

1 Kevin I. Shenkman (SBN 223315)
2 Mary R. Hughes (SBN 222662)
3 Andrea A. Alarcon (SBN 319536)

4 **SHENKMAN & HUGHES**

5 28905 Wight Road
6 Malibu, California 90265
7 Telephone: (310) 457- 0970

8 R. Rex Parris (SBN 96567)
9 Ellery S. Gordon (SBN 316655)

10 **PARRIS LAW FIRM**

11 43364 10th Street West
12 Lancaster, California 93534
13 Telephone: (661) 949-2595

14 Milton C. Grimes (SBN 59437)

15 **LAW OFFICES OF MILTON C. GRIMES**

16 3774 West 54th Street
17 Los Angeles, California 90043
18 Telephone: (323) 295-3023

19 Robert Rubin (SBN 85084)

20 **LAW OFFICE OF ROBERT RUBIN**

21 131 Steuart St Ste 300
22 San Francisco, CA 94105
23 Telephone: (415) 298-4857

24 Attorneys for Plaintiffs

25 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

26 **COUNTY OF LOS ANGELES**

27 PICO NEIGHBORHOOD ASSOCIATION
28 and MARIA LOYA,

Plaintiffs,

v.

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

Defendants.

CASE NO. BC616804

**DECLARATION OF JUSTIN LEVITT IN
SUPPORT OF PLAINTIFFS' PROPOSED
REMEDIES**

1 I, Justin Levitt, declare as follows:

2 1. The facts set forth in this declaration are within my personal knowledge and, if
3 called as a witness, I could and would competently testify as follows.

4 2. I have been retained by the plaintiff in this action to, among other things, evaluate
5 the effectiveness of remedies available to the Court with respect to the City of Santa Monica's
6 established violation of the California Voting Rights Act ("CVRA") and the Equal Protection
7 Clause of the California Constitution, including assessing alternatives to the current system that
8 improve Latino voters' electoral opportunity. I testified at trial concerning this subject, and this
9 declaration is intended to summarize the opinions I expressed at trial that are pertinent to this
10 Court's task of implementing appropriate remedies. The summary below sets out my conclusions
11 briefly, and the rest of this declaration explains them in more detail.

12
13 **I. Summary**

14 3. Of the remedies proposed in the instant case, the implementation of a seven-district
15 plan for city council elections, with one district encompassing the Pico Neighborhood as
16 illustrated in Trial Exhibit 261, would afford the Latino voters of Santa Monica the most equitable
17 opportunity to elect candidates of their choice or influence the outcomes of elections to the city
18 council of the City of Santa Monica.

19 4. Compared to a district-based election plan, at-large remedies such as cumulative,
20 limited, or ranked-choice voting are more likely to be ineffective means to remedy the dilution of
21 the Latino vote in the City of Santa Monica, particularly if Santa Monica retains staggered
22 elections for its city council. Indeed, implementation of such at-large remedies in this particular
23 context could invite further litigation under the CVRA by other Latino voters in Santa Monica,
24 alleging continued dilution and seeking district-based elections. If Santa Monica elections were
25 not staggered, such at-large remedies might improve the electoral capacity of Latinos over the
26 status quo, but practical context would still likely render such at-large structures less effective in
27 remedying violations of the CVRA in Santa Monica city council elections at this time than a
28 district-based alternative.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. Credentials

5. At trial, and in my declaration submitted to this Court in opposition to Defendant’s summary judgment motion, I detailed my education, experience and qualifications relevant to this case, and also provided a copy of my Curriculum Vitae. For the sake of brevity, and understanding that the Court is free to review those materials, I do not repeat that information here.

III. Tasks and Sources Utilized

6. I have been asked to provide information regarding the remedies selected by litigants and courts in cases brought under the CVRA and the federal Voting Rights Act.

7. I have also been asked to evaluate the likely effectiveness of various remedies that may be implemented by this Court pursuant to Section 14029 of the CVRA, both in an absolute sense and also relative to one another.

8. I find that it is impossible to accurately weigh the effectiveness of any particular remedy to vote dilution without an understanding of the demographics and political realities of the jurisdiction at issue. Therefore, in considering the effectiveness of various remedies to address the City of Santa Monica’s violation of the CVRA and Equal Protection Clause, I reviewed and relied upon, among other things, the demographic data and charts in the declaration of Peter Morrison; the maps and demographic data prepared and gathered by David Ely; the precinct-level election data gathered by Mr. Ely; the assessments of different groups’ electoral behavior produced by Morgan Kousser and Jeffrey Lewis; campaign finance reports from the City of Santa Monica; my knowledge of the voting systems used to cast and count ballots in Los Angeles County and the City of Santa Monica; and the campaign experience of candidates for office, including Latino-preferred candidates in districts with less than a majority of Latino voters.

IV. Remedies Adopted in Other Cases

9. In the course of my work in election law over the past several years, I have become

1 familiar with the remedies adopted by state and federal courts to address vote dilution, as well as
2 the remedies proposed by litigants and those adopted through settlement agreements and consent
3 decrees.

4 10. In the overwhelming majority of CVRA cases and federal Voting Rights Act cases
5 targeting at-large election systems, the remedy adopted has included district-based elections. In a
6 few such cases, at-large systems such as cumulative voting and limited voting have been adopted
7 where the circumstances warranted those alternative remedies.

8 11. I attempt to keep track of the resolutions of all CVRA cases. I am aware of at least
9 nineteen cities that have changed their election system from a plurality, at-large voting system, or
10 are in the process of attempting to do so, in connection with litigation filed under the CVRA.
11 These include the cities of Anaheim, Banning, Bellflower, Compton, Escondido, Fullerton,
12 Garden Grove, Highland, Mission Viejo, Modesto, Palmdale, Rancho Cucamonga, San Juan
13 Capistrano, Santa Barbara, Santa Clara, Tulare, Visalia, West Covina, and Whittier. With one
14 exception – the city of Mission Viejo – each of those cities has implemented district-based
15 elections in connection with CVRA litigation. (Mission Viejo will be implementing a cumulative
16 voting system, and moving from staggered elections to a system in which all members of the city
17 council are selected at once.) Many of these cases settled, but in at least three of the cases above
18 — *Jauregui v. City of Palmdale*, *Garrett v. City of Highland*, and *Kaku v. City of Santa Clara* —
19 California trial courts ordered the relevant jurisdictions to implement district-based elections, over
20 those cities' objections.

21 12. In addition to the cities above, I understand that at least 76 other cities, and more
22 than 200 other local California governments, have transitioned from at-large elections to district-
23 based elections since the CVRA was enacted.

24 13. Likewise, the vast majority of cases successfully challenging at-large election
25 systems under the federal Voting Rights Act have resulted in the imposition of district-based
26 elections.

27 14. I have advocated for the adoption or availability of alternative voting systems like
28 limited voting, cumulative voting, or ranked-choice voting, both on my own behalf and on behalf

1 of clients, when local context rendered such systems appropriate. Limited voting and cumulative
2 voting have been adopted in several jurisdictions, both voluntarily and as a part of judgments and
3 consent decrees in cases brought under the federal Voting Rights Act; to my knowledge, limited
4 voting systems have been adopted in at least eighty-five (85) jurisdictions in at least six (6)
5 different states, and cumulative voting systems have been adopted in at least sixty-five (65)
6 jurisdictions in at least seven (7) different states. In many of these cases, the local circumstances,
7 including demographic and political context, made these alternative voting systems appropriate,
8 and occasionally more effective than district-based remedies.

9
10 **V. A District-Based Plan, Focused on the Pico Neighborhood,**
11 **Represents the Remedy Providing the Most Equitable Opportunity**

12 15. Of the remedies proposed in the instant case, the implementation of the seven-district
13 plan for city council elections, with one district encompassing the Pico Neighborhood, as illustrated
14 in Trial Exhibit 261, would afford the Latino voters of Santa Monica the most equitable opportunity
15 to elect candidates of their choice or influence the outcomes of elections to the city council of the
16 City of Santa Monica.

17 16. I understand that the most recent available data indicate that the eligible electorate of
18 Santa Monica is approximately 13.6% Latino. Voting patterns establish that these Latino voters are
19 remarkably politically cohesive when candidates recognized as Latino and supported by the Latino
20 community run for city council seats. Those Latino-preferred candidates attract some support from
21 Anglo voters, but Santa Monica voting is starkly polarized, and with the lone exception of Tony
22 Vazquez, Latino voters during the period examined in this litigation have neither been able to elect
23 candidates of their choice nor influence the outcomes of elections to city council in Santa Monica
24 to elect any candidate other than those most preferred by Anglo voters.

25 17. I understand that in a districted plan for the City of Santa Monica comprising seven
26 districts of approximately equal population, a district encompassing the Pico Neighborhood can be
27 drawn in which the eligible electorate is approximately 30% Latino and approximately 41% Anglo,
28 with the remainder of the district comprising Asian American and African American populations. I

1 further understand that David Ely has drawn such a district, considering several different
2 redistricting principles embraced by California and federal law and without relying predominantly
3 on race in determining whether to place certain individuals within or without the district bounds.

4 18. Districts in which a minority community constitutes 30% of the electorate are often
5 considered “influence districts,” though the opportunity afforded by any given district cannot be
6 measured by demographics alone. As mentioned above, the Latino community in Santa Monica is
7 politically cohesive when candidates recognized as Latino and supported by the Latino community
8 run for city council seats. I also understand that the political organization of the Latino community
9 in the Pico Neighborhood in particular is robust, and able to attract support within the local area
10 from non-Latino voters that may not be matched citywide. For example, in the 2016 Democratic
11 primary election, while most of Santa Monica’s precincts favored Hillary Clinton, with the support
12 of the Pico Neighborhood Association and Latino voters in the Pico Neighborhood, Bernie Sanders
13 won the precincts within the Pico Neighborhood district that Mr. Ely has drawn.

14 19. District-based elections may also improve the electoral opportunity of the Latino
15 community in Santa Monica by helping to mitigate the cost of campaigning for Santa Monica city
16 council, and by increasing the likelihood that candidates for a given seat are drawn from a similar
17 socioeconomic base. I understand that the median socioeconomic status of the Anglo community
18 in Santa Monica is substantially higher than the median socioeconomic status of the Latino
19 community in Santa Monica. For example, I understand that the median household income of the
20 Anglo community of Santa Monica is more than 175% of the median household income of the
21 Latino community in Santa Monica. And Santa Monica’s citywide city council elections are
22 considerably more expensive than elections in cities of similar size. A district-based system may
23 reduce the effective cost of campaigning for city council — or at least make income and wealth
24 disparities between ethnic groups less important to the outcome of the elections — by, among other
25 impacts, reducing the size of the electorate to be contacted with campaign communications and
26 facilitating the recruitment of volunteers for canvassing.

27 20. The experiences of other California jurisdictions that have recently adopted district-
28 based elections as a result of CVRA litigation – and jurisdictions elsewhere with substantial minority

1 populations — also support the view that district-based elections can provide meaningful equitable
2 opportunity for minority communities even when those communities do not comprise the majority
3 of a district’s electorate. For example, Sergio Farias, a Latino candidate, ran for a seat on the San
4 Juan Capistrano City Council in 2008, and came in sixth place (last) in an at-large election for two
5 seats. As a result of CVRA litigation, the City of San Juan Capistrano held its first district-based
6 election in 2016. I understand that the district with the highest concentration of Latinos among the
7 electorate had a Latino citizen voting-age population of approximately 44%, and a substantially
8 lower Latino proportion of registered voters. Sergio Farias prevailed, and is now the Mayor of San
9 Juan Capistrano.

10
11 **VI. Alternative At-Large Systems Are More Likely to Be Ineffective in Santa Monica**

12 21. Though limited voting, cumulative voting, ranked choice voting, and other
13 alternative at-large voting systems are available to courts as remedies in CVRA and federal Voting
14 Rights Act cases, and though they may well be effective means to remedy dilution in certain
15 circumstances, the particular context in Santa Monica makes them less desirable in this case.

16 22. Limited voting limits the number of votes that a voter can cast to fewer than the
17 number of seats to be filled at the election. For example, in an election to fill the seven city
18 council seats in Santa Monica, a limited voting system might limit each voter to voting for just one
19 candidate. This limit allows the jurisdiction’s majority to win at least one seat, but prevents that
20 same majority from dominating every seat and, thus, provides the opportunity for a sufficiently
21 large and cohesive minority to win a seat.

22 23. Cumulative voting allows each voter to cast as many votes as there are positions to
23 be filled; a voter may either vote for candidates for all the positions to be filled or may instead
24 cumulate his or her votes behind those candidates he or she prefers most intensely. For example,
25 in an election to fill all seven city council seats in Santa Monica, a voter in a cumulative voting
26 system could cast seven votes for one candidate; three votes for one candidate, and four votes for a
27 second candidate; or one vote for each of seven candidates (or any other allocation of the seven
28

1 votes). With cumulative voting, a well-organized minority can similarly win a seat in the face of
2 majority opposition, if the minority is not only well organized but also a sufficient size.

3 24. Ranked-choice voting allows voters to rank as many candidates as they wish, in the
4 order of their choice; the voter's single vote is initially allocated to his/her most preferred
5 candidate and, as the count proceeds and candidates are either elected or eliminated, the votes for
6 eliminated candidates are transferred to other candidates according to the voter's stated
7 preferences. As with the other alternative forms above, ranked-choice voting in a multi-seat race
8 results in the election of a majority's preferred candidates while still making room to seat the
9 preferred candidate of a sufficiently large and cohesive minority.

10 25. In each of these systems, a cohesive group of voters will necessarily win a seat in
11 the election if the number of ballots they cast for one candidate is larger than a figure known as the
12 "threshold of exclusion." The threshold of exclusion marks the point at which a cohesive minority
13 uniting behind one candidate will win a seat under the most adverse conditions. (In practice,
14 reduced turnout, crossover voting, or splits in the majority electorate may mean that minorities can
15 win even below the threshold of exclusion.) The threshold of exclusion depends on the number of
16 seats to be filled and the number of votes a voter may cast. The threshold of exclusion applicable
17 to cumulative voting or ranked-choice voting is calculated by the following equation: $1/(1+N)$,
18 where N is the number of seats to be filled. As the number of seats available in a single election is
19 increased, the threshold of exclusion decreases. For example, where there are three seats to be
20 filled, then $N=3$, and the threshold of exclusion is $1/(1+3)$, or 25%; when there are four seats to be
21 filled, the threshold of exclusion is $1/(1+4)$, or 20%; and when there are seven seats to be filled —
22 the total number of seats on Santa Monica's city council — the threshold of exclusion is $1/(1+7)$,
23 or 12.5%. That is, under cumulative voting or ranked-choice voting, any cohesive voting bloc
24 with more than 12.5% of the total votes will necessarily win one of the seats in a seven-seat
25 election. The threshold of exclusion for limited voting is $V/(V+N)$, where V is the number of
26 votes a voter may cast and N is the number of seats to be filled. Where there are seven seats to be
27 filled — the size of Santa Monica's city council — and each voter is limited to one vote, then $N=7$
28 and $V=1$, and the threshold of exclusion is the same as with cumulative voting: $1/(1+7)$, or 12.5%.

1 26. In each instance, assuming that Santa Monica’s city council elections remain
2 staggered, the Latino percentage of the active voting population is less than the threshold of
3 exclusion, indicating that alternative at-large voting systems are less likely to be effective here.
4 Specifically, Latinos comprise 13.6% of the eligible electorate in Santa Monica – less than the
5 25% threshold of exclusion in a gubernatorial election year with three seats open, and less than the
6 20% threshold of exclusion in a presidential election year with four seats open.

7 27. If city council elections were not staggered, that would reduce the threshold of
8 exclusion for an alternative voting system, but it would not necessarily compensate for other
9 present limits of at-large elections in Santa Monica. Alternative at-large election systems like
10 limited voting and cumulative voting do not compensate as well as district-based elections for
11 serious and persistent ethnic and geographic disparities in socioeconomic status, income, and
12 education, and the serious and persistent turnout disparities or practical limitations of campaign
13 expense that often result; in Santa Monica, those disparities appear to be pronounced. Similarly,
14 the effectiveness for minority communities of alternative at-large election systems like limited
15 voting and cumulative voting depend on strong political organization within the minority
16 community, and while this infrastructure appears to be present within the Pico Neighborhood, I
17 am not aware of similar organization beyond the Pico Neighborhood. While systems like ranked-
18 choice voting are less dependent on strong local political organization, they may be quite difficult
19 to implement using the existing ballot styles available in Santa Monica. And if any of these
20 alternative voting systems are to be effective in remedying vote dilution, because they will be less
21 familiar to Santa Monica voters, they must be implemented with extensive voter education,
22 including voter education specifically targeting the minority communities in question. For these
23 reasons among others, given the present context in Santa Monica, alternative at-large systems are
24 less likely to be effective than district-based elections in providing Latinos the meaningful
25 opportunity to elect candidates of their choice or influence the outcomes of elections.

26 28. Other factors may bear on the effectiveness of district-based elections and
27 alternative at-large systems, both in an absolute sense and relative to one another in any given
28 jurisdiction. However, the discussion above touches on the factors of which I am aware that

1 appear to be most pertinent in Santa Monica. All of those factors point to the same conclusions –
2 a plan based on seven districts, and focusing on a district encompassing the Pico Neighborhood, is
3 likely to be most effective, and certainly eliminates the potential for any future violation of the
4 CVRA, while an alternative at-large system such as limited, cumulative, or ranked-choice voting
5 is less likely to be effective given the local context, and would invite further litigation alleging the
6 City of Santa Monica’s continued violation of the CVRA.

7

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

10 Executed on this 19th day of November 2018, at Los Angeles, California.

11

12

13

14

15

16

17

18

19

20

21

22

23

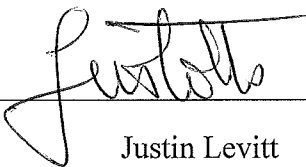
24

25

26

27

28


Justin Levitt

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

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

7 On November 19, 2018, I served the foregoing document described as
8 **DECLARATION OF JUSTIN LEVITT IN SUPPORT OF PLAINTIFFS**
9 **PROPOSED REMEDIES** as follows:

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

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

18 **BY PERSONAL SERVICE as follows:**

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

21 I caused the foregoing document described hereinabove to be
22 personally delivered by hand by placing it in a sealed envelope or
23 package addressed to the persons at the addresses listed on the
24 attached service list and provided it to a professional messenger
25 service whose name and business address is Team Legal, Inc.,
26 40015 Sierra Highway, Suite B220, Palmdale, CA 93550.

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

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


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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Executed on November 19, 2018, at Lancaster, California.

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



Cheryl Cinnater

1 **SERVICE LIST**

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

3 Lane Dilg, Esq.
4 Joseph Lawrence, Esq.
5 Susan Y. Cola, Esq.
6 1685 Main Street, Room 310
7 Santa Monica, CA 90401
8 Telephone: (310) 458-8336
9 Facsimile: (310) 395-6727

Attorneys for Defendant City of
Santa Monica

7 Theodore J. Boutrous, Jr., Esq.
8 Marcellus McRae, Esq.
9 Khan A. Scolnick, Esq.
10 William E. Thomson, Esq.
11 Theane Evangelis, Esq.
12 Tiaunia N. Bedell, Esq.
13 Gibson, Dunn & Crutcher, LLP
14 333 South Grand Avenue
15 Los Angeles, CA 90071
16 Telephone: (213) 229-7000
17 Facsimile: (213) 229-7520
18 thenry@gibsondunn.com
19 kscolnick@gibsondunn.com

Attorneys for Defendant City of
Santa Monica

15 Kevin I. Shenkman, Esq.
16 Mary R. Hughes, Esq.
17 John L. Jones, II, Esq.
18 SHENKMAN & HUGHES
19 28905 Wight Road
20 Malibu, California 90265
21 Telephone: (310) 457- 0970
22 Shenkman@sbcglobal.net

Attorneys for Plaintiffs Pico
Neighborhood Association, Maria
Loya and Advocates for Malibu
Public School

***Via Email Only**

21 Milton Grimes
22 LAW OFFICES OF MILTON GRIMS
23 3774 West 54TH Street
24 Los Angeles, CA 90043
25 miltgrim@aol.com
26 Telephone: (323) 295-3023

Attorneys for Plaintiffs Pico
Neighborhood Association, Maria
Loya and Advocates for Malibu
Public School

Via Email Only

24 Robert Rubin
25 LAW OFFICE OF ROBERT RUBIN
26 131 Steuart Street, Suite 300
27 San Francisco, CA 94105
28 robertrubinsf@gmail.com
Telephone: (415) 625-8454

Attorneys for Plaintiffs Pico
Neighborhood Association, Maria
Loya and Advocates for Malibu
Public School

***Via Email Only**