

1 CITY OF SANTA MONICA
LANE DILG, SBN 277220
2 City Attorney
Lane.Dilg@smgov.net
3 GEORGE S. CARDONA, SBN 135439
Special Counsel
4 George.Cardona@smgov.net
SUSAN COLA, SBN 178360
5 Deputy City Attorney
Susan.Cola@smgov.net
6 1685 Main Street, Room 310
Santa Monica, CA 90401
7 Telephone: 310.458.8336

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

16 Attorneys for Defendant,
CITY OF SANTA MONICA

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**

19 PICO NEIGHBORHOOD ASSOCIATION and
20 MARIA LOYA;

21 Plaintiffs,

22 v.

23 CITY OF SANTA MONICA; and DOES 1-100, in-
24 clusive,

25 Defendants.

CASE NO. BC616804

**DEFENDANT CITY OF SANTA MONICA'S
REPLY IN SUPPORT OF ITS MOTION
FOR SUMMARY JUDGMENT**

*[Reply in Support of Separate Statement, Objec-
tions to Plaintiffs' Evidence, and Declaration of
Daniel R. Adler Filed Concurrently]*

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Assigned to Judge Yvette Palazuelos, Dep't 28

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1 **I. INTRODUCTION**

2 In any election, some candidates win, and some lose. That alone cannot render an election
3 system discriminatory. To prevail on their CVRA claim, plaintiffs must show that the City’s “at-large
4 method of election” has been “imposed or applied” in a manner that results in “the dilution or abridge-
5 ment of the rights of [Latino] voters.” (Elec. Code, § 14027.) But plaintiffs fail to present a triable
6 issue of fact on this question. They present no admissible evidence that the City’s electoral system
7 dilutes the votes of Latino residents in Santa Monica, nor could they based on the City’s indisputable
8 demographics.

9 Rather, plaintiffs’ Opposition confirms the fundamental facts that underpin the City’s motion
10 and require summary judgment: First, Latinos constitute at most 13.6% of Santa Monica’s citizen-
11 voting-age population. Second, by plaintiffs’ own calculations, at least one of the City’s current coun-
12 cilmembers, Tony Vazquez, was preferred by Latino voters and victorious in his two most recent elec-
13 tions (2012 and 2016). Third, because Santa Monica’s Latino population is small and integrated
14 throughout the City, the creation of a Latino-majority district—or anything close—is impossible.
15 These facts further confirm what has been clear from the beginning—this lawsuit is not an effort to
16 address any purported dilution of Latino voting rights, but a gambit to increase the political influence
17 of a particular subset of Santa Monica voters (both Latino and non-Latino), and particular aspirants for
18 elected office, who happen to reside in the Pico Neighborhood. The CVRA does not, and could not
19 constitutionally, play favorites in this manner.

20 Because plaintiffs fail to demonstrate that the electoral system adopted and reaffirmed by Santa
21 Monica voters multiple times over the course of a century has resulted in the dilution of Latino voting
22 rights, plaintiffs cannot prevail on either their CVRA or Equal Protection claim, and the Court should
23 grant summary judgment.

24 **II. ARGUMENT**

25 **A. The CVRA requires proof the at-large electoral system has caused vote dilution.**

26 Liability under the CVRA requires a finding that an at-large election system has caused the
27 dilution of minority voting strength. (See Mot. at pp. 8–9.) These fundamental elements of a CVRA
28 claim are reflected in the statute’s plain text, broad context and purpose, and other canons of statutory

1 construction. (*Ibid.*) Because there is no triable dispute of material fact on these issues (see Part II.C,
2 *infra*), plaintiffs spend the bulk of their opposition attempting to convince the Court that they are im-
3 material—and that all that must be shown for liability purposes is “racially polarized voting.” (E.g.,
4 Opp. at p. 1.) Plaintiffs are demonstrably wrong.

5 First, and most importantly, plaintiffs never confront the text of section 14027, which prohibits
6 a political subdivision from applying an at-large method of election in a manner that “impairs the ability
7 of a protected class to elect candidates of its choice or its ability to influence the outcome of an election,
8 *as a result of the dilution* or the abridgement of the rights of voters who are members of a protected
9 class.” (Italics added.) Plaintiffs would have this Court read the language of causation (“as a result
10 of”) and injury (“dilution or the abridgement of the rights of voters”) out of the CVRA entirely, but
11 this is precisely the opposite of what courts must do in analyzing statutory text: “[W]e generally must
12 accord significance, if possible, to every word, phrase and sentence in pursuance of the legislative
13 purpose, and have warned that a construction making some words surplusage is to be avoided.” (*People*
14 *v. Valencia* (2017) 3 Cal.5th 347, 357, quotation marks and alterations omitted.)

15 Second, plaintiffs overlook that the CVRA makes clear that a finding of “racially polarized
16 voting” is *different from* a finding that a defendant has violated either section 14027 or 14028. Section
17 14028(c) provides that “[t]he fact that members of a protected class are not geographically compact or
18 concentrated may not preclude a finding of racially polarized voting, *or* a violation of Section 14027
19 and this section [14028]”, italics added.) “[U]se of the word ‘or’ in a statute indicates an intention
20 to use it disjunctively so as to designate alternative or separate categories.” (*People ex. rel. Green v.*
21 *Grewal* (2015) 61 Cal.4th 544, 561, alteration in original.) And the CVRA repeatedly makes clear that
22 only after finding a violation of *both* sections 14027 *and* 14028 may a court impose a remedy: “Upon
23 a finding of a violation of Section 14027 and Section 14028, the court shall implement appropriate
24 remedies, including the imposition of district-based elections. . . .” (§ 14029; see also § 14030 [fees
25 awardable to a prevailing party in an “action to enforce Section 14027 *and* Section 14028”; § 14032
26 [permitting suit to be brought by certain persons who “reside[] in a political subdivision where a vio-
27 lation of Sections 14027 *and* 14028 is alleged”].) Thus, although plaintiffs suggest that proof that an
28 at-large election system has caused vote dilution (the requirement under section 14027) is irrelevant

1 and unnecessary if there is proof of racially polarized voting under section 14028 (Opp. at pp. 3-4), the
2 statute's plain text proves the contrary by treating the two as separate and distinct required predicates.

3 Third, plaintiffs repeatedly invoke the CVRA's legislative history and the Legislature's sup-
4 posed goal of making the CVRA "more expansive than the FVRA." (Opp. at p. 3; see also *id.* at pp.
5 5-6, 10.) But plaintiffs can show nowhere in this history any indication that the Legislature did not
6 mean exactly what it said in section 14027—namely, that liability under the CVRA depends on the at-
7 large method of election *causing* the dilution of minority voting strength. (See *People v. Castaneda*
8 (2003) 23 Cal.4th 743, 747 ["If there is no ambiguity in the language of the statute, then the Legislature
9 is presumed to have meant what it said, and the plain meaning of the language governs."])

10 Fourth, plaintiffs accuse the City of conflating *liability* with *remedies*: "It cannot be a require-
11 ment that courts settle on a particular remedy before establishing liability." (Opp. at p. 10.) But this
12 is another non sequitur. Plaintiffs fail to articulate how "vote dilution" and "causation" are anything
13 other than essential elements of liability as specified in both Section 14027 and the few published
14 CVRA opinions (see Part II.B, *infra*). Indeed, absent a prior finding that the at-large method of election
15 has caused vote dilution, how would a Court know whether or what to remedy?

16 Fifth, plaintiffs fault the City for relying on "cases construing the FVRA." (Opp. at p. 9.) But
17 the City relies primarily on the CVRA's text, which plaintiffs ignore. In any event, only three Califor-
18 nia appellate decisions concern the CVRA, and none addresses the issues raised here—in particular,
19 whether a showing of racially polarized voting eliminates any need to prove causation and vote dilution.
20 Moreover, the CVRA expressly incorporates federal law (§ 14026, subs. (d), (e)), and constitutional
21 limitations on FVRA claims apply with equal force to CVRA claims. (Mot. at pp. 10-11, 13.)

22 Lastly, the City identified the absurd consequences that would follow from relying, for purposes
23 of CVRA liability, solely on the second and third *Gingles* factors, without also determining whether
24 vote dilution results—especially when the protected class is relatively small in number. (Mot. at pp.
25 2, 8-9, 13-14.) For example, under plaintiffs' construction, even a protected class of ten—or one—
26 could win a CVRA suit, and collect attorneys' fees, with proof that it voted for candidates who were
27 routinely defeated by the preferred candidates of the majority. (*Id.* at pp. 8-9.) Plaintiffs contend that
28 this hypothetical problem was already "rejected in *Sanchez*." (Opp. at p. 5-6, fn. 1.) But the *Sanchez*

1 court did not “reject” the hypothetical, and instead decided only that the trial court erred in considering
2 it in finding the CVRA facially unconstitutional. (145 Cal.App.4th 660, 688–689.)¹ On the contrary,
3 *Sanchez* makes the City’s point: “The CVRA is race neutral. . . It simply gives a cause of action to
4 members of any racial or ethnic group that can establish that its members’ votes are *diluted* through the
5 combination of racially polarized voting and an at-large election system . . .” (*Id.* at 666, italics added.)

6 In sum, to survive summary judgment on their CVRA claim, Plaintiffs must come forward with
7 admissible evidence that the at-large system has caused vote dilution—i.e., evidence that Latino voting
8 rights would be enhanced in a legally permissible manner under an alternative voting system. (Mot at
9 pp. 8–9.) Without such evidence, plaintiffs “cannot claim to have been injured by [the City’s current]
10 structure or practice.” (*Thornburg v. Gingles*, 478 U.S. 30, 50, fn. 17.)

11 **B. Racially polarized voting is not itself an injury.**

12 In an effort to sidestep the requirement that they show that the at-large system has caused vote
13 dilution, plaintiffs renew their contention that racially polarized voting is itself an injury sufficient to
14 support a CVRA claim. (Opp. at pp. 6–7.) It is not.

15 First, for the reasons outlined above, the fact that voting is racially polarized under the second
16 and third *Gingles* factors does not, by itself, demonstrate that a protected class’s voting strength has
17 actually been diluted. If nothing could make it more likely that a protected class could elect candidates
18 of its choice, that class cannot be said to have suffered any dilution of its voting rights.

19 Second, racially polarized voting cannot be an injury for the simple reason that the statute does
20 not try to cure racially polarized voting. To the contrary, the CVRA harnesses and even enshrines it.
21 The very premise of drawing (and re-drawing) districts, for instance, is the expectation that voters of
22 different races and language groups will continue to vote differently.

23 Third, the limited CVRA case law demonstrates that the statute was designed to cure vote dilu-
24 tion, not racially polarized voting:

25
26 ¹ Contrary to Plaintiffs’ claim (Opp. at p. 6, fn.1), there are many circumstances in which it would be
27 possible for a small group of voters to show racially polarized voting, but impossible to show that an
28 at-large system caused vote dilution. For example, a single minority voter could reveal his voting
history under oath, without the need to resort to “the methodologies for estimating group voting behav-
ior” under the FVRA, such as “homogenous precinct analysis and/or ecological regression.” (*Ibid.*)

- 1 • *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660: the “race-based harm” addressed by the
2 CVRA is “vote dilution” (p. 681); “liability . . . is imposed because of dilution of the plaintiffs’
3 votes” (p. 686); the CVRA authorizes a “vote-dilution cause of action” (p. 680); “any racial group
4 can experience the kind of vote dilution the CVRA was designed to combat” (p. 666).
- 5 • *Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223: “To protect against a voting system
6 that impairs the minority voters’ opportunity to participate in the political process, both federal and
7 California law create liability for vote dilution” (p. 1229).
- 8 • *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781: “this case is about vote dilution”
9 (p. 788); (“City-wide elections where there is no vote dilution are not in actual conflict with section
10 14027 Section 14027 applies only when there has been vote dilution”) (p. 798); the CVRA
11 “do[es] not apply to city-wide council elections unless vote dilution has occurred” (p. 802).²

12 **C. Plaintiffs have no evidence of injury in the form of vote dilution.**

13 Insisting that racially polarized voting is the beginning and the end of the CVRA inquiry, plain-
14 tiffs have asked Professor Kousser to opine on the existence and extent of racially polarized voting in
15 Santa Monica’s electoral history. But because proving the existence of racially polarized voting is
16 insufficient to establish liability under the CVRA, and because the City’s motion does not address
17 whether voting has been racially polarized, much of Professor Kousser’s declaration is irrelevant.³
18 What matters for purposes of the City’s motion is whether plaintiffs have satisfied their burden to
19 produce evidence that Latino voting strength would be enhanced in a legally significant manner under
20 some permissible alternative electoral system. They have not done so.

21 The City argued in its motion, with support from Dr. Morrison’s declaration, that the Latino
22

23 ² In *Jauregui*, the defendant city had a Latino population of 54.4%. (226 Cal.App.4th at p. 789.)
24 Though plaintiffs cite this case as establishing that racially polarized voting is alone sufficient for
25 CVRA liability (Opp. at p. 5), the court’s discussion of the CVRA nowhere suggests this, instead focusing
26 on race-based vote dilution as the matter of statewide concern that justified its holding that the
27 CVRA can apply to charter cities. (226 Cal.App.4th at pp. 798–802.) FVRA case law similarly requires
28 vote dilution; here are but two of many examples: *Shaw v. Reno* (1993) 509 U.S. 630, 641 (FVRA
“prohibits legislation that results in dilution of a minority group’s voting strength”); *League of United
Latin American Citizens v. Perry* (2006) 548 U.S. 399, 433 (“Under § 2, . . . the injury is vote dilution”).

³ The City does not agree that City elections have been marked by racially polarized voting and will
rebut Professor Kousser’s assertions at trial, should trial be necessary.

1 population in Santa Monica is too small and dispersed to allow for the creation of a majority-Latino
2 district or even a district in which Latino and black voters combine to form a majority. (Mot. at pp. 6–
3 7, 9, 14, 18.) Plaintiffs have not challenged the basic conclusions of Dr. Morrison’s analysis. Instead,
4 they contend that the impossibility of a majority-minority district is irrelevant to CVRA liability, and
5 that other electoral schemes—a districted system with a district that is 30 percent Latino or an at-large
6 scheme such as cumulative voting—prove Latino voting strength has been diluted. (Opp. at pp. 9–15.)

7 As an initial matter, the City has never contended that proving the possibility of a majority-
8 Latino district is the only method of establishing vote dilution under the CVRA. But Plaintiffs must
9 prove vote dilution by *some* means. And it is *their* burden. The City proved that the only alternative
10 electoral system specifically pleaded or otherwise mentioned by plaintiffs (districts) would fail to en-
11 hance Latino voting strength. (Mot. at pp. 9, 15–19.) The CVRA was, to be sure, at least intended to
12 authorize liability under a wider array of factual circumstances than the FVRA. But removal of com-
13 pactness as a strict requirement does not relieve plaintiffs of the obligation to prove vote dilution at all.
14 If it did, the Legislature would have effectively mandated a switch to district elections, which it could
15 have done in a single sentence (and without the significant expense of litigation and threats of attorneys’
16 fees for local governments) instead of 1,000 words spread across eight code sections.

17 Plaintiffs advance two alternative methods of proving vote dilution—a “Latino-opportunity
18 crossover district” and alternative at-large remedies, such as cumulative voting—but these alternatives
19 are not supported by competent evidence, and they thus fail to shield the CVRA claim from summary
20 judgment. Although plaintiffs have filed over 800 pages in supporting documents, their purported
21 evidence of vote dilution is confined to just a scant few paragraphs in two declarations.

22 Plaintiffs fail to show that their demographer Mr. Ely’s “Latino-opportunity crossover district”
23 would enhance Latino voting strength in any legally significant way. Mr. Ely’s hypothetical district
24 would have only a 30 percent Latino voting population. (Ely Decl. ¶ 29.) This is precisely the sort of
25 “influence” district that courts regularly reject on constitutional or justiciability grounds. (See Mot. at
26 pp. 16–18.) Although Mr. Ely claims to have assessed “the likely remedial effectiveness” of this dis-
27 trict, he analyses only three elections spanning nearly a quarter-century. (Ely Decl. ¶¶ 31–34.) And
28 he fails to make his point for two of the three. For the most recent of those elections (2016), Mr. Ely’s

1 own calculations show the allegedly Latino-preferred candidate would have lost. (*Id.* ¶ 34, Ex. 22.)
2 As for the earliest of the three elections, Tony Vazquez, whom Mr. Ely identifies as both Latino-pre-
3 ferred and a winner in 1994 in the hypothetical district (*id.* ¶ 32), has never lived in the Pico Neighbor-
4 hood. (City’s 2d Supp. Rog. Resp., No. 18.) Had Mr. Ely’s district been used in the 1994 election,
5 Mr. Vazquez could not have won that district’s seat. Mr. Ely’s analysis thus reduces to a claim that in
6 2004, but in no other years, a Latino-preferred candidate from the Pico Neighborhood might have se-
7 cured enough votes to win.⁴ But “the mere inability to win a particular election” does not equate to
8 vote dilution (*Gingles*, 478 U.S. at p. 57), and plaintiffs identify no constitutional or justiciable standard
9 that would warrant compelling the City, many years later, to adopt a new electoral system, absent a
10 demonstrated and ongoing harm. In any event, this hypothetical district would not accord Latino voters
11 a reasonably certain opportunity “to exercise an electoral power that is commensurate with [their share
12 of] the population” that they do not already possess. (*Perry*, 438 U.S. at p. 428.)

13 Plaintiffs also vaguely gesture at alternative *at-large* schemes, claiming that Professor Levitt
14 has found “that they are sufficient alternatives to demonstrate dilution of Latino voters in Santa Mon-
15 ica.” (Opp. at pp. 12–13.) As an initial matter, the complaint does not mention any such scheme, and
16 issues not raised in the complaint—the “outer measure of materiality” for purposes of a summary-
17 judgment motion—cannot be the basis of an order denying the City’s motion. (*FPI Dev., Inc. v.*
18 *Nakashima* (1991) 231 Cal.App.3d 367, 381.) Further, Professor Levitt’s opinion does not, as a matter
19 of law, prove that alternative at-large schemes would enhance Latino electoral success. His entire
20 analysis depends on the notion that the Latino share of all voters (roughly 13 percent) exceeds the
21 “threshold of exclusion,” or “the size of the cohesive voting population necessary for the minority to
22 win a seat in an election under the most adverse conditions.” (Levitt Decl. ¶¶ 28–34.) Professor
23 Levitt’s analysis concludes that in a hypothetical seven-seat City Council election in Santa Monica,
24 Latinos would win one seat.⁵ (*Ibid.*) By plaintiffs’ own admission, Tony Vazquez, a Latino-preferred

25
26 ⁴ Professor Levitt’s declaration adds nothing to this analysis. To the contrary, he simply states, without
any basis, that a Latino-preferred candidate would have won in 2004 and in 2016. (Levitt Decl. ¶ 26.)

27 ⁵ In his analysis, Professor Levitt assumes that the City would both switch to an alternative at-large
28 system and no longer stagger its elections, resulting in voters going to the polls only every four years
(as opposed to the current two) to express their desired direction for the City. (Levitt Decl. ¶ 33.)

1 candidate, is serving as a City Council member. (Opp. at p. 8.) Professor Levitt’s analysis thus shows
2 that Latinos are insufficiently numerous for an alternative at-large scheme to produce *additional* Latino
3 victories. Moreover, as plaintiffs’ own analysis demonstrates, not every eligible Latino voter votes,
4 nor do Latinos vote anywhere close to perfectly cohesively. (See Kousser Decl. ¶ 57.) Professor Levitt
5 nevertheless counterfactually assumes “perfect cohesion and equal turnout.” (Levitt Decl. ¶¶ 28, 34.)
6 These unreal assumptions, as well as the razor-thin margin between the threshold of exclusion and
7 Latinos’ maximum theoretical voting strength, fatally undermine Professor Levitt’s otherwise unrea-
8 soned conclusion that alternative at-large schemes might enhance Latino voting strength. (*Id.* ¶ 34.)

9 **D. The CVRA is unconstitutional to the extent that it authorizes any remedy that is**
10 **principally based on race in the absence of a compelling state interest.**

11 Separating voters predominantly on the basis of race violates the Fourteenth Amendment unless
12 it satisfies strict scrutiny. And here, an excessively race-based remedy predicated on a finding of “ra-
13 cially polarized” voting alone would be unconstitutional. (Mot. at pp. 11–13, 18.)

14 Plaintiffs contend, incorrectly, that the *Sanchez* court already considered and rejected this chal-
15 lenge to the statute. (Opp. at p. 16.) Not so. *Sanchez* rejected only a *facial* challenge to the CVRA
16 grounded, in part, in the contention that the statute was an impermissible exercise in reverse discrimi-
17 nation. (Mot. at p. 10 & fn. 3.) Although the court held that the CVRA is not unconstitutional in *every*
18 application, it expressly left open the question whether the statute is unconstitutional as applied to the
19 facts of particular cases—such as this one. (145 Cal.App.4th at p. 665.)

20 Plaintiffs also contend that the *Shaw* line of cases is not relevant at this stage of the litigation.
21 (Opp. at p. 16.) This argument, too, is misplaced. First, it depends entirely on plaintiffs’ view that this
22 case can be compartmentalized into two unrelated parts—a liability phase focused exclusively on ra-
23 cially polarized voting and then an entirely separate remedy phase. That structure would appear to
24 authorize the court to impose some remedy whose sole motivation is racial even absent any proof of
25 injury in the form of vote dilution. Any such remedy, however, would be unconstitutional under *Shaw*.
26 The time to assess that constitutional concern is now, when the Court must determine whether plaintiffs
27 have established an injury that could justify any remedy at all. Second, *Sanchez* itself notes that *Shaw*
28 and other cases would be relevant to an as-applied challenge to the CVRA. (145 Cal.App.4th at p. 680)

1 ["the *Shaw-Vera* line of cases reveals the potential for unconstitutional applications of the statute"].)

2 Finally, plaintiffs' contentions that the CVRA passes either rational basis review or strict scru-
3 tiny (Opp. at pp. 17–19) are beside the point. The City did not argue that the CVRA is facially uncon-
4 stitutional. It argued that imposing a remedy principally on the basis of race in response to racially
5 polarized voting alone—without any proof of vote dilution—would be unconstitutional. (Mot. at pp.
6 10–15.) Plaintiffs are correct that the Supreme Court has assumed without deciding that remedying
7 vote dilution is a compelling state interest (Opp. at p. 19 & fn. 10), but that means, of course, that
8 plaintiffs must prove vote dilution. Their failure implicates the Constitution. (See Mot. at pp. 10–15.)

9 **E. There is no triable issue of material fact on plaintiff's Equal Protection claim.**

10 Contrary to plaintiffs' assertion, the City met its initial summary-judgment burden on this claim.
11 The City relies on *evidence* tending to negate plaintiffs' allegations that the 1946 Charter amendment
12 had a disparate impact on ethnic minorities, and that the decisionmakers responsible for the amendment
13 affirmatively desired such a result. (Sep. St. ¶¶ 1–2, 22–23; Mot. at pp. 19–20.) This is more than
14 sufficient to shift the burden to Plaintiffs. (See *Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 855
15 [a defendant moving for summary judgment "must indeed present 'evidence'" that either negates an
16 element of the plaintiff's claim or demonstrates that she does not possess needed evidence].)

17 On the element of "discriminatory impact," plaintiffs have failed to create a triable issue by
18 showing that the City's at-large system has been responsible for denying Latinos electoral success, for
19 much the same reason that they have failed to show vote dilution. Plaintiffs have identified no evidence
20 showing that an alternative electoral scheme could have enhanced the voting strength of a consistently
21 small and dispersed Latino voting population. If anything, plaintiffs' evidence supports the City's
22 argument that 1946 adoption of the current system itself made it mathematically easier for cohesive
23 minority groups to elect their preferred candidates. (See Kousser Decl. ¶¶ 90–91 [quoting contempo-
24 rary statements favoring new Charter because it would enhance representation of minority groups].)

25 Likewise, on the element of intent, plaintiffs have failed to produce any evidence demonstrating
26 that the Board of Freeholders in 1946 was not just aware that its decision to adopt a new electoral
27 system might harm the interests of ethnic minorities but that it desired those consequences.⁶ Professor

28 ⁶ Only the Freeholders—and not the electorate at large—could be the relevant decisionmakers for

1 Kousser's declaration demonstrates, at most, that the Freeholders may have been aware that the debate
2 over the City's electoral system was racially charged. But general evidence of racial tensions or par-
3 ticular racial statements or acts bearing no connection to the Freeholders cannot, as a matter of law,
4 demonstrate that the Freeholders intentionally discriminated against minorities. (See *Personnel Adm'r*
5 *of Mass. v. Feeney* (1979) 442 U.S. 256, 279.)

6 Finally, plaintiffs' evidence concerning subsequent votes over the City's electoral system in
7 1975 and 2002 not only bears no connection to the operative complaint, which addresses only 1946
8 (FAC ¶¶ 1, 35–43), but also squarely contradicts plaintiffs' earlier insistence that those decisions were
9 irrelevant and that only the alleged original sin of 1946 is at issue. (E.g., Opp. to Demurrer at pp. 14–
10 15 [arguing that the 1975 and 2002 ballot measures “have no bearing on the validity of Defendant's
11 current electoral system that was adopted in 1946”]; Opp. to MJOP at p. 12, fn. 6 [similar].)

12 **F. The City's motion was timely.**

13 Plaintiffs received the City's motion by email on March 29, 2018—which is 77 days before the
14 June 14 hearing date. (Mot. at p. 21 [proof of service].) Where notice is “served by . . . another method
15 of delivery providing for overnight delivery, the required 75-day period of notice shall be increased by
16 two court days,” not five days. (Code Civ. Proc. § 437c, subd. (a)(2).)

17 **III. CONCLUSION**

18 Plaintiffs have not identified a triable issue of material fact on either cause of action, having
19 failed to fulfill their obligation to demonstrate that some alternative electoral system would have en-
20 hanced Latino voting strength and that the Board of Freeholders affirmatively intended to discriminate
21 against ethnic minorities in 1946. Accordingly, the Court should grant the City summary judgment.

22 DATED: June 7, 2018

Respectfully submitted,

23 GIBSON, DUNN & CRUTCHER LLP

24 By: 

25 William E. Thomson

26 Attorneys for Defendant, *City of Santa Monica*

27 purposes of the 1946 decision. The First Amendment prohibits a searching judicial inquiry into the
28 motivations of voters. (*Kirksey v. City of Jackson* (5th Cir. 1981) 663 F.2d 659, 662; see also *Sanchez*,
145 Cal.App.4th at p. 686 [noting that “Defendants may be correct in arguing that racially polarized
voting constitutes political expression protected by the First Amendment”].)

1 **PROOF OF SERVICE**

2 I, Cynthia Britt, declare:

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

5 On June 7, 2018, I served the Reply in Support of the City of Santa Monica's Motion for
6 Summary Judgment on the interested parties in this action by causing the service delivery of the
above document as follows:

7 Kevin I. Shenkman, Esq.
8 Mary R. Hughes, Esq.
9 John L. Jones, Esq.
10 SHENKMAN & HUGHES PC
11 28905 Wight Road
12 Malibu, California 90265
13 shenkman@sbcglobal.net
14 mrhughes@shenkmanhughes.com
15 jjones@shenkmanhughes.com

R. Rex Parris
Robert Parris
Jonathan Douglass
PARRIS LAW FIRM
43364 10th Street West
Lancaster, California 93534
rrparris@parrislawyers.com
jdouglass@parrislawyers.com

12 Milton Grimes
13 LAW OFFICES OF MILTON C. GRIMES
14 3774 West 54th Street
Los Angeles, California 90043
miltgrim@aol.com

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

- 15 **BY MESSENGER SERVICE:** A true and correct copy of the above document was provided
16 to a professional messenger service for delivery to Kevin Shenkman and R. Rex Parris before
17 5:00 PM on June 7, 2018.
- 18 **BY OVERNIGHT MAIL:** On the above-mentioned date, I enclosed the documents in
19 envelopes provided by an overnight delivery carrier and addressed to Milton Grimes and
20 Robert Rubin at the addresses shown above. I placed the envelopes for collection and
21 overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier
with delivery fees paid or provided for.
- 22 **BY ELECTRONIC SERVICE:** As a courtesy, I caused the documents to be emailed to the
23 persons at the electronic service addresses listed above.

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

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

27 
28 Cynthia Britt