Association and Maria Loya's Separate Statement in Opposition to the City's Motion for Summary Judgment.

Issue No. 1: The first cause of action for violation of the California Voting Rights Act, Cal. Elec. Code §§ 14025 et seq., should be resolved in favor of Defendant because Plaintiffs cannot establish any vote dilution caused by Defendant's at-large method of election, and to the extent the statute allows for the imposition of liability nevertheless, the statute violates the Equal Protection Clause of the United States Constitution.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	**OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE**
1. In 1915, the City transitioned to an at-large, commission form of government. Under this system, voters elected three commissioners – one for public safety, a second for finance, and a third for public works. Adler Decl. Ex. H (Shenkman Decl. in Opposition to Motion for Judgment on the Pleadings) p. 2	**Disputed but Irrelevant** Santa Monica's adoption of a commission form of government occurred in 1914, not 1915. (Kousser Decl. ¶ 78, Exs. 4-6). In any event, Defendant has not had a commission form of government since 1946, and the system of government under which Defendant operated more than 70 years ago is entirely irrelevant to Plaintiffs' claim pursuant to the California Voting Rights Act ("CVRA").
Reply: Undisputed. Plaintiff does not dispute that Santa Monica transitioned to an at-large commission form of government in and around 1914. (See Kousser Decl. at p. 6:15-16, ¶ 12.) Whether the at-large commission form of government was implemented in 1914 or 1915 is immaterial to the City's motion. To the extent plaintiffs contend that the implementation of the at-large method of election in 1915 is irrelevant to plaintiffs' California Voting Rights Act ("CVRA") claim, Plaintiffs are wrong as a matter of law. It was in 1915 that the City adopted an at-large method of election, and so that decision is certainly relevant to plaintiffs' CVRA claim. Courts look not only at when a method of election was reaffirmed, but also when it was initially adopted and implemented. Thus, to the extent 1946 is relevant to plaintiffs' claim (as they contend), 1915 is equally relevant. (See *Personnel Adm'r of Mass v. Feeney* (1979) 442 U.S. 256, 279 [explaining discriminatory intent refers to the intent of the legislature when "*select[ing] or reaffirm[ing]* a particular course of action," italics added].)	
2. In 1946, the City adopted its present council-mayor form of government. The Council consists of seven members. Elections are held every other year on an at-large basis. Terms run four years.	**Disputed** Defendant's currernt form of government, adopted in 1946, is council-manager, not "council-mayor." Except in that respect, Plaintiffs agree – Defendant

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
Adler Decl. Ex. G (Santa Monica Charter) p. 9; FAC p. 2:8, ¶ 1, p. 5:20-22,¶ 16, p. 5:27-28, ¶ 18.	adopted its current at-large election system for all seven of its council positions in 1946. (Kousser Decl. ¶¶ 79-94).
Reply: Undisputed. Plaintiffs do not dispute that the City adopted its present form of government in 1946. To the extent that the City and plaintiffs refer to this form of government differently, such differences are immaterial. The parties agree on the nature of the electoral system and the date of its adoption.	
3. Under the at-large method of election, all eligible voters in the City elect members of the City Council FAC . 5:25-26,¶ 17	**Undisputed**
Reply: Undisputed. Plaintiffs do not dispute this material fact.	
4. Eligible Latino voters comprise only one in eight people in the City's population, or roughly thirteen percent of the City's population.	**Disputed and Irrelevant** Latinos comprise 16.13% of the population of Santa Monica, and 13.64% of the citizen-voting-age population of Santa Monica. The citizen-voting-age population is sometimes refered to as the "eligible voter population" but that can be somewhat deceiving for a variety of reasons. All of these proportions exceed "one-in-eight" (12.5%). Even the outdated numbers relied upon by Defendant's expert (from 2013) show that the Latino citizen-voting-age-population is greater than "one in eight" or "roughly thirteen percent." Defendant's loose and inaccurate recitation of the numbers, and conflation of "population" with "voters," reflects the infirmity of Defendant's arguments more generally. In any event, the size of the Latino community in Santa Monica is irrelevant to Defendant's liability for violating the CVRA. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	shown)."]; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789["[T]he California Voting Rights Act does not require that the plaintiff prove a 'compact majority-minority' district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.) Ely Decl. ¶ 17; Kousser Decl. Table 5 at p. 55
Reply: Undisputed. Plaintiffs do not dispute that eligible Latino voters comprise *roughly* one in eight (12.50%) of the City's population. (See Ely Decl. ¶ 17.) To the extent plaintiffs contend Latinos comprise 13.64 percent of the citizen voting-age population, that number comports with the *approximate* numbers provided by the City and remains less than one in seven (14.29%). In either case, the fact remains that the Latino population is too small and too dispersed to comprise a majority-Latino district anywhere in the City; it also remains true that Latinos are represented in numbers far greater than their share of the City's citizen voting-age population. To the extent plaintiffs contend the size of the City's Latino community is irrelevant to Plaintiffs' CVRA claim, plaintiffs misstate the legal standard. The size of the Latino community is relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The size of the Latino community is an essential aspect of determining whether Santa Monica's Latinos would have fared better under an alternative electoral scheme.	
5. Latinos' share of eligible voters each year is several percentage points below Latinos' corresponding share of all residents. Morrison Decl. p. 4, ¶ 13	**Disputed and Irrelevant** Latinos comprise 16.13% of the population of Santa Monica, and 13.64% of the citizen-voting-age population of Santa Monica. The citizen-voting-age population is sometimes refered to as the "eligible voter population" but that can be somewhat deceiving for a variety of reasons. This difference of approximately 2.5% can hardly be characterized as "several percentage points" But, in any event, the difference between the Latino proportion of Santa Monica's population, on the one hand, and the Latino proportion of Santa Monica's citizen-voting-age population, on the other hand, is principally due to the fact that a greater proportion of Latinos in Santa Monica, than their non-Hispanic white neighbors, are under the age of eighteen. This only serves to show that the Latino proportion of the citizen-voting-age population in Santa Monica is likely to increase in the near future as Latino children become adults.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	In any event, the size of the Latino community in Santa Monica is irrelevant to Defendant's liability for violating the CVRA. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a 'compact majority-minority' district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.) Ely Decl. ¶¶ 17; Kousser Decl. Table 5 at p. 55
Reply: Undisputed. Plaintiffs state that Latinos comprise 16.13 percent of the City's population and roughly 13 percent of the citizen-voting-age population. (See Ely Decl. ¶ 17.) Plaintiffs' contention that a greater portion of Latinos than non-Hispanic white individuals are under the age of eighteen does not alter those numbers. Plaintiffs' suggestion that Latinos will account for a larger percentage of the citizen-voting-age population in the *future* is irrelevant to their claim that Latinos have already been injured by the City's electoral system. Plaintiffs' failure to prove any current harm is fatal to their claim, and the mere suggestion of future harm is inadequate to defeat summary judgment. To the extent that plaintiffs contend the size of the City's Latino community is irrelevant to Plaintiffs' CVRA claim, plaintiffs misstate the legal standard. The size of the Latino community is relevant to whether Plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The size of the Latino community is an essential aspect of determining whether Santa Monica's Latinos would have fared better under an alternative electoral scheme.	
6. Latinos are widely dispersed across the City. They account for at least one in ten adults in thirty-three of the City's fifty-six election precincts. *Id* at p. 6,	**Disputed and Irrelevant** Latinos are concentrated in the Pico Neighborhood – a distinct area in the southern portion of Santa Monica. Ely Decl.¶ 19, Ex. 5; Sherman Decl. Ex. A Even if Latinos were "widely dispersed" in Santa Monica, as Defendant claims, that would have no impact on Defendant's liability for violating the

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	CVRA. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9. 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that Latinos are dispersed across the City. That the share of Latino voters is relatively high in the Pico Neighborhood does not negate that fact because plaintiffs do not and cannot claim that Latinos are concentrated enough in the Pico Neighborhood to create a contiguous, majority-Latino district. (See Ely Decl. ¶ 19; Morrison Decl. ¶ 14.) To the extent Plaintiffs contend that the dispersion of the Latino community is irrelevant to plaintiffs' CVRA claim, plaintiffs misstate the legal standard. The dispersion of the Latino community is relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The dispersion of the Latino community is an essential aspect of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
7. They do not account for the majority of residents in any of Santa Monica's precincts. The highest level of Latino concentration is observed in precinct #6250061A, where Latinos constinute 48.6% of adults. The next highest concentration is in precinct #6250071A, where Latinos constitute 33.7% of adults. *Ibid.*	**Disputed and Irrelevant** Latinos do, in fact, account for the majority of residents in precinct #6250061A. In precinct #6250071A, Latinos account for 40.71% of the population, and 36.14 of voting-age population (i.e. adults). Ely Decl. ¶ 29, Ex. 17; Even if "the highest level of Latino concentration" in Santa Monica were as Defendant claims, that would have no impact on Defendant's liability for violating the California Voting Rights Act. (Elec.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that Latinos do not constitute a majority (greater than 50%) of the adults or citizen-voting-age population in any precinct. Similarly, Plaintiffs do not dispute that Latinos do not constitute a majority (greater than 50%) of the adults or citizen-voting-age population in any district. (See Ely Decl. ¶ 29, Ex. 17.) To the extent that plaintiffs contend that the number of Latino residents in precincts #6250061A and #6250071A is slightly different than the City's estimates, that dispute is immaterial to the City's motion; whether the number of Latino residents in a single precinct is above or below 50% does not change the fact that it is impossible to construct a majority-Latino district anywhere in the City. To the extent that plaintiffs contend that the concentration of Latino voters across the City's precincts is irrelevant to plaintiffs' CVRA claim, plaintiffs misstate the legal standard. Such concentration is relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The concentration of Latino voters in individual precincts is an essential aspect of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
8. Latinos' dispersed residential pattern alone casts considerable doubt on the possibility that any contiguous aggregation of territory in the City could assemble a Latino majority among the eligible voter population of any district *Id.* at pp. 7-8, ¶ 15	**Disputed and Irrelevant** Latinos are concentrated in the Pico Neighborhood; Latinos do not have a particularly "dispersed residential pattern." Ely Decl. ¶19, Ex. 5; Shenkman Decl. Ex. A Even if Latinos could not constitute a "majority among the eligible voter population of any district" in Santa Monica, as Defendant claims, that would

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	have no impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a 'compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that Latinos' residential pattern casts doubt on the possibility that any contiguous aggregation of territory in the City could assemble a Latino majority among the eligible voter population of any district. That the share of Latino voters is relatively high in the Pico Neighborhood does not negate that fact, because plaintiffs do not and cannot claim that Latinos are concentrated enough in the Pico Neighborhood to create a contiguous, majority-Latino district. (See Ely Decl. ¶ 19, Exs. 5, 16; Shenkman Ex. A.) In fact Mr. Ely declares that the best single-member district he can create for Latinos is a 30% district. (*Id.*) To the extent that plaintiffs contend that Latinos' inability to constitute a majority of eligible voters in a district is irrelevant to their CVRA claim, plaintiffs misstate the legal standard. Latinos' inability to constitute a majority of eligible voters in a district is relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. Latinos' inability to constitute a majority of eligible voters in a district is an essential aspect of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
9. The percentage of Latino voters in any hypothetical district could be no larger than 31.6%. *Id.* at pp. 10, ¶ 23	**Disputed and Irrelevant** Though it is inconsequential, the Latino proportion of the citizen-voting-age population of the ridiculous "hypothetical district" drawn by Defendant's demographer is likely higher than he calculates, because he uses old data (from 2013) even though more recent data (2016) is now

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	available. The 2016 data shows that the Latino proportion of the citizen-voting-age population throughout Santa Monica has increased from 2013. Compare Morrison Decl. ¶ 23 with Ely Decl.¶ 17; The "percentage of Latino voters in a hypothetical district" has no impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs lack any evidence to support the pure speculation that the Latino citizen-voting-age population in the City's hypothetical district is "likely higher than [Dr. Morrison] calculates . . . ." Even if the citizen-voting-age population were slightly higher than Dr. Morrison calculates, such a small increase would be immaterial to the City's motion, as the citizen-voting-age population of that hypothetical district would still be nowhere close to half Latino. In any event, Mr. Ely declares that the best single-member district he can create for Latinos is a 30% district. (See Ely Decl. ¶ 19, Exs. 5, 16; Shenkman Ex. A.) To the extent that plaintiffs contend the percentage of Latino voters in a hypothetical district is irrelevant to plaintiffs' CVRA claim, plaintiffs misstate the legal standard. The percentage of Latino voters in a hypothetical district is relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The percentage of Latino voters in a hypothetical district is an essential aspect of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
10. That district would contain only one of every three Latino voters, leaving two of	**Disputed and Irrelevant**

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
three Latinos among other predominantly non-Latino voters, thereby systematically devaluing Latinos' voters everywhere else in the City. *Id.* at pp. 12, ¶ 26	It is unclear what Defendant is referring to by "[t]hat district." To the extent that Defendant is referring to a hypothetical district drawn by its demographer, Mr. Morrison, it is impossible to determine what proportion of Latino voters reside outside of that district because Mr. Morrison fails to provide the precise boundaries of that bizarre district. Further, some portion of Latino voters are going to reside outside of any council district; and that is true in *any* city with *any* district. As the Ninth Circuit Court of Appeals has explicitly recognized, the proportion of minority voters who reside *outside* of a remedial district is irrelevant. *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1414 ["The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan . . . ." As the Fifth Circuit stated in *Campos v. City of Baytown, Texas*, (5th Cir. 1988) 840 F.2d 1240, 1244: "The fact that there are members of the minority group outside the minority district is immaterial."].) And, it is not true that the adoption of a Latino-opportunity "crossover" district would "systematically devalu[e] Latinos' voters [sic] everywhere else in the City." On the contrary, the U.S. Supreme Court has recognized that minority "crossover" districts with a minority proportion as little as 25% may enhance the minority's voting power. See *Georgia v. Aschcroft* (2003) 539 U.S. 461, 470–471, 482 [finding that Georgia's legislative redistricting did not violate Section 5 of the FVRA even though it reduced the number of safe black districts, because it "increased the number of ["crossover"] districts with a black voting age population of between 25% and 50% by four."].)

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	Moreover, the desirability of any particular remedy has no bearing on any element of liability for Defendant's violation of the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that a hypothetical district whose citizen-voting-age population is 31.6% Latino would necessarily leave two-thirds of Latinos submerged among other predominantly non-Latino voters in other districts. Where, as here, there is no cognizable injury in the form of vote dilution that requires the City to upend its electoral system, scattering the bulk of the Latino voting population across a wide array of new districts would likely decrease the voting power of Latinos. To the extent that plaintiffs contend the desirability of certain remedies is irrelevant to Plaintiffs' CVRA claim, plaintiffs misstate the legal standard. The City's motion presents not a question of remedies, but one of injury. Liability under the CVRA requires proof of injury in the form of vote dilution, and vote dilution cannot be shown without reference to alternative election systems. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme.	
11. A 31.6% Latino district would have bizarre boundaries, lacking compactness. *Id.* at pp. 10, ¶ 23	**Disputed and Irrelevant** It is unclear what district Defendant is referring to. To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 31.6% Latino proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower Latino proportion of citizen-voting-age

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	population, is very compact and cannot possibly be called bizarre. Ely Decl. ¶¶ 26-30, Exs. 15, 16 In any event, the shape of some bizarre district drawn by Defendant's demographer has no impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that a 31.6% Latino district would have bizarre boundaries, lacking compactness. Plaintiffs affirmatively state that such a hypothetical district is bizarre, and the fact that Mr. Ely allegedly created a contiguous district with an *even lower* Latino population is immaterial to the City's motion. (See Ely Decl. ¶ 29.) Mr. Ely's hypothetical district at most demonstrates the point that, as the Latino population climbs, any hypothetical district takes on an increasingly bizarre shape, but bizarre or not, any hypothetical district would contain too few Latinos to make Latino electoral success more likely than under the current system. To the extent plaintiffs that contend boundaries of a hypothetical district are irrelevant to their CVRA claim, plaintiffs misstate the legal standard. The boundaries of a hypothetical district are relevant to whether Plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The boundaries of a hypothetical district are essential aspects of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
12. The only option to refine those boundaries would be to amputate the least populous leg of the district, eliminating 900	**Disputed and Irrelevant**

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
eligible voters, and leaving the hypothetical district with 31.3% eligible Latino voters. Even this version of the hypothetical district is severely lacking in compactness. *Id.* at pp. 10, ¶¶ 23-24	It is unclear what boundaries Defendant is referring to, or what "hypothetical district." To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 31.6% Latino proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower Latino proportion of citizen-voting-age population, is very compact and is appropriately drawn. Ely Decl. ¶¶ 26-30, Exs. 15, 16 In any event, neither the shape of some bizarre district drawn by Defendant's demographer, nor the Latino proportion of that particular district, has any impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that the only option to refine the boundaries of Dr. Morrison's hypothetical district would be to amputate the least populous leg of the district, eliminating 900 eligible voters, and leaving the hypothetical district with 31.3% eligible Latino voters. Plaintiffs affirmatively acknowledge that such a district is bizarre and non-contiguous, and the fact that Mr. Ely allegedly created a contiguous district with an *even lower* Latino population is immaterial to the City's motion. (See Ely Decl. ¶ 29.) Mr. Ely's hypothetical district at most	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
demonstrates the point that, as the Latino population climbs, any hypothetical district takes on an increasingly bizarre shape, but bizarre or not, any hypothetical district would contain too few Latinos to make Latino electoral success more likely than under the current system. To the extent that plaintiffs contend that the shape of a hypothetical district and the Latino proportion of that district are irrelevant to their CVRA claim, plaintiffs misstate the legal standard. The shape of a hypothetical district and the Latino proportion of that district are relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The shape of a hypothetical district and the Latino proportion of that district are essential aspects of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
13. Only one in approximately twenty-five of the City's eligible voters, or 4.4% of the City's eligible voters, is non-Hispanic black. FAC p. 9:12-13, ¶ 27; Morrison Decl. p. 13, ¶ 29	**Disputed and Irrelevant** In the most recent election Santa Monica City Council election (2016), an estimated 5.0% of voters were non-Hispanic black, not 4.4%. Regardless, 5.0% and 4.4% are both more than "one in approximately twenty-five." Kousser Decl. Appendix A, Tables VII-A and VII-B In any event, the size of the African American community in Santa Monica is irrelevant to Defendant's liability for violating the CVRA. (See Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a 'compact majority-minority' district is possible for liability purposes."), quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that eligible non-Hispanic black voters comprise *approximately* one in twenty-five, or 4.4 percent of the City's eligible voters. To the extent that plaintiffs contend that a slightly higher percentage of voters (5%, that is 1 in 20) in the 2016 Santa Monica City Council election were non-Hispanic black, that contention is immaterial to the City's motion because both Latino and non-Hispanic black voters are still too few in number and too	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
dispersed across the City to comprise a contiguous, majority-black-and-Latino district. To the extent that plaintiffs contend the size of the City's non-Hispanic black community is irrelevant to their CVRA claim, plaintiffs the legal standard. The size of the non-Hispanic black community is relevant to whether Plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The size of the non-Hispanic black community is an essential aspect of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
14. The City's non-Hispanic black population is widely distributed across the City. Morrison Decl. p. 13, ¶ 29	**Disputed and Irrelevant** Santa Monica's African American community is concentrated in the Pico Neighborhood – a distinct area in the southern portion of Santa Monica. Ely Decl. ¶ 29, Ex. 17; Shenkman Decl. Ex. A Even if African Americans were "widely distributed" in Santa Monica, as Defendant claims, that would have no impact on Defendant's liability for violating the CVRA. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that non-Hispanic blacks are distributed throughout the City. That the share of non-Hispanic black voters is relatively high in the Pico Neighborhood does not negate that fact because both Latino and non-Hispanic black voters are still too few in number and too dispersed across the City to comprise a contiguous, majority-black-and-Latino district. To the extent that plaintiffs contend that the distribution of the City's non-Hispanic black community is irrelevant to their CVRA claim, plaintiffs misstate the legal standard. The distribution of the City's non-Hispanic black community is relevant to whether plaintiffs can	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The distribution of the City's non-Hispanic black community is an essential aspect of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
15. Areas of the City where non-Hispanic black individuals are concentrated do not generally overlap with areas where Latinos are concentrated. *Id.* at p. 13, ¶ 30	**Disputed and Irrelevant** Both Latinos and non-Hispanic blacks are concentrated in the Pico Neighborhood. Ely Decl. ¶¶ 19, 29, Exs. 5, 17; Shenkman Decl. Ex. A The geographic compactness of the Latino and non-Hispanic black communities, or lack thereof, has no bearing on whether Defendant is liable for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ("Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that Latinos do not generally overlap with areas where non-Hispanic blacks are concentrated. Plaintiffs' vague allegations concerning concentration in the Pico Neighborhood do not address Dr. Morrison's opinion concerning the dissimilarity index, which demonstrates a relatively high degree of residential separation between blacks and Latinos. (See Morrison Decl. p. 13, ¶ 30, fn. 2; Ely Decl. ¶ 19, 29, Exs. 5, 17; Shenkman Decl. Ex. A.) That the share of non-Hispanic black and Latino voters is relatively high in the Pico Neighborhood does not negate that fact because the two groups can still reside in	

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different parts of the Pico Neighborhood. Moreover, plaintiffs do not and cannot claim that non-Hispanic blacks and Latinos are concentrated enough in the Pico Neighborhood to create a contiguous, majority-non-Hispanic-black-and-Latino district. To the extent that plaintiffs contend that the geographic compactness of the City's Latino and non-Hispanic black communities is irrelevant to plaintiffs' CVRA claim, plaintiffs misstate the legal standard. The compactness of Latino and non-Hispanic black communities is relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The compactness of Latino and non-Hispanic black communities is an essential aspect of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
16. The lack of overlap of Latinos and non-Hispanic black residents alone casts doubt on the ability to create a contiguous aggregation of territory within the City where there could be a Latino-plus-black majority among the eligible voter population. *Ibid.*	**Disputed and Irrelevant** Both Latinos and non-Hispanic blacks are concentrated in the Pico Neighborhood. Ely Decl. ¶¶ 19, 29, Exs. 5, 17; Shenkman Decl. Ex. A Even if Latinos and African Americans could not, collectively, constitute a "majority among the eligible voter population" of an equipopulous district in Santa Monica, as Defendant claims, that would have no impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy.']; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."); *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
Reply: Undisputed. Plaintiffs do not dispute that Latinos do not generally overlap with areas where non-Hispanic blacks are concentrated. Plaintiffs' vague allegations concerning concentration in the Pico Neighborhood do not address Dr. Morrison's opinion concerning the dissimilarity index, which demonstrates a relatively high degree of residential separation between blacks and Latinos. (See Morrison Decl. p. 13, ¶ 30 n.2; Ely Decl. ¶ 19, 29, Exs. 5, 17; Shenkman Decl. Ex. A.) That the share of non-Hispanic black and Latino voters is relatively high in the Pico Neighborhood does not negate that fact because the two groups can still reside in different parts of the Pico Neighborhood. Moreover, plaintiffs do not and cannot claim that non-Hispanic blacks and Latinos are concentrated enough in the Pico Neighborhood to create a contiguous, majority-non-Hispanic-black-and-Latino district. To the extent that plaintiffs contend that the inability to draw a majority-non-Hispanic-black-and-Latino district is irrelevant to their CVRA claim, plaintiffs misstate the legal standard. The inability to draw a majority Latino and non-Hispanic black district is relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The inability to draw a majority Latino and non-Hispanic black district is an essential aspect of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
17. Even combined, Latinos and non-Hispanic blacks do not constitute the majority of any precinct. The concentration of Latino and non-Hispanic black voters cannot possibly exceed forty-one percent of any district's eligible voters. *Id.* at p. 15, ¶ 33	**Disputed and Irrelevant** Latinos and non-Hispanic blacks do, in fact, account for the majority of residents in precinct #6250061A; indeed, they account for a significant majority – more than two-thirds of all residents. Latinos and non-Hispanic blacks also account for the majority of residents in at least two other Santa Monica voting precincts – #6250025B and #6250062A. Ely Decl.¶ 29, Ex. 17; Even if "the highest level of Latino concentration" in Santa Monica were as Defendant claims, that would have no impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that Latinos and non-Hispanic black voters cannot possibly exceed 41 percent of any district's *eligible voters*. To the extent plaintiffs contend Latinos and non-Hispanic blacks account for a slightly higher number of residents in precincts #6250061A, #6250025B, and #6250062A than the City estimates, plaintiffs try to introduce a dispute that is immaterial to the City's motion, because the number of eligible voters in any district would still not exceed 50 percent. To the extent that plaintiffs contend that Latinos and non-Hispanic blacks' inability to constitute a majority in any precinct is irrelevant to plaintiffs' CVRA claim, plaintiffs misstate the legal standard. Latinos and non-Hispanic blacks' inability to constitute a majority in any precinct is relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. Latinos and non-Hispanic blacks' inability to constitute a majority in any precinct is an essential aspect of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
18. A district with even forty-one percent non-Hispanic black and Latino eligible voters would necessarily have bizarre boundaries and be severely lacking in compactness. *Id.* at p. 3, ¶ 9	**Disputed and Irrelevant** It is unclear what district Defendant is referring to. To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 41% Latino / African American proportion of the citizen-voting-age-population, that district is certainly bizarre, However, the district drawn by Mr. Ely, with an only slightly lower combined proportion of Latinos and African Americans, is very compact and cannot possibly be called bizarre. Ely Decl. ¶¶ 26-30, Exs. 15, 16 In any event, the shape of some bizarre district drawn by Defendant's demographer has no impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that a district whose population would be 41 percent non-Hispanic black and Latino would have bizarre boundaries, lacking compactness. Plaintiffs affirmatively acknowledge that such a district is bizarre and non-contiguous, and the fact that Mr. Ely allegedly created a contiguous district with an *even lower* Latino and non-Hispanic black population is immaterial to the City's motion. (See Ely Decl. ¶ 29.) Mr. Ely's hypothetical district at most demonstrates the point that, as the Latino and non-Hispanic black population climbs, any hypothetical district takes on an increasingly bizarre shape, but bizarre or not, any hypothetical district would contain too few Latinos and non-Hispanic blacks to make Latino electoral success more likely than under the current system. To the extent that plaintiffs contend the boundaries of a hypothetical district are irrelevant to their CVRA claim, plaintiffs misstate the legal standard. The boundaries of a hypothetical district are relevant to whether Plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The boundaries of a hypothetical district are essential aspects of determining whether Santa Monica's Latinos would have fared better under certain alternative electoral schemes.	
19. The proposed non-Hispanic black and Latino district would relegate seventy-two percent of the City's Latino voters, and fifty-seven percent of the City's non-Hispanic black voters, to territory outside of the hypothetical district. *Id.* at p. 16, ¶ 34	**Disputed and Irrelevant** No district has been "proposed" by Plaintiffs, certainly not one analyzed by Defendant or its expert, Mr. Morrison. To the extent that Defendant is referring to a hypothetical district drawn by its expert, Mr. Morrison, some portion of Latino voters and African American voters are going to reside outside of any council district; and that is true in *any* city with *any* district. As the Ninth Circuit Court of Appeals has explicitly recognized,

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	the proportion of minority voters who reside *outside* of a remedial district is irrelevant. *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1414 ["The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan . . . ." As the Fifth Circuit stated in *Campos v. City of Baytown, Texas*, (5th Cir. 1988) 840 F.2d 1240, 1244: The fact that there are members of the minority group outside the minority district is immaterial."].) Moreover, the desirability of any particular remedy has no bearing on any element of liability for Defendant's violation of the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jaureui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that a hypothetical district with 41 percent Latinos and non-Hispanic blacks would necessarily relegate 72 percent of Latinos and 57 percent of non-Hispanic blacks to territory outside of that district. Where, as here, there is no cognizable injury in the form of vote dilution that requires the City to upend its electoral system, scattering the bulk of the Latino voting population across a wide array of new districts would likely decrease the voting power of Latinos. To the extent that plaintiffs contend the desirability of certain remedies is irrelevant to Plaintiffs' CVRA claim, plaintiffs misstate the legal standard. The City's motion presents not a question of remedies, but one of injury. Liability under the CVRA requires proof of	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
injury in the form of vote dilution, and vote dilution cannot be shown without reference to alternative election systems. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme.	
20. This would submerge seventy-two percent of Latinos and fifty-seven percent of non-Hispanic black voters among other predeominantly non-Latino voters, and would devalue the votes of most Latinos and non-Hispanic blacks in the City. *Id.* at p. 16, ¶ 36	**Disputed and Irrelevant** It is unclear what Defendant is referring to by "[t]his would submerge ..." To the extent that Defendant is referring to a hypothetical district drawn by its demographer, Mr. Morrison, it is impossible to determine what proportion of Latino and African American voters reside outside of that district because Mr. Morrison fails to provide the precise boundaries of that bizarre district. Further, some portion of Latino and African American voters are going to reside outside of any council district; and that is true in *any* city with *any* district. As the Ninth Circuit Court of Appeals has explicitly recognized, the proportion of minority voters who reside *outside* of a remedial district is irrelevant. *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1414 ["The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan . . . ." As the Fifth Circuit stated in *Campos v. City of Baytown, Texas*, (5th Cir. 1988) 840 F.2d 1240, 1244: "The fact that there are members of the minority group outside the minority district is immaterial."].) And, it is not true that the adoption of a Latino and/or African American opportunity "crossover" district "would devalue the votes of most Latinos and non-Hispanic blacks in the City." On the contrary, the U.S. Supreme Court has recognized that minority "crossover" districts with a minority proportion as little as 25% may enhance the minority's voting power. See *Georgia v. Aschcroft* (2003) 539 U.S. 461, 470-471, 482 [finding that Georgia's legislative redistricting did not violate Section 5 of the FVRA even though it reduced the number of safe black districts, because it

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	"increased the number of ["crossover"] districts with a black voting age population of between 25% and 50% by four."].) Moreover, the desirability of any particular remedy has no bearing on any element of liability for Defendant's violation of the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that a hypothetical district with 41 percent Latinos and non-Hispanic blacks would necessarily submerge 72 percent of Latinos and 57 percent of non-Hispanic blacks among other predominantly non-Latino voters. Where, as here, there is no cognizable injury in the form of vote dilution that requires the City to upend its electoral system, scattering the bulk of the Latino voting population across a wide array of new districts would likely decrease the voting power of Latinos. To the extent that plaintiffs contend the desirability of certain remedies is irrelevant to Plaintiffs' CVRA claim, plaintiffs misstate the legal standard. The City's motion presents not a question of remedies, but one of injury. Liability under the CVRA requires proof of injury in the form of vote dilution, and vote dilution cannot be shown without reference to alternative election systems. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme.	
21. Slightly improving compactness issues in such a hypothetical district, which almost certainly would be required, would take the Latino or non-Hispanic black share of the vote to 39.6%.	**Disputed and Irrelevant** It is unclear what "hypothetical district" Defendant is referring to, or specifically how "compactness issues" would be "improv[ed]" (perhaps by modifying the boundaries in some unspecified way

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
Id. at pp. 15-16, ¶ 33	to the unspecified "hypothetical district"). To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 41% Latino and African American proportion of the citizen-voting-age-population, that district could certainly be more compact. However, the district drawn by Mr. Ely, with an only slightly lower Latino and African American proportion of citizen-voting-age population, is very compact and is appropriately drawn. Ely Decl. ¶¶ 26-30, Exs. 15, 16 In any event, neither the shape of some hypothetical district drawn by Defendant's demographer, nor the Latino and/or African American proportions of that particular district, nor any hypothetical modifications of Defendant's unspecified hypothetical district, has any impact on Defendant's liability for violating the California Voting Rights Act. (Elec. Code, § 14028(c) ["The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, but may be a factor in determining an appropriate remedy."]; also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002. at p. 3 ["Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)."]; *Jauregui, supra*, 226 Cal.App.4th at p. 789 ["[T]he California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."], quoting *Sanchez, supra*, 145 Cal.App.4th at p. 669.)
Reply: Undisputed. Plaintiffs do not dispute that slightly improving compactness issues in such a hypothetical district, which almost certainly would be required, would take the Latino or non-Hispanic black share of the vote to 39.6%. Plaintiffs affirmatively acknowledge that such a district is bizarre and non-contiguous, and the fact that Mr. Ely allegedly created a contiguous	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
district with an *even lower* Latino and non-Hispanic black population is immaterial to the City's motion. (See Ely Decl. ¶ 29.) Mr. Ely's hypothetical district at most demonstrates the point that, as the Latino and non-Hispanic black population climbs, any hypothetical district takes on an increasingly bizarre shape, but bizarre or not, any hypothetical district would contain too few Latinos and non-Hispanic blacks to make Latino electoral success more likely than under the current system. To the extent plaintiffs contend the shape of a hypothetical district and the Latino and non-Hispanic black proportions of that district are irrelevant to their CVRA claim, plaintiffs misstate the legal standard. The shape of a hypothetical district, and the Latino and non-Hispanic black proportions of that district, are relevant to whether plaintiffs can demonstrate vote dilution, which is required to state a claim under the CVRA. Plaintiffs can demonstrate vote dilution only if Santa Monica's Latinos would have fared better under an alternative electoral scheme. The shape of a hypothetical district, and the Latino and non-Hispanic black proportions of that district, are essential aspects of determining whether Santa Monica's Latinos would have fared better under an alternative electoral scheme.	

Issue No. 2: The second cause of action for violation of the California Constitution's Equal Protection Clause should be resolved in favor of Defendant because Plaintiffs have no evidence that the City's electoral scheme causes a disparate impact on minorities that was intended by the relevant contemporaneous decisionmakers.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
22. This section incorporates by reference all statements in paragraphs 1-21 of this Statement of Undisputed Material Facts.	Because the applicability of Defendant's purportedly undisputed facts differs depending on which cause of action they relate to, each is addressed separately below in connection with Plaintiffs' second cause of action.
The City addresses each of Plaintiffs' responses separately below in connection with Plaintiffs' second cause of action.	
22-1. In 1915, the City transitioned to an at-large, commission form of government. Under this system, voters elected three commissioners – one for public safety, a second for finance, and a third for public works.	**Disputed but Irrelevant** Santa Monica's adoption of a commission form of government occurred in 1914, not 1915. (Kousser Decl ¶ 78, Exs. 4-6). In any event, Defendant has not had a commission form of government since 1946, and the system of government under which Defendant operated more

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
Adler Decl. Ex. H (Shenkman Decl. in Opposition to Motion for Judgment on the Pleadings) p. 2	than 70 years ago is entirely irrelevant to Plaintiffs' Equal Protection claim. Rather, the current system of at-large elections for Defendant's council, originated in 1946. To the extent that Defendant includes this reference to Defendant's system of government from 1914 to 1946 in order to suggest that the selection of at-large elections in 1946 could not have had a discriminatory impact, Defendant is wrong as a matter of law. See *Garza v. County of Los Angeles* (CD.Cal. 1990) 756 F.Supp. 1298, 1305 [finding Los Angeles County Board of Supervisors intentionally discriminated against Latinos by *maintaining* election district boundaries that did not include a Latino-majority district – "The Court finds, on the evidence presented, that the Supervisors acted with the intent to maintain the fragmentation of the Hispanic vote."]; *Bolden v. Mobile* (S.D. Ala. 1982) 542 F.Supp. 1050, 1060-61, 1074-76 [finding 1874 enactment of at-large elections to have been intentionally discriminatory despite the fact that at-large election system was already in place prior to 1874] So, whether Defendant's 1946 charter amendment is characterized as *adopting* an at-large elected council, or *maintaining* at-large elections, makes no difference – the fact remains that a purpose of that charter provision was to keep racial minorities from electing their preferred representatives, and that means it is invalid. In 1946, Defendant selected an at-large election system over a district election system (or at least hybrid system with some council members elected by districts) with a discriminatory intent, and has maintained that system with a discriminatory intent. Moreover, the at-large election system has had a discriminatory impact. *See Bolden v. City of Mobile* (S.D. Ala. 1982) 542 F.Supp. 1070, 1076 (relying on the lack of success of black candidates over several decades to show disparate impact, even without a showing that black voters voted for each of the particular black candidates going back to 1874); *also see Jenkins*, 4 F.3d at 1126 ("experience does demonstrate that minority candidates will tend to

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	be candidates of choice among the minority community").
Reply: Undisputed. Plaintiff does not dispute that Santa Monica transitioned to an at-large commission form of government in and around 1914. (See Kousser Decl. at p. 6:15-16, ¶ 12.) Whether the at-large commission form of government was implemented in 1914 or 1915 is immaterial to the City's motion. To the extent plaintiffs contend that the implementation of the at-large method of election in 1915 is irrelevant to plaintiffs' Equal Protection claim, Plaintiffs are wrong as a matter of law. It was in 1915 that the City adopted an at-large method of election, and so that decision is certainly relevant to plaintiffs' Equal Protection claim. Courts look not only at when a method of election was reaffirmed, but also when it was initially adopted and implemented. Thus, to the extent 1946 is relevant to plaintiffs' claim (as they content), 1915 is equally relevant. (See *Personnel Adm'r of Mass v. Feeney* (1979) 442 U.S. 256, 279 [explaining discriminatory intent refers to the intent of the legislature when "*select[ing] or reaffirm[ing]* a particular course of action," italics added].)	
22-2. In 1946, the City adopted its present council-mayor form of government. The Council consists of seven members. Elections are held every other year on an at-large basis. Terms run four years. Adler Decl. Ex. G (Santa Monica Charter) p. 9; FAC p. 2:8, ¶ 1, p. 5:20-22, ¶ 16, p. 5:27-28, ¶ 18.	**Disputed** Defendant's current form of government, adopted in 1946, is council-manager, not "council-mayor." Except in that respect, Plaintiffs agree – Defendant adopted its current at-large election system for all seven of its council positions in 1946. (Kousser Decl. ¶¶ 79- 94).
Reply: Undisputed. Plaintiffs do not dispute that the City adopted its present form of government in 1946. To the extent that the City and plaintiffs refer to this form of government differently, such differences are immaterial. The parties agree on the nature of the electoral system and the date of its adoption.	
22-3. Under the at-large method of election, all eligible voters in the City elect members of the City Council. FAC. 5:25-26, ¶ 17	**Undisputed**
Reply: Undisputed. Plaintiffs do not dispute this material fact.	
22-4. Eligible Latino voters comprise only one in eight people in the City's population, or roughly thirteen percent of the City's population.	**Disputed and Irrelevant** Latinos comprise 16.13% of the population of Santa Monica, and 13.64% of the citizen-voting-age population of Santa Monica The citizen-voting-age population is sometimes refered to as the "eligible voter population" but that can be

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	somewhat deceiving for a variety of reasons. All of these proportions exceed "one-in-eight" (12.5%). Even the outdated numbers relied upon by Defendant's expert (from 2013) show that the Latino citizen-voting-age-population is greater than "one in eight" or "roughly thirteen percent." Defendant's loose and inaccurate recitation of the numbers, and conflation of "population" with "voters," reflects the infirmity of Defendant's arguments more generally. In any event, the current size of the Latino community in Santa Monica is irrelevant to Plaintiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion in a city. Ely Decl. ¶ 17; Kousser Decl. Table 5 at p. 55
Reply: Undisputed. Plaintiffs do not dispute that eligible Latino voters comprise *roughly* one in eight (12.50%) of the City's population. (See Ely Decl. ¶ 17.) To the extent plaintiffs contend Latinos comprise 13.64 percent of the citizen voting-age population, that number comports with the *approximate* numbers provided by the City and remains less than one in seven (14.29%). In either case, the fact remains that the Latino population is too small and too dispersed to comprise a majority-Latino district anywhere in the City; it also remains true that Latinos are represented in numbers far greater than their share of the City's citizen voting-age population. To the extent Plaintiffs contend the size of the City's Latino community is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The size of minority groups is relevant to that question; for example, if the minority group was too small to elect candidates of its choice under *any* electoral scheme, then the City's at-large electoral scheme could not have *caused* any disparate impact.	
22-5. Latinos share of eligible voters each year is several percentage points below Latinos' corresponding share of all residents.	**Disputed and Irrelevant** Latinos comprise 16.13% of the population of Santa Monica, and 13.64% of the citizen-voting-

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
Morrison Decl. p. 4, ¶ 13	age population of Santa Monica. The citizen-voting-age population is sometimes refered to as the "eligible voter population" but that can be somewhat deceiving for a variety of reasons. This difference of approximately 2.5% can hardly be characterized as "several percentage points" But, in any event, the difference between the Latino proportion of Santa Monica's population, on the one hand, and the Latino proportion of Santa Monica's citizen-voting-age population, on the other hand, is principally due to the fact that a greater proportion of Latinos in Santa Monica, than their non-Hispanic white neighbors, are under the age of eighteen. This only serves to show that the Latino proportion of the citizen-voting-age population in Santa Monica is likely to increase in the near future as Latino children become adults. In any event, the current size of the Latino community in Santa Monica is irrelevant to Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion in a city. Ely Decl. ¶¶ 17, 29; Kousser Decl. Table 5 at p. 55
Reply: Undisputed. Plaintiffs state that Latinos comprise 16.13 percent of the City's population and roughly 13 percent of the citizen-voting-age population. (See Ely Decl. ¶ 17.) Plaintiffs' contention that a greater portion of Latinos than non-Hispanic white individuals are under the age of eighteen does not alter those numbers. Plaintiffs' suggestion that Latinos will account for a larger percentage of the citizen-voting-age population in the *future* is irrelevant to their claim that Latinos have already been injured by the City's electoral system. Plaintiffs' failure to prove any current harm is fatal to their claim, and the mere suggestion of future harm is inadequate to defeat summary judgment. To the extent Plaintiffs contend the size of the City's Latino community is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The size of	

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minority groups is relevant to that question; for example, if the minority group was too small to elect candidates of its choice under *any* electoral scheme, then the City's at-large electoral scheme could not have *caused* any disparate impact.	
22-6. Latinos are widely dispersed across the City. They account for at least one in ten adults in thirty-three of the City's fifty-six election precincts. *Id.* at p. 6,	**Disputed and Irrelevant** Latinos are concentrated in the Pico Neighborhood – a distinct area in the southern portion of Santa Monica. Ely Decl. ¶ 19, Ex. 5; Shenkman Decl. Ex. A In any event, the degree to which Latinos are currently "dispersed" across Santa Monica is irrelevant to Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that Latinos are dispersed across the City. That the share of Latino voters is relatively high in the Pico Neighborhood does not negate that fact because plaintiffs do not and cannot claim that Latinos are concentrated enough in the Pico Neighborhood to create a contiguous, majority-Latino district. (See Ely Decl. ¶ 19; Morrison Decl. ¶ 14.) To the extent Plaintiffs contend the dispersion of the City's Latino community is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) Dispersion of the City's Latinos is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and success under many of these alternative schemes requires that minorities not be dispersed.	
22-7. They do not account for the majority of residents in any of Santa Monica's precincts. The highest level of Latino concentration is observed in precinct #6250061A, where Latinos constitute 48.6% of adults. The next highest concentration is in precinct #6250071A, where Latinos constitute 33.7% of adults.	**Disputed and Irrelevant** Latinos do, in fact, account for the majority of residents in precinct #6250061A. In precinct #6250071A, Latinos account for 40.71% of the population, and 36.14 of voting-age population (i.e. adults).

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Ibid.	Ely Decl. ¶ 29, Ex. 17 Even if currently "the highest level of Latino concentration" in Santa Monica were as Defendant claims, that would have no impact on Defendant's Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that Latinos do not constitute a majority (greater than 50%) of the adults or citizen-voting-age population in any precinct. Similarly, Plaintiffs do not dispute that Latinos do not constitute a majority (greater than 50%) of the adults or citizen-voting-age population in any district. (See Ely Decl. ¶ 29, Ex. 17.) To the extent that plaintiffs contend that the number of Latino residents in precincts #6250061A and #6250071A is slightly different than the City's estimates, that dispute is immaterial to the City's motion; whether the number of Latino residents in a single precinct is above or below 50% does not change the fact that it is impossible to construct a majority-Latino district anywhere in the City. To the extent Plaintiffs contend the Latino concentration in a precinct is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) Latino concentration in a precinct is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and success under many of these alternative schemes depends on minority concentration.	
22-8. Latinos' dispersed residential pattern alone casts considerable doubt on the possibility that any contiguous aggregation of territory in the City could assemble a Latino majority among the eligible voter population of any district *Id.* at pp. 7.8, ¶ 15	**Disputed and Irrelevant** Latinos are concentrated in the Pico Neighborhood; Latinos do not have a particularly "dispersed residential pattern." Ely Decl, ¶ 19, Ex. 5; Shenkman Decl. Ex. A Even if Latinos could not constitute a "majority among the eligible voter population of any district" in Santa Monica, as Defendant claims, that would have no impact on Plaitiffs' Equal Protection claim. Racial

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	minorities can be discriminated against regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that Latinos' residential pattern casts doubt on the possibility that any contiguous aggregation of territory in the City could assemble a Latino majority among the eligible voter population of any district. That the share of Latino voters is relatively high in the Pico Neighborhood does not negate that fact, because plaintiffs do not and cannot claim that Latinos are concentrated enough in the Pico Neighborhood to create a contiguous, majority-Latino district. (See Ely Decl. ¶ 19, Exs. 5, 16; Shenkman Ex. A.) In fact Mr. Ely declares that the best single-member district he can create for Latinos is a 30% district. (*Id.*) To the extent Plaintiffs contend Latinos' inability to constitute a majority of the eligible voter population is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) Latinos' inability to constitute a majority of the eligible voter population is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and success under many of these alternative schemes depends on minority concentration being high enough in a particular area that minorities constitute the majority of the eligible voter population.	
22-9. The percentage of Latino voters in any hypothetical district could be no larger than 31.6%. *Id.* at pp. 10, ¶ 23	**Disputed and Irrelevant** Though it is inconsequential, the Latino proportion of the citizen-voting-age population of the ridiculous "hypothetical district" drawn by Defendant's demographer is likely higher than he calculates, because he uses old data (from 2013) even though more recent data (2016) is now available. The 2016 data shows that the Latino proportion of the citizen-voting-age population throughout Santa Monica has increased from 2013. In any event, the current "percentage of Latino voters in a hypothetical district" has no impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and

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	regardless of whether they are concentrated in one portion of a city. Compare Morrison Decl. ¶ 23 with Ely Decl. ¶ 17
Reply: Undisputed. Plaintiffs lack any evidence to support the pure speculation that the Latino citizen-voting-age population in the City's hypothetical district is "likely higher than [Dr. Morrison] calculates . . . ." Even if the citizen-voting-age population were slightly higher than Dr. Morrison calculates, such a small increase would be immaterial to the City's motion, as the citizen-voting-age population of that hypothetical district would still be nowhere close to half Latino. In any event, Mr. Ely declares that the best single-member district he can create for Latinos is a 30% district. (See Ely Decl. ¶ 19, Exs. 5, 16; Shenkman Ex. A.) To the extent Plaintiffs contend the percentage of Latino voters in a hypothetical district is irrelevant to Plaintiffs' Equal Protection claim, Plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The percentage of Latino voters in a hypothetical district is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and success under many of these alternative schemes depends on minority concentration being high enough in a particular area that minorities constitute a majority in that district.	
22-10. That district would contain only one of every three Latino voters, leaving two of three Latinos among other predeominantly non-Latino voters, thereby systematically devaluing Latinos' voters everywhere else in the City. *Id. at* pp. 12, ¶ 26	**Disputed and Irrelevant** It is unclear what Defendant is referring to by "[t]hat district." To the extent that Defendant is referring to a hypothetical district drawn by its demographer, Mr. Morrison, it is impossible to determine what proportion of Latino voters reside outside of that district because Mr. Morrison fails to provide the precise boundaries of that bizarre district. Further, some portion of Latino voters are going to reside outside of any council district; and that is true in any city with *any* district. As the Ninth Circuit Court of Appeals has explicitly recognized, the proportion of minority voters who reside *outside* of a remedial district is irrelevant. *Gomez v. City of*

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	Watsonville (9th Cir. 1988) 863 F.2d 1407, 1414 ["The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan . . . ." As the Fifth Circuit stated in *Campos v. City of Baytown, Texas*, (5th Cir. 1988) 840 F.2d 1240, 1244: "The fact that there are members of the minority group outside the minority district is immaterial."].) And, it is not true that the adoption of a Latino-opportunity "crossover" district would "systematically devalu[e] Latinos' voters [sic] everywhere else in the City." On the contrary, the U.S. Supreme Court has recognized that minority "crossover" districts with a minority proportion as little as 25% may enhance the minority's voting power. See *Georgia v. Aschcroft* (2003) 539 U.S. 461, 470-471, 482 [finding that Georgia's legislative redistricting did not violate Section 5 of the FVRA even though it reduced the number of safe black districts, because it "increased the number of ["crossover"] districts with a black voting age population of between 25% and 50% by four."].) In any event, the proportion of Latino voters that would currently lie outside some unspecified hypothetical district has no impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that a hypothetical district whose citizen-voting-age population is 31.6% Latino would necessarily leave two-thirds of Latinos submerged among other predominantly non-Latino voters in other districts. Where, as here, there is no cognizable injury in the form of vote dilution that requires the City to upend its electoral system, scattering the bulk of the Latino voting population across a wide array of new districts would likely decrease the voting power of Latinos. To the extent Plaintiffs contend the proportion of Latino voters outside a hypothetical district is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See	

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Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc. (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The proportion of Latino voters outside a hypothetical district is relevant to assessing the extent to which an alternative scheme would benefit some or all members of the allegedly injured minority group. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact; however, success under these alternative schemes for a subset of the minority group cannot be viewed in a vacuum. The at-large method of election cannot *cause* disparate impact if the only alternative is a different scheme that produces even more disparate results.	
22-11. A 31.6% Latino district would have bizarre boundaries, lacking compactness. *Id.* at pp. 10, ¶ 23	**Disputed and Irrelevant** It is unclear what district Defendant is referring to. To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 31.6% Latino proportion of the citizen-voting-age population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower Latino proportion of citizen-voting-age population, is very compact and cannot possibly be called bizarre. In any event, the boundaries of some unspecified hypothetical district has no impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city. Ely Decl. ¶¶ 26-30. Exs. 15, 16
Reply: Undisputed. Plaintiffs do not dispute that a 31.6% Latino district would have bizarre boundaries, lacking compactness. Plaintiffs affirmatively state that such a hypothetical district is bizarre, and the fact that Mr. Ely allegedly created a contiguous district with an *even lower* Latino population is immaterial to the City's motion. (See Ely Decl. ¶ 29.) Mr. Ely's hypothetical district at most demonstrates the point that, as the Latino population climbs, any hypothetical district takes on an increasingly bizarre shape, but bizarre or not, any hypothetical district would contain too few Latinos to make Latino electoral success more likely than under the current system. To the extent Plaintiffs contend the boundaries of a hypothetical district are irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that	

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there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The boundaries of a hypothetical district are relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and the constitutionality of these alternative schemes often depends on the contiguous shape and boundaries of a particular district. If the alternative schemes are not constitutional, then the City's at-large method of election could not have *caused* disparate impact.	
22-12. The only option to refine those boundaries would be to amputate the least populous leg of the district, eliminating 900 eligible voters, and leaving the hypothetical district with 31.3% eligible Latino voters. Even this version of the hypothetical district is severely lacking in compactness. *Id.* at pp. 10, ¶¶ 23-24	**Disputed and Irrelevant** It is unclear what boundaries Defendant is referring to, or what "hypothetical district." To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 31.6% Latino proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower Latino proportion of citizen-voting-age population, is very compact and is appropriately drawn. In any event, neither the shape of some bizarre district drawn by Defendant's demographer, nor the Latino proportion of that particular district, has any impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city. Ely Decl. ¶¶ 26-30, Exs. 15, 16
Reply: Undisputed. Plaintiffs do not dispute that the only option to refine the boundaries of Dr. Morrison's hypothetical district would be to amputate the least populous leg of the district, eliminating 900 eligible voters, and leaving the hypothetical district with 31.3% eligible Latino voters. Plaintiffs affirmatively acknowledge that such a district is bizarre and non-contiguous, and the fact that Mr. Ely allegedly created a contiguous district with an *even lower* Latino population is immaterial to the City's motion. (See Ely Decl. ¶ 29.) Mr. Ely's hypothetical district at most demonstrates the point that, as the Latino population climbs, any hypothetical district takes on an increasingly bizarre shape, but bizarre or not, any hypothetical district would contain too few Latinos to make Latino electoral success more likely than under the current system. To the extent Plaintiffs contend the shape of a hypothetical district is irrelevant to Plaintiffs' Equal Protection	

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claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The shape of a hypothetical district is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and the constitutionality of these alternative schemes often depends on the contiguous shape and boundaries of a particular district. If the alternative schemes are not constitutional, then the City's at-large method of election could not have *caused* disparate impact.	
22-13. Only one in approximately twenty-five of the City's eligible voters, or 4.4% of the City's eligible voters, is non-Hispanic black. FAC p. 9:12-13, ¶ 27; Morrison Decl. p. 13, ¶ 29	**Disputed and Irrelevant** In the most recent Santa Monica City Council election (2016), an estimated 5.0% of voters were non-Hispanic black, not 4.4%. Regardless, 5.0% and 4.4% are both more than "one in approximately twenty-five." In any event, the current size of the African American community in Santa Monica has no impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city. Kousser Decl. Appendix A, Tables VII-A and VII-B
Reply: Undisputed. Plaintiffs do not dispute that eligible non-Hispanic black voters comprise *approximately* one in twenty-five, or 4.4 percent of the City's eligible voters. To the extent that plaintiffs contend that a slightly higher percentage of voters (5%, that is 1 in 20) in the 2016 Santa Monica City Council election were non-Hispanic black, that contention is immaterial to the City's motion because both Latino and non-Hispanic black voters are still too few in number and too dispersed across the City to comprise a contiguous, majority-black-and-Latino district. To the extent Plaintiffs contend the size of the City's non-Hispanic black community is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the	

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amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The size of minority groups is relevant to that question; for example, if the minority group was too small to elect candidates of its choice under *any* electoral scheme, then the City's at-large electoral scheme could not have *caused* any disparate impact.	
22-14. The City's non-Hispanic black population is widely distributed across the City. Morrison Decl. p. 13, ¶ 29	**Disputed and Irrelevant** Santa Monica's African American community is concentrated in the Pico Neighborhood – a distinct area in the southern portion of Santa Monica. Ely Decl. ¶ 29, Ex. 17; Shenkman Decl. Ex. A Even if African Americans were "widely distributed" in Santa Monica, as Defendant claims, that would have no impact an Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that non-Hispanic blacks are distributed throughout the City. That the share of non-Hispanic black voters is relatively high in the Pico Neighborhood does not negate that fact because both Latino and non-Hispanic black voters are still too few in number and too dispersed across the City to comprise a contiguous, majority-black-and-Latino district. To the extent Plaintiffs contend the distribution of the City's non-Hispanic black community is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) Distribution of the City's non-Hispanic black population is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
method of election *caused* disparate impact, and success under many of these alternative schemes requires that minorities not be dispersed.	
22-15. Areas of the City where non-Hispanic black individuals are concentrated do not generally overlap with areas where Latinos are concentrated. *Id.* at p. 13, ¶ 30	**Disputed and Irrelevant** Both Latinos and non-Hispanic blacks are concentrated in the Pico Neighborhood. Ely Decl. ¶ 29, Ex. 17; Shenkman Decl. Ex. A The geographic compactness of the Latino and non-Hispanic black communities, or lack thereof, has no bearing on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that Latinos do not generally overlap with areas where non-Hispanic blacks are concentrated. Plaintiffs' vague allegations concerning concentration in the Pico Neighborhood do not address Dr. Morrison's opinion concerning the dissimilarity index, which demonstrates a relatively high degree of residential separation between blacks and Latinos. (See Morrison Decl. p. 13, ¶ 30, fn. 2; Ely Decl. ¶ 19, 29, Exs. 5, 17; Shenkman Decl. Ex. A.) That the share of non-Hispanic black and Latino voters is relatively high in the Pico Neighborhood does not negate that fact because the two groups can still reside in different parts of the Pico Neighborhood. Moreover, plaintiffs do not and cannot claim that non-Hispanic blacks and Latinos are concentrated enough in the Pico Neighborhood to create a contiguous, majority-non-Hispanic-black-and-Latino district. To the extent Plaintiffs contend compactness of the City's Latino and non-Hispanic black communities is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) Latino and non-Hispanic black compactness is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and success under many of these alternative schemes depends on minority compactness.	
22-16. The lack of overlap of Latinos and non-Hispanic black residents alone casts doubt on the	**Disputed and Irrelevant**

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ability to create a contiguous aggregation of territory within the City where there could be a Latino-plus-black majority among the eligible voter population. *Ibid.*	Both Latinos and non-Hispanic blacks are concentrated in the Pico Neighborhood. Ely Decl. ¶ 29, Ex. 17; Shenkman Decl. Ex. A Even if currently Latinos and African Americans could not, collectively, constitute a "majority among the eligible voter population" of an equipopulous district in Santa Monica, as Defendant claims, that would have no impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that Latinos do not generally overlap with areas where non-Hispanic blacks are concentrated. Plaintiffs' vague allegations concerning concentration in the Pico Neighborhood do not address Dr. Morrison's opinion concerning the dissimilarity index, which demonstrates a relatively high degree of residential separation between blacks and Latinos. (See Morrison Decl. p. 13, ¶ 30 n.2; Ely Decl. ¶ 19, 29, Exs. 5, 17; Shenkman Decl. Ex. A.) That the share of non-Hispanic black and Latino voters is relatively high in the Pico Neighborhood does not negate that fact because the two groups can still reside in different parts of the Pico Neighborhood. Moreover, plaintiffs do not and cannot claim that non-Hispanic blacks and Latinos are concentrated enough in the Pico Neighborhood to create a contiguous, majority-non-Hispanic-black-and-Latino district. To the extent Plaintiffs contend Latinos and non-Hispanic blacks' inability to constitute a majority of the eligible voter population is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) Latinos and non-Hispanic blacks' inability to constitute a majority of the eligible voter population is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and success under many of these alternative schemes depends on minority concentration being high enough in a particular area that minorities constitute the majority of the eligible voter population.	
22-17. Even combined, Latinos and non-Hispanic blacks do not constitute the majority of any precinct. The concentration of Latino	**Disputed and Irrelevant**

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
and non-Hispanic black voers cannot possibly exceed forty-one percent of any district's eligible voters. *Id.* at p. 15, ¶ 33	Latinos and non-Hispanic blacks do, in fact, account for the majority of residents in precinct #6250061A; indeed, they account for a significant majority – more than two-thirds of all residents. Latinos and non-Hispanic blacks also account for the majority of residents in at least two other Santa Monica voting precincts – #6250025B and #6250062A. Ely Decl. ¶ 29, Ex. 17; Even if Latinos and African Americans currently do not, collectively, constitute a "majority of any precinct," as Defendant claims, that would have no impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that Latinos and non-Hispanic black voters cannot possibly exceed 41 percent of any district's *eligible voters*. To the extent plaintiffs contend Latinos and non-Hispanic blacks account for a slightly higher number of residents in precincts #6250061A, #6250025B, and #6250062A than the City estimates, plaintiffs try to introduce a dispute that is immaterial to the City's motion, because the number of eligible voters in any district would still not exceed 50 percent. To the extent Plaintiffs contend Latinos' and non-Hispanic blacks' inability to constitute a majority of any precinct is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) Latinos and non-Hispanic blacks' inability to constitute a majority of any precinct is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and success under many of these alternative schemes depends on minority concentration being high enough in a particular area that minorities constitute the majority.	
22-18. A district with even forty-one percent non-Hispanic black and Latino eligible voters	**Disputed and Irrelevant** It is unclear what district Defendant is referring to. To the extent that Defendant is referring to the district

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would necessarily have bizarre boundaries and be severely lacking in compactness. *Id.* at p. 3, ¶ 9	drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 41% Latino / African American proportion of the citizen-voting-age-population, that district is certainly bizarre. However, the district drawn by Mr. Ely, with an only slightly lower combined proportion of Latinos and African Americans, is very compact and cannot possibly be called bizarre. In any event, the shape of some bizarre district drawn by Defendant's demographer has no impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city. Ely Decl. ¶¶ 26-30, Exs. 15, 16

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
Reply: Undisputed. Plaintiffs do not dispute that a district whose population would be 41 percent non-Hispanic black and Latino would have bizarre boundaries, lacking compactness. Plaintiffs affirmatively acknowledge that such a district is bizarre and non-contiguous, and the fact that Mr. Ely allegedly created a contiguous district with an *even lower* Latino and non-Hispanic black population is immaterial to the City's motion. (See Ely Decl. ¶ 29.) Mr. Ely's hypothetical district at most demonstrates the point that, as the Latino and non-Hispanic black population climbs, any hypothetical district takes on an increasingly bizarre shape, but bizarre or not, any hypothetical district would contain too few Latinos and non-Hispanic blacks to make Latino electoral success more likely than under the current system. To the extent Plaintiffs contend the shape of a hypothetical district is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The shape of a hypothetical district is relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and the constitutionality of these alternative schemes often depends on the contiguous shape and boundaries of a particular district. If the alternative schemes are not constitutional, then the City's at-large method of election could not have *caused* disparate impact.	

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
22-19. The proposed non-Hispanic black and Latino district would relegate seventy-two percent of the City's Latino voters, and fifty-seven percent of the City's non-Hispanic black voters, to territory outside of the hypothetical district. *Id.* at p. 16; ¶ 34	**Disputed and Irrelevant** No district has been "proposed" by Plaintiffs, certainly not one analyzed by Defendant or its expert, Mr. Morrison. To the extent that Defendant is referring to a hypothetical district drawn by its expert, Mr. Morrison, some portion of Latino voters and African American voters are going to reside outside of any council district; and that is true in *any* city with *any* district. As the Ninth Circuit Court of Appeals has explicitly recognized, the proportion of minority voters who reside *outside* of a remedial district is irrelevant. *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1414 ["The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan . . . ." As the Fifth Circuit stated in *Campos v. City of Baytown, Texas*, (5th Cir. 1988) 840 F.2d 1240, 1244: "The fact that there are members of the minority group outside the minority district is immaterial."].) In any event, the proportion of Latino and African American voters that would currently lie outside some unspecified hypothetical district has no impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.

Reply: Undisputed. Plaintiffs do not dispute that a hypothetical district with 41 percent Latinos and non-Hispanic blacks would necessarily relegate 72 percent of Latinos and 57 percent of non-Hispanic blacks to territory outside of that district. Where, as here, there is no cognizable injury in the form of vote dilution that requires the City to upend its electoral system, scattering the bulk of the Latino voting population across a wide array of new districts would likely decrease the voting power of Latinos. To the extent Plaintiffs contend the proportion of Latino and non-Hispanic black voters outside a hypothetical district is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement

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[that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The proportion of Latino and non-Hispanic black voters outside a hypothetical district is relevant to assessing the extent to which an alternative scheme would benefit some or all members of the allegedly injured minority group. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact; however, success under these alternative schemes for a subset of the minority group cannot be viewed in a vacuum. The at-large method of election cannot *cause* disparate impact if the only alternative is a different scheme that produces even more disparate results.	
22-20. This would submerge seventy-two percent of Latinos and fifty-seven percent of non-Hispanic black voters among other predeominantly non-Latino voters, and would devalue the votes of most Latinos and non-Hispanic blacks in the City. *Id.* at p. 16, ¶ 36	**Disputed and Irrelevant** It is unclear what Defendant is referring to by "[t]his would submerge ..." To the extent that Defendant is referring to a hypothetical district drawn by its demographer, Mr. Morrison, it is impossible to determine what proportion of Latino and African American voters reside outside of that district because Mr. Morrison fails to provide the precise boundaries of that bizarre district. Further, some portion of Latino and African American voters are going to reside outside of any council district; and that is true in *any* city with *any* district. As the Ninth Circuit Court of Appeals has explicitly recognized, the proportion of minority voters who reside *outside* of a remedial district is irrelevant. *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1414 ["The district court erred in considering that approximately 60% of the Hispanics eligible to vote in Watsonville would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan . . . ." As the Fifth Circuit stated in *Campos v. City of Raytown, Texas*, (5th Cir. 1988) 840 F.2d 1240, 1244: "The fact that there are members of the minority group outside the minority district is immaterial."].) And, it is not true that the adoption of a Latino and/or African American opportunity "crossover" district "would devalue the votes of most Latinos and non-Hispanic blacks in the City." On the contrary, the U.S. Supreme Court has recognized that minority "crossover" districts with a minority proportion as little

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
	as 25% may enhance the minority's voting power. See *Georgia v. Aschcroft* (2003) 539 U.S. 461, 470-471, 482 [finding that Georgia's legislative redistricting did not violate Section 5 of the FVRA even though it reduced the number of safe black districts, because it "increased the number of ["crossover"] districts with a black voting age population of between 25% and 50% by four."].) In any event, the proportion of Latino and African American voters that would currently lie outside some unspecified hypothetical district has no impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that a hypothetical district with 41 percent Latinos and non-Hispanic blacks would necessarily submerge 72 percent of Latinos and 57 percent of non-Hispanic blacks among other predominantly non-Latino voters. Where, as here, there is no cognizable injury in the form of vote dilution that requires the City to upend its electoral system, scattering the bulk of the Latino voting population across a wide array of new districts would likely decrease the voting power of Latinos. To the extent Plaintiffs contend the proportion of Latino and non-Hispanic black voters outside a hypothetical district is irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment caused that difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The proportion of Latino and non-Hispanic black voters outside a hypothetical district is relevant to assessing the extent to which an alternative scheme would benefit some or all members of the allegedly injured minority group. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election caused disparate impact; however, success under these alternative schemes for a subset of the minority group cannot be viewed in a vacuum. The at-large method of election cannot cause disparate impact if the only alternative is a different scheme that produces even more disparate results.	
22-21. Slightly improving compactness issues in such a hypothetical district, which almost certainly would be required, would take the	**Disputed and irrelevant**

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
Latino or non-Hispanic black share of the vote to 39.6%. *Id.* at pp. 15-16, ¶ 33	It is unclear what "hypothetical district" Defendant is referring to, or specifically how "compactness issues" would be "improv[ed]" (perhaps by modifying the boundaries in some unspecified way to the unspecified "hypothetical district"). To the extent that Defendant is referring to the district drawn by its demographer, Mr. Morrison, which Mr. Morrison claims has a 41% Latino and African American proportion of the citizen-voting-age-population, that district could certainly be more compact. However, the district drawn by Mr. Ely, with an only slightly lower Latino and African American proportion of citizen-voting-age population, is very compact and is appropriately drawn. Ely Decl. ¶¶ 26-30, Exs. 15, 16 In any event, neither the shape of some hypothetical district drawn by Defendant's demographer, nor the Latino and/or African American proportions of that particular district, nor any hypothetical modifications of Defendant's unspecified hypothetical district, has any impact on Plaitiffs' Equal Protection claim. Racial minorities can be discriminated against regardless of their proportion and regardless of whether they are concentrated in one portion of a city.
Reply: Undisputed. Plaintiffs do not dispute that slightly improving compactness issues in such a hypothetical district, which almost certainly would be required, would take the Latino or non-Hispanic black share of the vote to 39.6%. Plaintiffs affirmatively acknowledge that such a district is bizarre and non-contiguous, and the fact that Mr. Ely allegedly created a contiguous district with an *even lower* Latino and non-Hispanic black population is immaterial to the City's motion. (See Ely Decl. ¶ 29.) Mr. Ely's hypothetical district at most demonstrates the point that, as the Latino and non-Hispanic black population climbs, any hypothetical district takes on an increasingly bizarre shape, but bizarre or not, any hypothetical district would contain too few Latinos and non-Hispanic blacks to make Latino electoral success more likely than under the current system. To the extent Plaintiffs contend the shape of a hypothetical district, and the Latino and non-Hispanic black proportions of that district, are irrelevant to Plaintiffs' Equal Protection claim, plaintiffs misstate the legal standard. Plaintiffs' theory of the case is that the Charter amendment has had a disparate impact on ethnic minorities, and that it is possible to infer, through circumstantial evidence, that the relevant decisionmakers behind the amendment intended such an impact. But to prevail on their disparate-impact theory, plaintiffs must show not just that there has been an observable difference between minority and white electoral success, but that the Charter amendment *caused* that	

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difference. (See *Texas Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.* (2015) 135 S. Ct. 2507, 2523 [discussing the "robust casualty requirement [that] ensures that racial imbalance does not, without more, establish a prima facie case of disparate impact and thus protects defendants from being held liable for racial disparities they did not create," internal quotation marks omitted].) The shape of a hypothetical district, and the Latino and non-Hispanic black proportions of that district, are relevant to assessing whether the City's at-large electoral scheme has led to the defeat of minority-preferred candidates. One must necessarily assess outcomes under alternative electoral schemes to determine whether the at-large method of election *caused* disparate impact, and the constitutionality of these alternative schemes often depends on the contiguous shape and boundaries of a particular district. If the alternative schemes are not constitutional, then the City's at-large method of election could not have *caused* disparate impact.	
23. No districted electoral scheme could have produced results more favorable to minorities. *Id.* at pp. 12-13, ¶ 27, p. 16, ¶ 37	**Disputed.** As demonstrated by recent election results, Latino candidates preferred by the Latino electorate likely would have prevailed in the appropriate illustrative district developed by Mr. Ely, whereas they lost in Defendant's at-large electoral scheme. Moreover, with district elections, serious Latino candidates would have been more likely to run because, unlike with at-large elections, those candidates would not have perceived a city council campaign as futile. Still further, other election systems, such as cumulative voting, limited voting and ranked-choice voting, could also have produced election results more favorable to Latino candidates preferred by the Latino electorate. (Ely Decl. __; Levitt Decl. __; Kousser Decl.)
Reply: Undisputed. Mr. Ely addresses only three elections. The first election involved Tony Vazquez, who does not and has never lived in the Pico Neighborhood, and hence could not have run or prevailed in Mr. Ely's district. (Ely Decl. ¶ 32; City's 2d Supp. Rog. Responses, No. 18.) Further, in 2016, according to Mr. Ely's own calculations, Terry O'Day beat Oscar de la Torre in the hypothetical district. (Ely Decl. ¶ 34, Ex. 22.) To the extent Plaintiffs claim "serious Latino candidates would be more likely to run," it is unclear what Plaintiffs mean by "serious Latino candidates." Plaintiffs' references to "other election systems," such as cumulative voting, limited voting, and ranked choice voting, all of which, as Prof. Levitt explains, would be implemented in a remaining at-large electoral system (Levitt Decl. ¶¶ 28–34), are irrelevant to the undisputed fact that no districted electoral scheme could have produced results more favorable to minorities. In any event, Plaintiffs do not mention these schemes in their complaint, and do not raise these issues in their complaint. Further, Professor Levitt's opinion does not, as a matter of law, prove that alternative at-large schemes would enhance Latino voting strength. His entire analysis depends on the notion that the Latino share of all voters (roughly 13 percent) exceeds the "threshold of	

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exclusion," or "the size of the cohesive voting population necessary for the minority to win a seat in an election under the most adverse conditions." (Levitt Decl. ¶¶ 28–34.) Professor Levitt's analysis concludes that in a hypothetical seven-seat City Council election in Santa Monica, Latinos would be guaranteed one seat. (*Id.*) By Plaintiffs' own admission, Tony Vazquez, a Latino-preferred candidate, is serving as a City Council member. (Opp. at p. 8.)	

ADDITIONAL MATERIAL FACTS THAT ARE PERTINENT TO THE DISPOSITION OF THE MOTION

OPPOSING PARTY'S UNDIPSUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
1. Defendant employs an at-large method of election for electing all seven members of its governing board – its city council, as it has done since amending its city charter to provide for the at-large election of seven council members in 1946. • Kousser Decl. ¶¶ 11-17, 78-136	**Disputed and immaterial.** The City has employed an at-large method of election since 1915. From 1915 to 1946, voters elected three commissioners – one for public safety, a second for finance, and a third for public works. In 1946, the City adopted its present form of government, in which voters elect seven members of a City Council. (See Defendants' Request for Judicial Notice in Support of Motion for Summary Judgment, Adler Decl. Exs. G, H.) Plaintiffs have conceded that at-large elections have been used to elect the governing body of Santa Monica since 1914. (Kousser Decl. ¶ 78.)
2. Elections for Defendant's governing board involving Latino candidates exhibit racially polarized voting. • Kousser Decl, ¶¶ 3-10, 55-59, Tables 2-4, Appendices A and B	**Disputed and immaterial.** This purported fact depends on improper legal conclusions. For example, Plaintiffs' expert purports not to offer a "legal opinion about the issues in defining racially polarized voting" (Kousser Decl. ¶ 46) but does so repeatedly. (E.g., *Id.* ¶ 48 ["[n]ote there is no 'bright-line' definition of minority cohesion"]; ¶ 49 ["In sum, the level of minority cohesion does not have to be a specific number"].) Additionally, Plaintiffs concede that a Latino candidate was elected to City Council in 2012 and 2016 (Kousser Decl. ¶ 55.) Plaintiffs' expert also fails to account for the success of Gleam Davis, a Latina currently serving on City Council. Moreover, this contention is immaterial to Defendant's Motion, which concerns the absence of vote dilution, not the distinct question whether racially polarized voting exists. If necessary,

	the City will prove at trial that whites do not vote cohesively, Latinos do not vote cohesively, and/or that white bloc voting (if any) does not usually defeat Latino bloc voting (if any), proof of any one of which points would be a complete defense to plaintiffs' CVRA claim.
3. Renowned demographics and districting expert, David Ely, developed a Latino-opportunity district comprising the Pico Neighborhood of Santa Monica, based on the traditional districting criteria listed in Section 21620 of the Elections Code. That Latino-opportunity district is compact, contiguous and comprises approximately one-seventh of the population of Santa Monica. Latinos represent a much larger proportion in that district than in the city as a whole. However, race was not a predominant consideration in Mr. Ely's selection of district boundaries. • Ely Decl. ¶¶ 26-30, Exs. 15, 16	**Disputed and immaterial**. Plaintiffs concede that the Latino share of the population of the hypothetical district drawn up by their demographer is only 30 percent. (Ely Dec. ¶ 29.) The City would contest at trial, should trial be necessary, that this district is compact and contiguous. The mere fact that the hypothetical district does not, on its face, appear to be irregular does not mean that race was not a predominant factor in considering the district's boundaries. Additionally, plaintiffs failed to produce legible exhibits (see, e.g., Ex. 8, 9), as the City has yet to receive hard copies of plaintiffs' supporting documents. Thus, although Mr. Ely appears to have "created color-coded maps" (*id.* ¶ 18), it is impossible for the City to verify Mr. Ely's contentions from the low-resolution black-and-white scans the City received in electronic form.
4. While Latino candidates for Santa Monica City Council preferred by the Latino electorate generally lose in Defendant's current at-large election system, those same Latino candidates preferred by the Latino electorate perform much better within that Latino-opportunity district. • Ely Decl. ¶¶ 31-35, Exs. 18-22; Kousser Decl. ¶¶ 3-10, 55-59, Tables 2-4, Appendices A and B	**Disputed and immaterial**. The cited materials do not support the contention that Latinos "perform much better" within the "Latino-opportunity" district drawn by Mr. Ely. First, Mr. Ely analyzes only three elections, making it impossible to assess what would "generally" or "usually' be true. Second, Mr. Ely's own calculations demonstrate that an allegedly non-Latino-preferred candidate would have defeated an allegedly Latino-preferred candidate in the most recent election (2016). (Ely Decl. ¶ 34, Ex. 22.) Plaintiffs

	cannot claim that this hypothetical alternative would correct any ongoing harm if it would be ineffective at delivering victory for an allegedly Latino-preferred candidate even in the most recent election. Third, Mr. Ely's conclusion that Mr. Vazquez would have won the election in the hypothetical district is manifestly incorrect. Mr. Vazquez has never lived in the district and thus could not have run there, much less won. Mr. Ely therefore also ignores the 2012 and 2016 electoral victories of Mr. Vazquez, who was elected under the City's at-large system and was preferred by the proposed district. (*Id.* Ex. 22.) In sum, Mr. Ely has hardly demonstrated that Latino candidates would have performed much better under his hypothetical districted system than under the current at-large system.
5. In the 2004 election, the Latina candidate preferred by the Latino electorate, Maria Loya, received more votes within the Latino-opportunity district than any other candidate. • Ely Decl. ¶ 33, Exs. 19, 20; Kousser Decl. Appx. A, Tables IV(A) and IV(B)	**Disputed and immaterial.** The contention that Ms. Loya was "the Latina candidate preferred by the Latino electorate" is unsupported except by Dr. Kousser's declaration, which rests on purported expert opinions based on methodologies and analysis the validity of which it is impossible to assess given the provided materials. Finally, even if this contention were true, a single election would not have an effect on the question of whether there is dilution of Latino voting power.
6. In the 2016 election, two candidates residing in the Latino-opportunity district sought a seat on the Santa Monica City Council – Oscar de la Torre and Terry O'Day. Mr. O'Day was an incumbent and ultimately received more votes citywide than any other candidate. However, the Latino candidate preferred by the Latino electorate, Mr. de la Torre, almost certainly received more votes than Mr. O'Day in the Latino-opportunity district.	**Disputed and immaterial.** Mr. Ely's own calculations show that Mr. de la Torre would have lost to Mr. O'Day in the hypothetical district. (Ely Decl. Ex. 22.) Notwithstanding the data, Mr. Ely nevertheless concludes, without any reasonable basis, that Mr. de la Torre would have won. It thus appears that Mr. Ely has cast doubt on

• Ely Decl. ¶ 34, Exs. 21, 22; Kousser Decl. Appx. A, Tables VII(A) and VII(B)	the reliability of his own calculation methodology.
7. Latinos constitute at least 13.64% of the citizen-voting-age population of Santa Monica • Ely Decl. ¶ 17	**Disputed and immaterial.** Plaintiffs concede that Latino voters comprise "roughly thirteen percent of the City's population," as noted in Defendant's Separate Statement No. 4. Whether Latinos constitute "at least" 13.64 percent of the citizen-voting-age population is unclear. The figure may be slightly higher or lower.
8. The Latino proportion of citizen-voting-age population in Santa Monica is likely to increase in the near future because the Latino proportion of the population under the age of eighteen is greater than the Latino proportion of the general population. • Ely Decl. ¶ 17, 29	**Disputed and immaterial.** Plaintiffs implicitly acknowledge that the demographic focus in vote-dilution cases is on citizen-voting-age population (Ely Decl. ¶ 29) but attempt to shift the focus beyond the current facts to what may happen in the future—if, for example, Latino minors remain residents or non-citizen Latino adults become naturalized. This is improper. Plaintiffs' CVRA claim depends on a showing of current injury, not some hypothetical future injury to a theoretical population. Plaintiffs must show that there is vote dilution in the present; what may happen in the future is irrelevant.
9. The "threshold of exclusion" – the proportion of voters necessary to elect a candidate to a governing board – for cumulative voting, limited voting and ranked-choice voting for Santa Monica's seven-seat city council is one-eighth (12.5%) • Levitt Decl. ¶¶ 31-33	**Disputed and immaterial.** The Complaint does not plead anything regarding cumulative voting, limited voting and ranked-choice voting, and thus these assertions are outside the parameters of the case. This is a hypothetical construct, not one rooted in fact. Plaintiffs' expert assumes equal turnout and perfect cohesion (Levitt Decl. ¶ 28), neither of which is observed in the real world. Specifically, under Dr. Kousser's own analysis, Latino cohesion is often lower than two-thirds. (Kousser Decl.

	¶ 57.) This figure also assumes that the City would de-stagger its elections.
10. The Latino proportion of the citizen-voting-age population of Santa Monica is greater than that threshold of exclusion (12.5%), and therefore Latinos could elect a candidate of their choice in a cumulative voting, limited voting or ranked-choice voting system, without any crossover support from non-Latinos. • Ely Decl.¶17; Levitt Decl. ¶ 33, 34	**Disputed and immaterial**. The Complaint does not plead anything regarding cumulative voting, limited voting and ranked-choice voting, and thus these assertions are outside the parameters of the case. The combination of low turnout and low cohesion means that even if the City de-staggered its elections, Latinos could not elect candidates of their choice without crossover support. Specifically, under Dr. Kousser's own analysis, Latino cohesion is often lower than two-thirds. (Kousser Decl. ¶ 57.)
11. Cumulative voting and limited voting have each been adopted as remedies in federal Voting Rights Act cases. • Levitt Decl. ¶¶ 18-21	**Undisputed but immaterial.** The Complaint does not plead anything regarding cumulative voting, limited voting and ranked-choice voting, and thus these assertions are outside the parameters of the case. It is worth noting, however, that plaintiffs' expert does not cite any cases in California. (Levitt Decl. ¶¶ 18-21.)
12. Ranked-choice voting is currently employed in the municipal elections of several California cities. • Levin Decl. ¶ 22	**Disputed and immaterial**. The Complaint does not plead anything regarding cumulative voting, limited voting and ranked-choice voting, and thus these assertions are outside the parameters of the case. This is an unsupported factual assertion. Plaintiffs' expert merely states that "several jurisdictions in California" employ "a form of ranked-choice voting . . . for single-seat elections." (Levitt Decl. ¶ 22.) Plaintiffs' expert does not provide a source for this assertion, nor name any specific jurisdiction.
13. At-large elections have been understood at least from the early 19th century to disadvantage political and ethnic minorities, and they were employed in the Reconstruction	**Disputed and immaterial**. Dr. Kousser's analysis falsely suggests that there are no other potential

and Post-Reconstruction South and in "Progressive Era" cities throughout the country to subordinate minorities. • Kousser Decl. ¶¶ 76-77	benefits to an at-large system or drawbacks to districts, an assertion contradicted by his own cited evidence. (Kousser Decl. ¶ 87 [noting that "[t]hose who favored at-large elections condemned districts for fostering logrolling, 'horse trading,' and 'sectionalism.'], *id.* Ex. 44 [article noting that districts increase the likelihood of "log rolling" and sow divisions beyond elections within a municipality].). Additionally, the extent to which at-large systems may have been employed by other jurisdictions for discriminatory purposes, including those in the Post-Reconstruction South, has no bearing on why an at-large system was implemented in Santa Monica in the twentieth century, or reaffirmed on subsequent occasions.
14. A hostile racial climate existed in Santa Monica in 1946. The historical context of World War II and immediate post-war years was suffused with racial issues that seem virulent even by today's standards – the Japanese incarceration, the Zoot Suit riots, the FEPC proposition. Opinion leaders who were staunch backers of the at-large charter, particularly the Santa Monica Evening Outlook and the Santa Monica-Ocean Park Chamber of Commerce, openly expressed or endorsed racially retrogressive attitudes, and the newspaper casually employed gross racial stereotypes. • Kousser Decl. ¶¶ 80-85	**Disputed and immaterial**. As an initial matter, these general allegations of racism are inadequate to prove the intent prong of plaintiffs' Equal Protection claim. Plaintiffs must demonstrate that the relevant decisionmakers, members of the Board of Freeholders, were not only aware that the 1946 Charter amendment might have a disparate impact on ethnic minorities, but that they affirmatively wished that it do so. (See *Personnel Adm'r of Mass. v. Feeney* (1979) 442 U.S. 256, 279.) The observation that some or even many people at the time harbored racist views is not evidence that the Freeholders did. In any event, many of Dr. Kousser's gross generalizations are not firmly rooted in fact and fail to prove that racism was omnipresent, much less that it inspired all major political decisions. Dr. Kousser's analysis depends on unreasonable readings of contemporary articles, cartoons, ballot measures, and more.

	For example, Dr. Kousser concludes that the only reason to have opposed the creation of a Fair Employment Practices Commission was virulent racism. (Kousser Decl. ¶¶ 83–84.) But voters may very well have had a wide range of other reasons to oppose such a new government agency, including a reluctance to expand the scope and role of government. These generalizations come nowhere near showing not just that some people in Southern California in 1946 may have been racist, but that racism was so pervasive that it infected each and every political decision made, including the Freeholders' decision to place the Charter amendment on the ballot.
15. The black proportion of Santa Monica's population was growing in the 1940s, up through at least 1946. • Kousser Decl. ¶ 80	**Disputed and immaterial.** Plaintiffs have not introduced any admissible evidence to support this factual contention. They certainly have not identified any evidence that supports Dr. Kousser's contention that "the influx of 'non-whites' during the Second World War troubled the Outlook and perhaps other members of the city's elite." (Kousser Decl. ¶ 80.) In the paragraph in which Dr. Kousser makes this claim, he cites just a single contemporary article neutrally, even blandly, reporting the growth in the City's white and nonwhite populations. In any event, whether the black share of the population grew in the 1940s or not is irrelevant, as it does not remotely show that the Freeholders placed the Charter amendment on the ballot because they wished to limit the voting power of nonwhites. (See *Personnel Adm'r of Mass. v. Feeney* (1979) 442 U.S. 256, 279.)
16. In 1945, a Board of Freeholders was impaneled to propose changes to Santa Monica's city charter. The Board of Freeholders was all white, nearly all from the wealthiest	**Disputed and immaterial.** Even if true, these factual statements do not prove anything about the Freeholders'

part of the city, and there is no record that it consulted with any members of racial minorities during its deliberations. • Kousser Decl. ¶ 79	intentions. In other words, even if they were all white and all lived in a certain part of town, those facts do not remotely prove that they intended to discriminate against ethnic minorities. What is more, plaintiffs have given no reason to believe that these assertions are indeed true, as they are predicated solely on an incendiary contemporary newspaper advertisement paid for by opponents of the 1946 Charter amendment. What is more, the final assertion—that "there is no record that [the Board] consulted with any members of racial minorities during its deliberations"—finds no support whatsoever in Dr. Kousser's declaration. (Kousser Decl. ¶ 79.)
17. The method of electing councilpersons was the most controversial issue associated with the Board of Freeholders' deliberations over what to propose in a new city charter, and the Board of Freeholders repeatedly changed its mind and heatedly debated the issue. • Kousser Decl. ¶¶ 86-91	**Disputed and immaterial.** There is nothing in the materials cited by plaintiffs' expert that discuss other issues the Board of Freeholders considered during the proposal of a new city charter to qualify its assertion that the method of elections was the "most controversial issue." (Kousser Decl. ¶¶ 86-91.)
18. The text of the 1946 Charter measure as finally put to the voters did not offer them a simple choice between at-large and districted election systems. Rather, the Board of Freeholders ultimately decided to give voters only the choice of an at-large elected council, or to keep the then-current commission system. • Kousser Decl. ¶ 86	**Undisputed.**
19. Both proponents and opponents of the 1946 charter measure publicly stated that members of "minority groups" would probably not be able to elect representatives of their choice under an at-large system, and both explicitly mentioned blacks as one of those "minority groups." Charter opponents also explicitly mentioned Latinos. • Kousser Decl. ¶¶ 86-91	**Disputed and immaterial.** Mischaracterizes the cited evidence. For example, in the cited material, plaintiffs' expert improperly concludes that the support of two Board members "who were easily identifiable as racial liberals" to reopen the ballot measure debate on elections was "further evidence that the issue was seen as racially tinged." (Kousser Decl. ¶ 89.)

	For one thing, this concedes that there were racial liberals serving on the Board of Freeholders. Furthermore, the cited article acknowledges that there were four other Board members who voted alongside these two "racial liberal" members (Kousser Decl. Ex. 31), suggesting, by plaintiffs' expert's logic, that there were other considerations beyond race. Indeed, Dr. Kousser appears to extract nefarious intent even from sources that prove the very opposite of his point. Exhibit 32, for instance, is an article entitled "New Charter Aids Racial Minorities," which reports that at an NAACP meeting a Freeholder explained that "the opportunity for representation in minority groups has been increased two and a half times over the present charter by expansion of the City Council from three to seven members." Dr. Kousser speculates that the Freeholder "tacitly acknowledged that the at-large system discriminated against racial minorities and implied that blacks understood the point well," presumably because she "admitt[ed] that the proposed charter is not perfect in every respect." There is simply no sound basis in the text for this logical leap.
20. In 1946, proponents of the at-large charter provision patronizingly announced to "colored people" that it would be better for them to coalesce behind white liberals with citywide support than to elect candidates who were their real choice, while charter opponents warned that elite candidates elected citywide would not be sympathetic to "laboring men," "colored people," or "Mexicans." • Kousser Decl. ¶¶ 87, 88	**Disputed and immaterial.** Mischaracterizes the cited evidence. The cited opinion piece cautions against the problems of sectionalism created by districts: "if the council is elected at large, sectional rivalries will be rare and the problems of Santa Monica as a whole will receive the attention they deserve." (Kousser Decl. ¶ 87, Ex. 25.) Even opponents of at-large voting recognized this potential pitfall of sectionalism. (See Kousser Decl. ¶ 88 [expressing concern for "residents of Ocean park, Douglas district, the Lincoln-Pico and

	other districts"].) Further, the identity of the authors of the cited documents is in doubt. Some documents appear to be unsigned editorials in the local newspaper, and one document appears to be an advertisement paid for by the Anti-Charter Committee. Whether the authors of these documents spoke for a broader group of "proponents" or "opponents" of the Charter amendment is entirely unclear. Finally, plaintiffs failed to produce legible exhibits. (See, e.g., Kousser Decl. Ex. 25.)
21. Following the adoption of the current at-large election system for Defendant's city council in 1946, the predicted disproportionate impact on Latino candidates was, in fact, realized, particularly in the decades immediately following the adoption of that system. Between 1946 and 1988, Latinos ran for the City Council 10 times. And 10 times, they failed to win. • Kousser Decl. Table 2, at pp. 33-34	**Disputed and immaterial.** Mischaracterizes the cited evidence. Plaintiffs' expert acknowledges that the "growth of the Latino population is more difficult to trace" and concedes likely miscategorization of Latino residents during this period. (Kousser Decl. ¶ 80.) Therefore, it is extremely difficult if not impossible—by their expert's own admission—to determine the Latino support for the listed "Spanish-surnamed candidates," and thus impossible to attempt to determine the impact of the 1946 ballot measure on the voting strength of Latinos in Santa Monica. In other words, even if plaintiffs are correct that Latino voting has traditionally been cohesive in Santa Monica—an assertion that would be challenged at trial should trial be necessary—the Latino population was likely far too small for decades for any Latino-preferred candidate to have won not just under the current at-large system, but under any alternative electoral system without substantial non-Latino support.
22. The relationship between votes on Proposition 11 and votes on the charter with an at-large provision was very strong, suggesting that the overwhelming number of white voters shared both the racial attitudes expressed by and in the Outlook and that they connected their votes on the	**Disputed and immaterial.** Mischaracterizes the evidence. Plaintiffs' expert, Dr. Kousser, attempts to draw a parallel between support for a state initiative concerning

Charter to those attitudes. Those who backed Proposition 11 opposed the Charter, while those who voted negatively on Proposition 11 favored the Charter. The tight relationship between the vote on the Charter and as pure a measure of racial attitudes as one is likely to find in an election (Proposition 11) implies that Santa Monicans voted for a new Charter with at-large elections because of, not in spite of, its predicted racially discriminatory effects. • Kousser Decl. ¶ 93, Table 6	an employment practices commission and a local ballot initiative on election methods. (Kousser Decl. ¶¶ 83, 93.) The premise of Dr. Kousser's analysis is flawed—the referendum was not an up-or-down vote on racism, but was, among other things, a decision regarding the proper role of government in private business relationships. Plaintiffs note that it was also opposed by veterans groups and dubbed "communistic" (*id.* ¶ 83), suggesting other concerns—that were chiefly political rather than racial—may have been at play in postwar America. Additionally, plaintiffs failed to produce legible exhibits that support their claims. (Kousser Decl. Ex. 15.) Finally, Dr. Kousser's claim that this is "as good a measure of local racial opinion as one is ever likely to find" is hyperbolic and flawed, and represents another example of Plaintiffs selectively reading the historical record and drawing tenuous conclusions.
23. In 1975, there was another referendum on districts vs. at-large, among other topics – Proposition 3. • Kousser Decl. ¶¶ 95-106	**Disputed and immaterial.** As Plaintiffs themselves concede, the 1975 proposition did not represent "another" referendum on districts vs. at-large in connection with City Council elections, as the 1946 ballot measure provided a choice of an at-large elected council, or to keep the then-current commission system. (Kousser Decl. ¶ 86.)
24. As in 1946, both proponents and opponents of the ballot measure recognized that at-large elections stifle minority representation, and that district elections do not. For example, the city's leading newspaper spotlighted "the increased chance for ensuring minority representation by drawing boundaries around minority neighborhoods" as an advantage of the district electoral structure (which it opposed).	**Disputed and immaterial.** Plaintiffs mischaracterize the evidence. Opponents focused on issues presented by the proposition other than racial considerations, including "changes that promised both immediate and long-range upheaval in the city's politics." (Kousser Decl. ¶ 103.) Plaintiffs' expert concedes that Nathaniel Trives—the first African-American

• Kousser Decl. ¶¶ 100-102	elected to the City Council—opposed the measure and its proposed shift to districts, demonstrating that minorities who had achieved representation did not believe districts would help them. (*Id.* ¶ 101.) Plaintiffs again failed to produce legible exhibits to verify their assertions. (See *id.* ¶ 101, Ex. 46, p. 2.) Moreover, Plaintiffs selectively quote from the cited news article, which certainly does not "spotlight" the purported advantages of districted elections. In fact, the article notes several advantages and drawbacks to both districted and at-large systems. (Kousser Decl. Ex. 44.)
25. Two Latino candidates sought seats on the school board at the same time as Proposition 3 was on the ballot in 1975 – Fred Beteta and Beulah Juarez. Both Mr. Beteta and Ms. Juarez expressed their dedication to issues particularly important to the Latino community. Support for Mr. Beteta and Ms. Juarez correlated very strongly with support for Proposition 3. • Kousser Decl. ¶¶ 105, 106, Figure 5, Table 7	**Disputed and immaterial**. The evidence presented is equivocal: although Proposition 3 was defeated, Mr. Beteta was successful and claimed at the time to be the first Latino elected official in Santa Monica. Furthermore, Mr. Beteta was a Republican, which casts doubt upon plaintiffs' contention that Santa Monica's purportedly conservative and racially biased electorate opposed *both* Proposition 3 *and* Latino candidates. To the contrary, it appears that Santa Monica voters were willing to vote for a Latino candidate (and, it so happens, a black candidate, Nat Trives, in that same year) but also oppose Proposition 3—very likely for reasons having nothing at all to do with race. Further, Dr. Kousser notes that the supposed chief propagandist against Proposition 3—the *Outlook*—endorsed both Beteta and Trives—two minority candidates. (Kousser Decl. ¶ 103.) In short, there were concerns other than race in the consideration of Proposition 3, and plaintiffs' suggestion otherwise is tenuous at best.

26. In the early 1990s, the Santa Monica City Council first appointed a Charter Review Commission whose chief object was to consider whether to replace the at-large, free-for-all system of electing councilmembers. • Kousser Decl. ¶ 116	**Disputed and immaterial.** The Charter Review Commission considered thirteen separate issues requested by City Council. (Kousser Decl. Ex. 74).
27. By a near-unanimous vote (14-1), the Charter Review Commission concluded that the at-large election system for the Santa Monica City Council should be dismantled. The Charter Review Commission based its conclusion on its understanding that the at-large election system prevented minorities, particularly the Latino community, and disadvantaged neighborhoods, particularly the Pico Neighborhood, from electing candidates of their choice. • Kousser Decl. ¶ 116	**Disputed and immaterial.** The Charter Review Commission reached the conclusion it did principally to manage risk, claiming it might be "prudent" to avoid "great expense [of litigation] notwithstanding the likelihood that the City might ultimately prevail." (Kousser Decl. Ex. 4.)
28. The Charter Review Commission prepared a report to the Santa Monica City Council, finding evidence of discriminatory intent in the 1946 adoption of at-large elections for the city council and discriminatory effect in the maintenance of at-large elections. • Kousser Decl. ¶ 117, Ex. 74	**Disputed and immaterial.** Mischaracterizes the evidence. Dr. Kousser ultimately concluded in his 1992 report that the City would have to defend itself in the event someone brought a suit, further suggesting that the Commission was making its recommendation based on risk-management reasoning. The Report itself points out inherent flaws in Dr. Kousser's methodology, including limited research and "being asked not to explore contrary evidence." (Kousser Decl. Ex. 74.) Dr. Kousser himself "characterized his conclusions as 'quite tentative.'" (*Ibid.*) This lacks the necessary support to constitute an undisputed factual assertion. As above, the methodology and analysis used to reach this conclusion, as well as the "tentative" conclusion reached, would be contested at trial if necessary.
29. In 1992, on a 4-3 vote, the Santa Monica City Council rejected the Charter Review Commission's recommendation to scrap the at-large election system, and	**Undisputed that the vote took place, but disputed** to the extent that the vote by the City Council is tendentiously

refused to allow Santa Monica voters to choose between a district election system and the at-large election system. • Kousser Decl. ¶ 120	characterized as a "refusal to allow Santa Monica voters to choose between a district election system and the at-large system."

DATED: June 7, 2018

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: 
William E. Thomson

Attorneys for Defendant, *City of Santa Monica*

PROOF OF SERVICE

I, Cynthia Britt, declare:

I am employed in the County of Los Angeles, State of California. My business address is 333 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.

On June 7, 2018, I served the City of Santa Monica's Reply in Support of its Separate Statement of Undisputed Facts and Responses to Plaintiffs' Separate Statement of Additional Disputed Facts on the interested parties in this action by causing the service delivery of the above document as follows:

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☑ **BY MESSENGER SERVICE**: A true and correct copy of the above document was provided to a professional messenger service for delivery to Kevin Shenkman and R. Rex Parris before 5:00 PM on June 7, 2018.

☑ **BY OVERNIGHT MAIL**: On the above-mentioned date, I enclosed the documents in envelopes provided by an overnight delivery carrier and addressed to Milton Grimes and Robert Rubin at the addresses shown above. I placed the envelopes for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier with delivery fees paid or provided for.

☑ **BY ELECTRONIC SERVICE**: As a courtesy, I caused the documents to be emailed to the persons at the electronic service addresses listed above.

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

Executed on June 7, 2018, in Los Angeles, California.

Cynthia Britt