No. B295935

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

City of Santa Monica,
Appellant-Defendant,
v.
Pico Neighborhood Association, et al.,
Respondents and Plaintiffs.

Appeal from the Superior Court for the County of Los Angeles
The Hon. Yvette M. Palazuelos, Judge
Presiding
Superior Court Case No. BC616804

PLAINTIFFS' SUPPLEMENTAL OPENING BRIEF AFTER REMAND

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I. INTRODUCTION

In its unanimous decision, the California Supreme Court resoundingly confirmed that California courts must give full effect to the broad protections afforded by the California Voting Rights Act ("CVRA"), a state law designed to "provide greater protections to California voters than those provided by the [federal Voting Rights Act]." (*Pico Neighborhood Assn. v. City of Santa Monica* (2023) 15 Cal.5th 292, 306 (*Pico*).) The Court underscored the democratic imperative to counter at-large voting rules that historically have denied, and continue to deny, minority voters a seat at the table. (*Ibid.*) The Court recognized that the voting rules governing local elections "may effectively decide whether a group of voters can have a voice in the myriad decisions made by local representatives," making the difference between giving minority voters "a say in the topics and terms of the debate" or allowing their voice to "be effectively muted or silenced" and their "needs and preferences" ignored—exactly

what the trial court here found to have occurred in Santa Monica for over 70 years. (*Ibid.*; 24AA10705-10706.)

The Supreme Court summed it up: to prove vote dilution, a plaintiff must show racially polarized voting and demonstrate that "under some lawful alternative electoral system, the protected class would have the potential, on its own or with the help of crossover voters, to elect its preferred candidate." (*Pico, supra*, 15 Cal.5th at pp. 307-308.) As the Supreme Court's opinion repeatedly emphasizes, this determination is a fact-intensive inquiry requiring the trial court to conduct a "searching practical evaluation" of the local political process and related factors. (See *id.* at p. 312, quoting *Thornburg v. Gingles* (1986) 478 U.S. 30, 79 (*Gingles*).)

As the Supreme Court recognized, that is exactly what the trial court found. (*Pico, supra*, 15 Cal.5th at p. 309 ["The trial court further found that the City's at-large voting system unlawfully diluted the electoral strength of its Latino residents within the meaning of the CVRA, in that several alternative

voting systems—e.g., district-based elections, cumulative voting, limited voting, and ranked choice voting—would better enable Latino voters to elect candidates of their choice or influence the outcomes of elections"].) Additionally, another CVRA case decided since this Court's opinion—*Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385 (*Yumori-Kaku*)—confirms that Appellant's attacks on the trial court's findings are meritless.

The trial court reached its factual findings based precisely on the searching practical evaluation the Supreme Court's opinion commands. It is proper for this Court to defer to those findings. Thus, there is no need to remand this case back to the trial court. There is more than substantial evidence from the six-week trial to support the trial court's findings that satisfy every aspect of the Supreme Court's standard. Accordingly, the trial court's judgment should be affirmed.

II. SUMMARY OF THE SUPREME COURT'S RULING ON VOTE DILUTION

The California Supreme Court set out the legal standard governing vote dilution claims under the CVRA. The Court held

that in addition to showing the "key element" of racially polarized voting, a plaintiff must demonstrate that "under some lawful alternative electoral system, the protected class would have the potential, on its own or with the help of crossover voters, to elect its preferred candidate." (*Pico, supra*, 15 Cal.5th at pp. 307-308.) Thus, a finding of dilution requires "that racially polarized voting exists," and that "the protected class thereby has less ability to elect its preferred candidate or influence the election's outcome than it would have" under a different system. (*Id.* at pp. 314-315.) That different system which "serve[s] as the benchmark undiluted voting practice" for liability purposes may but need not be district elections; it could be "cumulative voting, limited voting, or ranked choice voting." (*Id.* at pp. 315, 318, 319-320.)

The Supreme Court repeatedly emphasized that evaluating dilution is a fact-intensive process encompassing multiple factors. Echoing case law under the federal Voting Rights Act (FVRA), the Court directed that when presented with a dilution claim, courts "should undertake a searching evaluation of the facts and

circumstances (see, e.g., Elec. Code § 14028, subd. (e)), including the characteristics of the specific locality, its electoral history, and 'an intensely local appraisal of the design and impact of the contested electoral mechanisms' as well as the design and impact of the potential alternative electoral system." (*Pico, supra*, 15 Cal.5th at p. 308, quoting *Gingles, supra*, 478 U.S. at p. 79 and citing *Allen v. Milligan* (2023) 599 U.S. 1, 19.) This fact-specific inquiry "'requires a 'functional analysis of the political process' in that locality and a 'searching practical evaluation of the past and present reality.'" (*Id.* at p. 320, quoting *Gingles*, *supra*, 478 U.S. at p. 79.)

Applying those standards, the Supreme Court rejected Defendant's argument that a plaintiff is required to show the possibility of drawing a majority-minority or near-majority-minority district, or for that matter a remedial district with any particular pre-ordained minority proportion. (*Pico, supra,* 15 Cal.5th at pp. 320-323.) Rather, the opinion instructs, the percentage of the vote required to win under the benchmark

alternative, either within a remedial district, or citywide as with non-district remedies such as cumulative voting and ranked-choice voting, is a "key inquiry … that is not short-circuited merely because the protected class may fall short of an absolute majority (or something close to that)" within a district. (*Id.* at pp. 320-321.) That key inquiry should be based on, and guided by, "the totality of the facts and circumstances of the particular case [], including": (1) "the design and impact of the potential alternative system," (2) the jurisdiction's "electoral history," (3) "the characteristics of the specific locality" including the socio-economic, historical and political factors listed in Elections Code section 14028, subdivision (e); and (4) "the experiences of other similar jurisdictions that use district elections or other alternatives to traditional at-large elections." (*Id.* at pp. 308, 321.)

The Supreme Court also squarely rejected Defendant's argument that the CVRA is constitutionally suspect and must be interpreted narrowly in order to avoid constitutional concerns.

(*Pico, supra*, 15 Cal.5th at pp. 322-323.) The Court ruled those constitutional concerns are not implicated by the CVRA, recognizing that "nothing in the CVRA requires a municipality or a court to select a district-based remedy or, even if it chooses to do so, to draw district lines ... based 'principally on race.'" (*Id.* at p. 323.) On the contrary, "California law directs that district boundaries" be drawn based on traditional districting criteria such as geographical contiguity and compactness, communities of interest, and natural and artificial barriers, none of which "run afoul of the Constitution." (*Ibid.*, citing *Miller v. Johnson* (1995) 515 U.S. 900, 916.) And as the Supreme Court recognized, U.S. Supreme Court and Ninth Circuit precedent affirms a state's legislative prerogative to adopt an approach ensuring a protected class "has the potential to elect the candidate of its choice," which is "precisely the choice the Legislature made in enacting the CVRA." (*Ibid.*)

Although the Supreme Court acknowledged that the trial court reached factual findings addressing every facet of the legal

standard for vote dilution (*Pico, supra*, 15 Cal.5th at p. 309), the Supreme Court declined to review whether the trial court's findings are supported by the trial record. Instead, the Supreme Court left that task to this Court to perform "under the correct legal standard," along with resolving "any [] other unresolved issues in the City's appeal," as consistent with the Supreme Court's practice. (*Id.* at p. 325, citing *Central Coast Forest Assn. v. Fish & Game Commission* (2017) 2 Cal.5th 594, 606.)

III. AS CONFIRMED BY THE CALIFORNIA SUPREME COURT, THE VOTE DILUTION INQUIRY IS FACT-INTENSIVE AND THUS SUBJECT TO THE DEFERENTIAL "SUBSTANTIAL EVIDENCE" STANDARD IN THIS COURT.

"The trial court's dilution findings are presumed to be correct" and, accordingly, are evaluated under the deferential substantial evidence standard. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 792 [citing cases describing the substantial evidence standard].) "In reviewing factual determinations for substantial evidence, a reviewing court should 'not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts.'" (*In re Caden C.* (2021) 11 Cal.5th

614, 640 (*Caden C.*), quoting *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) Under this standard, "'[t]he power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, to support the findings below.'" (*SFPP v. Burlington Northern & Santa Fe Railway Co.* (2004) 121 Cal.App.4th 452, 462 (*SFPP*), quoting *Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429 (*Crawford*).) This standard "applies to both express and implied findings of fact made by the superior court in its statement of decision." (*Ibid.*)

Defendant has previously argued that *de novo* review applies, but that position must be rejected. The application of the substantial evidence standard to the trial court's findings in this case is supported by: (1) well-established practice under the FVRA; (2) the statutory language of the CVRA; and, now, (3) the clear direction from the California Supreme Court regarding the fact-intensive nature of the vote-dilution inquiry.

In analogous FVRA cases "the ultimate finding of vote dilution [is] a question of fact subject to the clearly-erroneous standard" when reviewed by appellate courts. (*Gingles*, *supra*, 478 U.S. at p. 78.) Issues subsidiary to the ultimate question of vote dilution, such as the identification of minority-preferred candidates, are likewise questions of fact, about which appellate courts should defer to trial court findings. (See, e.g., *Meek v. Metro Dade County* (11th Cir. 1990) 908 F.2d 1540, 1548 ["Whether a given [] candidate ... is the preferred representative [of the minority] requires appraisal of local facts within the ken of the district court and best left to it"].)

In *Yumori-Kaku*, the Sixth District Court of Appeal cited and relied on this well-established federal practice in holding that "deferential review" applies to ultimate factual findings, such as the ultimate finding of racially polarized voting or vote dilution. (*Yumori-Kaku, supra,* 59 Cal.App.5th at p. 410 [acknowledging the "intensely factual nature of the inquiry"].) As in federal law, *Yumori-Kaku* also recognized that deferential

review of a trial court's ultimate findings "'does not inhibit an appellate court's power to correct errors of law, including those that may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law.'" (*Id.* at pp. 410-411, quoting *Gingles*, *supra,* 478 U.S. at p. 79.) While *Yumori-Kaku* accordingly applied *de novo* review to the narrow legal question of "whether an equal ratio of polarized to nonpolarized elections precludes liability for racially polarized voting and vote dilution" (*id.* at p. 411), its resolution of that issue affirmed the trial court's discretion as the finder of fact to determine the weight accorded to different elections, the degree to which those elections exhibited racially polarized voting, and generally what those elections show (*id.* at pp. 416-426 ["a court's analysis of racially polarized voting, in accordance with *Gingles'* third factor and consistent with section 14028, invariably depends on its ability to weigh the usefulness of the election evidence presented and to assign probative value where appropriate"]). *Yumori-Kaku*

summed it up: "These cases are 'driven by the facts.'" (*Id.* at p. 419.)

The deferential review applied by federal practice and acknowledged by *Yumori-Kaku* finds further support in the language of the CVRA requiring a fact-intensive analysis with regard to racially polarized voting and vote dilution. Elections Code section 14028 specifies which elections are "more probative" than others, identifies circumstances that "may be considered" by the court, and categorizes specific socioeconomic, historical and political factors as "probative, but not necessary" to finding liability. (Elec. Code § 14028, subds. (a), (c), (e).) These provisions plainly anticipate that trial courts will weigh the evidence and draw ultimate conclusions from the entire record—a function trial courts are uniquely positioned to perform. (*In re Marriage of Wozniak* (2020) 59 Cal.App.5th 120, 131 ["We give deference to the trial court's factual findings 'because those courts generally are in a better position to evaluate and weigh the evidence (than appellate courts).' [Citation.]")

Finally, the Supreme Court's opinion in this case further underscores that vote dilution is a factual issue, and thus subject to the deferential "substantial evidence" standard of review. The opinion repeatedly emphasizes the fact-intensive nature of the vote dilution inquiry—that the "determination [of dilution] is peculiarly dependent upon the facts of each case, and requires an intensely local appraisal of the design and impact of the contested electoral mechanisms." (*Pico, supra,* 15 Cal.5th at p. 312, internal citations and quotations omitted.) Drawing on teachings from FVRA caselaw, the Court's opinion underscores that in evaluating a vote dilution claim, a court "should undertake a searching evaluation of the totality of the facts and circumstances," including a diverse set of factors: "the characteristics of the specific locality, its electoral history, and an intensely local appraisal of the design and impact' of the contested electoral mechanisms as well as the design and impact of the potential alternative electoral system." (*Id.* at pp. 308, 324, internal citations and quotations omitted; *see also id.* at p. 320.)

The Court describes the task as a "fact-specific inquiry" designed to take "a flexible approach" in order to accommodate the large and diverse state in which the CVRA was designed to operate. (*Id.* at p. 320, citation omitted.)

Both the trial court's racially polarized voting findings and its ultimate finding of vote dilution—that "several available remedies (district-based elections, cumulative voting, limited voting and ranked choice voting), [would] each ... enhance Latino voting power over the current at-large system" (24AA10706-10707)—are exactly the sort of fact-finding that the Supreme Court's opinion, the CVRA's plain language, and federal precedent all confide to the trial court and direct an appellate court to review under the deferential substantial evidence standard.

IV. THE TRIAL COURT'S FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND SATISFY EVERY ASPECT OF THE TEST FOR UNLAWFUL VOTE DILUTION ANNOUNCED BY THE CALIFORNIA SUPREME COURT.

The Supreme Court summarized what a plaintiff must show to establish dilution under the CVRA:

> [W]hat is required to establish 'dilution' of a protected class's 'ability ... to elect candidates of its choice' (Elec. Code, § 14027) is proof that, under some lawful alternative electoral system, the protected class would have the potential, on its own or with the help of crossover voters, to elect its preferred candidate. … [No guarantee of victory is necessary; only] that the protected class would, under some lawful alternative, have a 'real electoral opportunity' to elect its candidate of choice, either on its own or with the aid of crossover voters.

(*Pico, supra,* 15 Cal.5th at pp. 307-308, 321-322.) The trial court made findings precisely tracking that standard, as the Supreme Court recognized:

> "The trial court further found that the City's at-large voting system unlawfully diluted the electoral strength of its Latino residents within the meaning of the CVRA, in that several alternative voting systems—e.g., district-based elections, cumulative voting, limited voting, and ranked choice voting—would better enable Latino voters to elect candidates of their choice or influence the outcomes of elections."

(*Id.* at p. 309, internal quotations omitted; see also *id.* at p. 307; 24AA10706-10707, 24AA10733.) In making those findings, the trial court engaged in the "functional analysis of the political process" and a "searching practical evaluation of the past and present reality" in Santa Monica (*Pico, supra,* at p. 320),

examining precisely the same factors that the Supreme Court recognized as probative on the vote dilution issue:

> 1) the "design and impact of the potential alternative system," (*id.* at p. 320);
>
> 2) the "electoral history" of the jurisdiction, particularly within a remedial district (*id.* at p. 318);
>
> 3) "the characteristics of the specific locality," including the factors enumerated in Elections Code section 14028, subdivision (e) (*id.* at pp. 308, 320, 324); and
>
> 4) "the experiences of other similar jurisdictions that use district elections or other alternatives to traditional at-large elections" (*id.* at p. 321; see also *id.* at p. 324 [same]).

The trial court's findings on each of these factors are all supported by substantial, often unrebutted, evidence, with respect to district and non-district remedies alike. Those factual findings, all of which are entitled to deference by this Court, and the substantial evidence presented at trial that supports each of those findings, are detailed below, first with respect to a district remedy and then with respect to non-district remedies.

A. Districts

The trial court heard evidence explaining the operation of district elections, canvassing Santa Monica's electoral history and voting patterns, addressing the "characteristics of the specific locality" bearing on electoral power under various election systems on the specific facts of Santa Monica, and detailing the successful experience of other comparable jurisdictions in electing minority candidates from districts in Southern California with comparable demographics to the remedial Pico Neighborhood district. The trial court concluded based on all of those factors that "the district map developed by Mr. Ely, and adopted by this Court as an appropriate remedy, will likely be effective, improving Latinos' ability to elect their preferred candidate or influence the outcome of such an election." (24AA10707.) Because this ultimate finding and the subsidiary factual findings it rests on are all supported by substantial evidence, and fulfill the legal standard announced by the Supreme Court, the trial court's finding of vote dilution must be affirmed.

1. The Design and Function of District Elections

The trial court's finding that district elections would allow Latino voters to elect their preferred candidate was grounded in its understanding of the operation of district elections. (*See* 24AA10733-10735; RT6818:9-6919:16, 6919:22-6921:14.) "Districts simply mean creating areas within a jurisdiction ... from which a group of voters elects a single member[.]" (RT6818:12-14.) It is undisputed that "[c]ity council elections … are nonpartisan" as required by the California Constitution. (*Pico, supra*, 15 Cal.5th at p. 307, citing Cal. Const., art. II, § 6.) Because California's local nonpartisan elections "may [have] more than two candidates, the winner may prevail with far less than a majority of the vote." (*Id.* at p. 320.) Additionally, the trial court heard and accepted evidence that districts lower the costs to compete in local elections and that "where the community is particularly well politically organized, districts will tend to facilitate turning that into electoral power." (RT6819:2-16, 6921:1-14, 6929:19-27; 24AA10735.)

2. Electoral History Demonstrating the Potential for Latino Voters to Elect their Preferred Candidates in the Remedial Pico Neighborhood District

The Supreme Court recognized that the "electoral history" of the locality could shed light on the impact of district elections. (*Pico*, *supra,* 15 Cal.5th at p. 308.) Specifically, courts should consider whether "the greater concentration of protected class voters in the hypothetical district … [would] be sufficient to enable them to elect their preferred candidate when combined with the available crossover votes," focusing on voting patterns within the hypothetical remedial district, because "racially polarized voting by other voters *in the hypothetical district* [may be] lower than in the community as a whole." (*Id.* at p. 318.) This guidance matches the analysis already performed by the trial court in this case.

After determining that Latino voters consistently preferred Latino candidates when the choice was available (24AA10686-10689), the trial court evaluated how those Latino candidates who were demonstrated to have been preferred by Latino voters

performed in the Pico Neighborhood district. Based on the "particular demographics and electoral experiences of Santa Monica," the court concluded that the remedial district plan would "result in the increased ability of the minority population to elect candidates of their choice or influence the outcome of elections." (24AA10734; see also 24AA10707 [citing past "precinct-level elections results in past elections from Santa Monica's city council" in finding that the proposed remedial district "will likely be effective" and improve Latino voters' ability to elect their preferred candidate].) As the court found:

> Mr. Ely's analysis of various elections shows that the Latino candidates preferred by Latino voters perform much better in the Pico Neighborhood district of Mr. Ely's [proposed remedial district] plan than they do in other parts of the city—while they lose citywide, they often receive the most votes in the Pico Neighborhood district.

(24AA10734; see also RT2318:7-2330:4; RA 29-30, 25AA11002-11004.) Of course, receiving the most votes in the district is enough to win in a plurality-vote district race, and the record here shows the number of candidates is more than double, and typically more than triple, the number of available seats in the

nonpartisan city council elections. (See *Pico*, *supra,* 15 Cal.5th at p. 307; RA56-70.)

Substantial evidence supports the trial court's finding. The 2004 election is illustrative. According to both sides' experts, Plaintiff and council candidate Maria Loya received the votes of essentially 100% of Latinos and just 21% of non-Hispanic whites. (RT3076:9-3077:2; RA65-66; RA204.) Despite that overwhelming support from Latino voters, Ms. Loya lost, placing seventh in an at-large election for four seats. (*Ibid.*) In the Pico Neighborhood district, where she resides, Ms. Loya received the most votes of any candidate—more than Bobby Shriver who beat all of the other candidates in their own neighborhoods. (RT2132:26-2134:14; RT2320:14-2322:2.) With district elections, Ms. Loya surely would have won. (*Ibid.*) The same was true for Tony Vazquez in 1994 when he enjoyed overwhelming support from Latino voters but lost at-large, while receiving the most votes of any candidate in the Pico Neighborhood district. (RT2318:7-2320:6.)

Mr. Ely explained that his precinct-level analyses demonstrated the potential for Latino voters to elect their preferred candidate in the remedial district:

> So we have a very—a very different outcome from the citywide election from what you would get in here, which is consistent with what we've seen with the—with my analysis of the 1994, 2002, 2004 and 2016 elections, which in a sense—I often look at these kinds of things when trying to look at a remedial district in a case like this. And often, even in a district where—you know, where you have a very strong minority, majority within a district, it's hard to find any candidates from the past that lost citywide but prevailed in the district. And so with this I sort of established a pattern of potential, that the election outcome within a district drawn like this, based on historical election patterns, election results, has a very—a very real possibility of producing a very different outcome than what the citywide elections have provided in terms of representation for this community and for the minority communities that live within it. (RT2329:3-21.)

The trial court agreed. (24AA10734; see also RT2330:2-3 ["THE COURT: He just said it would be different outcomes, is what he said."].)

These analyses of past election results within the Pico Neighborhood district are particularly probative because they reflect real-world conditions within that district. As the

California Supreme Court recognized, the degree of racially polarized voting may be different within a remedial district from that in the city as a whole. (*Pico, supra,* 15 Cal.5th at p. 318.) The election recreations presented by Mr. Ely, which the trial court found probative of Latino voters' potential to elect their preferred candidate in the remedial district, inherently take all of that into account by using actual election results within the Pico Neighborhood district for the nonpartisan city council races. As Mr. Ely testified, where, as here, "a minority candidate who loses citywide comes in first in the precincts … within that area, that is a strong indication that there is a potential for the minority community to have representation" in a district system. (RT2610:10-14.)

Defendant has attempted to dismiss this strong evidence of Latino voters' likely ability to elect their preferred candidate in the Pico Neighborhood district by claiming that Mr. Ely "emphasized []that his analysis was in no way predictive of what would happen in a district election" (Appellant's Answer Brief in

the Supreme Court, p. 64, citing RT2610:23-25). Attacks such as this which go to the weight that should be given to testimony or evidence must be disregarded under substantial evidence review. (*See Caden C.*, *supra*, 11 Cal.5th at p. 640 [reviewing courts are not to "reweigh the evidence"].)

Moreover, taking that one piece of Mr. Ely's answer in isolation and out of context, Defendant grossly mischaracterizes Mr. Ely's actual testimony at trial. His entire response to Defendant's cross-examination is duplicated below:

> Q: So this is—I think you called it a very unrealistic analysis; right?
>
> A: No, I didn't call it an unrealistic analysis. I said it's an analysis that only works in one direction. The circumstances of this election were the at-large system. And that's very disadvantageous to minority voters.
>
> So when you have a situation where a minority candidate who loses citywide comes in first in the precincts [] within that area, that is a strong indication that there is a potential for the minority community to have representation there.
>
> It's not intended to say that this shows that Tony Vazquez would have won election there if that had been a single-member district election.

> What it's saying is that the voters in the Pico neighborhood at that time gave more votes to Tony Vazquez than they did to anyone else, and that that's indicative of the potential for those voters to have representation in this district.
>
> And all three of these, it's similar. It's in no way predictive of what would happen in a district election. It's showing that despite the disadvantages of the at-large election system, you have candidates who receive sufficient numbers of votes in a district to obviously be competitive within the district, to … have a realistic possibility of being elected, that the voters who supported Tony Vazquez would have a realistic opportunity to elect a candidate of their choice.

(RT2610:3-2611:4.)

The full context shows that Mr. Ely is explaining the power of his election recreations in this case—that while there is no way to know with certainty what the results of any election would have been if the rules were different, because, for example, different candidates might have run in light of the lower barriers to entry present in smaller district races, "the at-large system [is] very disadvantageous to minority voters ... [s]o when you have a situation where a minority candidate who loses citywide comes in first in the precincts [] within that area, that is a strong

indication that there is a potential for the minority community to have representation there." (RT2610:8-14.)

Ultimately, the trial court heard Mr. Ely's testimony, understood the importance and power of his election recreations, and, in spite of Defendant's criticisms, after weighing the evidence, decided that Mr. Ely's analysis supported a finding that the Pico Neighborhood district would afford Latino voters the ability to elect their preferred candidate—an ability they lack in the at-large system. As this finding is supported by substantial evidence in the trial record, it should not be disturbed on appeal. (*SFPP, supra*, 121 Cal.App.4th at p. 462 [a reviewing court must "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor"], quoting *Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)

3. Specific Characteristics of the Locality, Including Those Enumerated in Section 14028(e).

The Supreme Court also directed that the dilution inquiry be grounded in "the characteristics of the specific locality,"

including the factors enumerated in Elections Code section 14028, subdivision (e). (*Pico*, *supra,* 15 Cal.5th at pp. 308, 320, 324.) Trial evidence in this case extensively addressed a number of socio-economic, political, and historical factors bearing on Santa Monica elections. The trial court made well-supported findings on these qualitative factors, which it found "further support" its determination that Defendant's at-large election system dilutes the Latino vote in violation of the CVRA. (24AA10700-10706.) The trial court's findings on these factors, including those expressly enumerated in Elections Code section 14028, subdivision (e), are all supported by substantial evidence and remain undisputed.

a. Socioeconomic and Political Effects of Past Discrimination and the Significance of Wealth Disparities in Santa Monica Elections.

The trial court carefully considered the socioeconomic and political effects of past discrimination on the Latino community and the present-day existence of striking wealth disparities in Santa Monica. (*See* Elec. Code § 14028, subd. (e) [identifying as a

probative factor "the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process"].)

The trial court found that the disposable wealth disparity between white residents and Latino residents in Santa Monica, due in part to the housing discrimination discussed below, was "far greater than the national disparity." (24AA10704.) The trial court also found that "districts tend to reduce the campaign effects of wealth disparities between the majority and minority communities, which are pronounced in Santa Monica." (24AA10735.)

These findings are well grounded in the evidence presented at trial, which revealed significant wealth disparities both between Latino and white residents in Santa Monica, and between the Pico Neighborhood and the rest of the city. (RT2292:19-2294:22; RT2302:13-2303:14 [objections later overruled at RT2429:10-11; RA49.) The wealth gap identified by

the trial court is particularly important in this case, where campaign spending has been extraordinarily high for city council races, sometimes approaching $1 million. (24AA10704; RT6926:2-6928:22.) As Professor Levitt testified, "The amount of money spent in Santa Monica makes it difficult to run and win city-wide, particularly for a minority [] of lower socioeconomic status … and particularly if you're fighting against the prevailing organizations that are spending independently." (RT6928:27-6929:15.) At-large campaigns are typically more expensive than district election campaigns because at-large campaigns must reach a much larger electorate. (RT6921:1-6921:14; RT6928:23-6929:27; RT7056:23-7059:3; RT7061:7-7063:11.) District elections, with their correspondingly smaller electorate and geographic footprint, render inexpensive campaign activities like door-knocking and phone-banking more effective, thus reducing the political advantages of having superior financial resources. (*Id.*; *Gingles*, *supra,* 478 U.S. at pp. 69-70 ["[C]andidates generally must spend more money in order to win election in a

multimember district than in a single-member district"]; see also *Buchanan v. City of Jackson* (W.D.Tenn. 1988) 683 F.Supp. 1537, 1542 [noting that dividing a city into districts would decrease the expense of "mounting a campaign throughout a large area"].)

A minority community that has been unsuccessful in expensive at-large elections due in part to its inferior financial resources could reasonably be expected to fare better in district elections. (RT6929:19-27; RT7063:5-11; see also Collingwood & Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act* (2021) 57 Urban Affairs Review 731, citing Berry et al., *The Discriminatory Effects of At-Large Elections* (1979) 7 Fla. St. U. L. Rev. 85.) With the large wealth gap and exceptionally expensive city council campaigns in Santa Monica, blunting the advantage of wealth by switching to district-based elections is especially likely to have a significant positive impact on minority representation in Santa Monica, as the trial court found. (24AA10735.)

b. History of Discrimination.

In Elections Code section 14028, subdivision (e), the CVRA identifies the "history of discrimination" affecting the protected class as one factor that may be probative in the vote dilution inquiry. The trial court recited a troubling history of discrimination against Latinos in Santa Monica, established at trial, including: (1) restrictive real estate covenants that concentrated Latinos into the Pico Neighborhood; (2) 70% percent of Santa Monica voters supporting a proposition to repeal the Rumsford Fair Housing act "and therefore again allow racial discrimination in housing"; (3) segregation in public facilities; and (4) discriminatory programs such as English-literacy requirements for voting and a "repatriation" program that sought to force Mexican-American legal immigrants and even citizens out of the country. (24AA10701-02.) This history of discrimination impacts both where Latino voters reside within Santa Monica—having been relegated to the least-wealthy Pico Neighborhood—and the Latino community's ability to compete in expensive at-large elections. These findings are all supported by

the trial evidence. (RT3755:6-3756:11; RT8639:14-8639:24; RT8630:8-8631:27; RA41; RA255-256.)

c. Unresponsiveness to the Needs of the Latino Community.

Courts have found that "'a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group'" is also probative of vote dilution. (See *Gingles, supra,* 478 U.S. at p. 37, quoting Sen. Rep. 97-417, 2d Sess., pp. 28-29 (1982); accord, *Pico*, *supra,* 15 Cal.5th at pp. 305-306.) The trial court found that Defendant's city council has a long record of such unresponsive indifference to the Latino community and the Latino-concentrated Pico Neighborhood. (24AA10705-10706.) As the trial court explained, "[t]he elements of the city that most residents would want to put at a distance—the freeway, the trash facility, the city's maintenance yard, a park that continues to emit poisonous methane gas, hazardous waste collection and storage, and, most recently, the train maintenance yard—have all been placed in the Latino-concentrated Pico Neighborhood."

(24AA10705.) Further, "[s]ome of these undesirable elements—e.g., the 10-freeway and train maintenance yard—were placed in the Pico neighborhood at the direction, or with the agreement, of Defendant or members of its city council." (24AA10705-10706.) This finding is supported by substantial evidence. (RT2316:10-2317:27; RT6078:18-6081:20; RT6083:10-28; RT7968:28-7989:23; RT8774:21-8788:15; 25AA11001; RA28; RA39-40; RA294-295; RA297-343; RA346.)

d. Voting Procedures that Exacerbate the Dilutive Effect of At-Large Voting.

The court also found that another factor identified by Elections Code section 14028, subdivision (e), the "use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections," supported its finding of vote dilution. Specifically, the trial court found that "the staggering of Defendants' city council elections enhances the dilutive effect of its at-large election system." (24AA10703.) At trial, unrebutted expert testimony established that Defendant's staggered elections make it "more possible for the majority to

field candidates for every single seat and to win each of those races." (RT6813:17-6814:21.) The U.S. Supreme Court has likewise recognized that staggering elections enhances the dilutive effect of at-large voting. (See *City of Lockhart v. United States* (1983) 460 U.S. 125, 135 ["The use of staggered terms also may have a discriminatory effect under some circumstances, since it ... might reduce the opportunity for single-shot voting or tend to highlight individual races"]; *City of Rome v. United States* (1980) 446 U.S. 156, 183 [same].)

e. Racial Appeals in Political Campaigns.

The trial court found that Santa Monica's elections have been plagued by both overt and subtle racial appeals—including depictions of a Latino candidate as the leader of a Latino gang, and repeated questions of a Latina candidate regarding "whether she could represent all Santa Monica residents or just 'her people.'" (24AA10704-10705; compare with Elec. Code § 14028, subd. (e) ["the use of overt or subtle racial appeals in political campaigns are probative, but not necessary [] to establish a violation of (the CVRA)"].) Those shameful racial appeals were

demonstrated at trial, and never rebutted by Defendant. (RT2145:11-23; RA278-279; RA291-292.)

f. Racially Exclusive Appointments

The trial court also found a pattern of racial exclusion in the appointments made by Defendant's city council to various commissions. The Court observed that the commissions "are nearly devoid of Latino members, in sharp contrast to the significant proportion (16%) of Santa Monica residents who are Latino." (24AA10706.) Moreover, the Court recognized that this pattern of exclusion from commissions had downstream political consequence, finding that the "near absence of Latinos on those commissions is important not only in city planning but also for political advancement: in the past 25 years there have been 2 appointments to the Santa Monica City Council, and both of the appointees had served on the planning commission." (*Id.*) These findings are supported by undisputed evidence in the trial record. (RT1852:8-10; RT2137:23-2140:7; RT8786:16-8788:14.)

g. Latino Political Organization in the Pico Neighborhood

The trial court also found that "Latinos in the Pico Neighborhood are politically organized in a manner that would more likely translate to equitable electoral strength [in a district system]." (24AA10735.) The unrebutted evidence established this political organization of the Latino community in the Pico Neighborhood. Several witnesses testified to the history of effective activism and Latino political organization in the Pico Neighborhood, making the Pico Neighborhood district more likely to enable Latino voters to elect their preferred candidate. (RT2117:3-2126:8; RT6920:20-6920:28; RT6950:20-6952:6; RT8739:1-8741:19.)

* * *

All of these socio-economic, historical and political factors combine with the at-large election system to deprive Latino voters of the voting power they would enjoy with an alternative system such as district-based elections. Specifically, as the trial court found, the continuing impact of historical discrimination

against Latinos in Santa Monica, a gulf in wealth and income between Latino and white residents of Santa Monica combined with extraordinarily expensive campaigns, overt and subtle racial appeals in city council campaigns, and the use of dilutive staggered elections, all combine with the at-large system to prevent Latinos from electing the Latino candidates they have preferred. (24AA10700-10706.) These factors, and their application in this case, bear out the U.S. Supreme Court's observation that "[t]he essence" of a vote dilution claim is that an electoral practice like at-large elections "interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives." (*Gingles, supra*, 478 U.S. at p. 47.)

4. The Experiences of Similar Jurisdictions That Use District Elections

The Supreme Court instructed that courts may also consider "the experiences of other similar jurisdictions that use district elections" in analyzing whether at-large voting is dilutive as compared with districts. (*Pico*, *supra,* 15 Cal.5th at pp. 321,

324.) Here too, the trial court made findings that the experiences of comparable jurisdictions with district elections support a conclusion that districts would afford protected class voters a greater opportunity to elect their preferred candidates. The trial court evaluated the experiences of other jurisdictions that had recently adopted district-based elections due to the CVRA, especially the results in districts where the protected class is not a majority, and concluded:

> Trial testimony revealed that jurisdictions that have switched from at-large elections to district elections as a result of CVRA cases have experienced a pronounced increase in minority electoral power, including Latino representation. Even in districts where the minority group is one-third or less of a district's electorate, minority candidates previously unsuccessful in at-large elections have won district elections. (24AA10733-10704.)

That finding is supported by the unrebutted trial testimony of election systems expert, Professor Justin Levitt, who detailed the results in newly-created districts in Southern California cities in which Latinos were less than a majority, as well as how such districts have performed elsewhere for minority communities. (RT6932:14-6932:26; RT6935:24-6936:7; RT6937:8-6938:18;

RT6938:20-24; RT6939:7-18; RT6940:10-14; RT6942:6-20; RT6946:5-6947:21; RT7065:19-7067:19.) In San Juan Capistrano's first district elections held in the wake of CVRA litigation, a Latino candidate prevailed in that city's most-heavily-Latino district where Latinos make up "22 percent [of] registered voter[s]," after being unsuccessful a few years earlier in the at-large system. (RT6935:24-6936:7; RT6937:8-6938:18.) In Highland, no Latino had ever been elected in that city's at-large system. (RT6942:18-20.) In Highland's first district election, also the result of CVRA litigation, a Latino candidate prevailed in the "non-Latino-majority district" in which the Latino proportion of eligible voters was "in the 40 percent range." (RT6938:20-24; RT6939:7-18; RT6940:10-14; RT6942:6-14.)

The trial court's findings, which are amply supported by the unrebutted testimony in the trial record, are also in line with the findings of academic studies demonstrating that districts with less than 50% minority voters, like the Pico Neighborhood district, nonetheless improve the ability of minority voters to

elect their preferred candidate. In its Statement of Decision, the trial court cited Florence Adams, Latinos and Local Representation: Changing Realities, Emerging Theories (2000), at pp. 49-61—one of several academic and empirical studies that confirm district-based elections improve minority electoral opportunity, even without majority-minority districts.[1] (*See also Georgia v. Ashcroft* (2003) 539 U.S. 461, 464 [recognizing that "various studies have suggested that the most effective way to maximize minority voting strength may be to create more influence or coalitional districts"].) This is especially true in California, as explained in the amicus letter of the Latino, African American, and Asian American Legislative Caucuses in this case, in which those caucuses credit their members' electoral

[1] See, e.g., Leal et al., *The Politics of Latino Education: The Biases of At-Large Elections* (2004) 66 Journal of Politics 1224, 1234-1235; Grofman et al., *Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence* (2001) 79 N.C. L. Rev. 1383; Engstrom et al., *The Election of Blacks to City Councils: Clarifying the Impact of Electoral Arrangements on the Seats/Population Relationship* (1981) 75 American Political Science Rev. 344.

success to districts with corresponding minority proportions as low as 20%.

B. Non-District Remedies

As the Supreme Court noted, "the trial court found that, in addition to district elections, several alternative at-large election methods—cumulative voting, limited voting, and ranked choice voting—would each enhance Latino voting power and their ability to elect candidates of their choice." (*Pico*, *supra,* 15 Cal.5th at p. 317; see also 24AA10706-10707, 24AA10733 [same].) These findings form an independent basis for the trial court's holding that Defendant's at-large elections dilute Latino voting power. The significance of these findings for purposes of liability is not diminished by the trial court's ultimate election of a district remedy. Rather, as the Supreme Court explained:

> Courts should likewise keep in mind that the inquiry at the liability stage is simply to prove that a solution is possible, and not necessarily to present the final solution to the problem. … In other words, the remedy the court ends up selecting under section 14029 may, but need not, be the benchmark the plaintiff offered to show the element of dilution.

(*Pico*, *supra,* 15 Cal.5th at p. 321, internal citations and quotations omitted.)

In briefing before the California Supreme Court, Defendant argued that these alternative remedies should not be considered because the trial court's Statement of Decision "said so little on the subject it was effectively unreviewable." (Def's Answer Br. at 66.) The Supreme Court rightfully rejected that argument in giving full recognition to the trial court's finding that "cumulative voting, limited voting, and ranked choice voting [] would each enhance Latino voting power and their ability to elect candidates of their choice," and noting the availability of those remedies as further reason to reject Defendant's invitation "that a majority (or near-majority) requirement should be judicially engrafted onto the CVRA." (*Pico*, *supra,* 15 Cal.5th at pp. 309, 317-318, 321; see also 24AA10706-10707, 24AA10733.)

Defendant's effort to dismiss the trial court's findings on this issue due to the brevity of the trial court's discussion is contrary to well-established California law. "[A] trial court

rendering a statement of decision … is required to state only ultimate rather than evidentiary facts because findings of ultimate facts necessarily include findings on all intermediate evidentiary facts necessary to sustain them." (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 599; accord, *People v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 524, disapproved on other grounds in *Cal-Tech Communications, Inc. v. Los Angeles Cellular Telephone* (1999) 20 Cal.4th 163, 184-185.) A statement of decision need not address all the legal and factual issues raised by the parties. Instead, it need do no more than state the grounds upon which the judgment rests, without necessarily specifying the particular evidence considered by the trial court in reaching its decision. (*Haight v. Handweiler* (1988) 199 Cal.App.3d 85, 89-90; *Aviointeriors SpA v. World Airways, Inc.* (1986) 181 Cal.App.3d 908, 913-914.)

The trial court's finding that, in the particular circumstances of Santa Monica, "cumulative voting, limited voting, and ranked choice voting—would each enhance Latino

voting power and their ability to elect candidates of their choice" (*Pico*, *supra,* 15 Cal.5th at p. 317), is supported by substantial evidence of exactly the sort the California Supreme Court directed trial courts consider in evaluating the likely impact of those systems. The Latino community's substantial proportion of eligible voters, the experiences of other jurisdictions using those systems, and the political organization of the Latino community—all demonstrated at trial—all support the trial court's finding.

1. The Design and Function of Cumulative Voting, Limited Voting, and Ranked Choice Voting.

The trial court heard unrebutted testimony on the nature of the three alternative at-large elections systems: cumulative voting, limited voting, and ranked choice voting.

With cumulative voting, voters can "cumulate" their votes by casting more than one of their available votes for a single candidate. (RT6955:7-6956:23; *Pico*, *supra,* 15 Cal.5th at p. 317, fn. 6.) Because minority voters can allocate all of their votes to a

preferred candidate, such a system "allows strong minority preferences to win elections." (RT6955:25-6956:9.)

Limited voting limits the number of votes a voter can cast to fewer than the number of seats to be filled at the election. (RT6967:9-23; *Pico*, *supra,* 15 Cal.5th at p. 317, fn. 7.) Professor Levitt explained that limited voting allows a cohesive minority "to elect at least one candidate of choice" (RT6967:9-23) because "[t]he minority can bullet vote with all of their support behind one particular candidate," while the majority "will be forced to split its vote," eliminating the majority's ability to "win every seat all the time." (RT6968:13-6970:3.)

Ranked choice voting allows voters to rank candidates in order of preference; the voter's single vote is initially allocated to that voter's most-preferred candidate and, as the count proceeds and candidates are eliminated, the votes for eliminated candidates are transferred to other candidates according to the voter's stated preferences. (RT6975:5-6979:20; *Pico*, *supra,* 15 Cal.5th at p. 317, fn. 8.) With ranked choice voting too, "[i]f the

minority community all plumps behind one particular candidate, they will also be able to elect a candidate to that multi-seat race." (RT6980:5-7.)

Professor Levitt explained that in each of these alternative remedies, "even under the most adverse conditions" a cohesive minority could elect their preferred candidate without any crossover support if the minority surpasses the "threshold of exclusion." (RT6956:10-6957:5; accord, *Pico*, *supra,* 15 Cal.5th at p. 320, fn. 11.) "[I]n a jurisdiction with seven seats, [like Santa Monica,] the threshold of exclusion [is] 12.5%." (*Pico*, *supra,* 15 Cal.5th at p. 320; RT6957:13-6958:13 ["it may be possible to win with fewer than 12.5% of the votes," but if the minority can pass the threshold of exclusion "at that point it's guaranteed."]; RT6965:3-10 [12.5% threshold for cumulative voting], RT6970:13-16 [same for limited voting]; RT6979:10-20 [same for ranked choice voting].)

2. The Latino Proportion of Eligible Voters Exceeds the "Threshold of Exclusion."

As the California Supreme Court explained, particularly in evaluating potential non-district remedies, "[t]he key inquiry in establishing dilution of a protected class's ability to elect its preferred candidate under the CVRA [] is what percentage of the vote would be required to win." (*Pico*, *supra,* 15 Cal.5th at p. 320.) In a cumulative, limited, or ranked-choice voting system, the Court explained just as Professor Levitt did at trial, that percentage is no greater than the "threshold of exclusion." (*See id.* at p. 320, fn. 11, quoting *Dillard v. Chilton County Board of Education* (M.D.Ala. 1988) 699 F.Supp. 870, 874; accord, RT6956:10-6958:13.)

In Santa Monica, as the California Supreme Court recognized, Latinos comprise 13.64% of eligible voters. (*Pico, supra,* 15 Cal.5th at p. 308; accord, 24AA10734, RT2470:8-10.) This exceeds the threshold of exclusion of 12.5% reflected in both the trial record and the Supreme Court's opinion. (See RT6957:13-6958:13, RT6965:3-10, RT6970:13-16, RT6979:10-20;

Pico, supra, 15 Cal.5th at p. 320 ["in a jurisdiction with seven seats [like Santa Monica], the threshold of exclusion [is] 12.5%"].) Therefore, the politically cohesive Latino voters in Santa Monica[2] could elect their preferred candidate under cumulative, limited, or ranked-choice voting even with no help from non-Latinos. (RT7051:27-7053:20.)

Defendant has previously argued that a greater (but unidentified) percentage than the threshold of exclusion should be required to show dilution because turnout among Latino voters has historically been less than that of non-Hispanic white voters. Legal guidance from the California Supreme Court in this case, and federal courts in other cases, rejects Defendant's argument. When evaluating a minority group's ability to elect, the federal courts have compared the threshold of exclusion to the

[2] The ecological regression analyses of both sides' experts demonstrates the political cohesiveness of Santa Monica's Latino voters, as the trial court found, and Defendant has never contested that fact. (24AA10685-10688; RT3021:2-19; RT3057:22-3089:12; RT3171:5-3199:24; RT5515:22-5524:19; RT5528:1-5537:9; RA56-76; RA193-215.)

proportion of eligible minority voters, just as the California Supreme Court advised in this case. (See *Pico*, *supra,* 15 Cal.5th at p. 320, fn. 11; *U.S. v. Village of Port Chester* (S.D.N.Y 2010) 704 F.Supp.2d 411, 427, 450 [ordering cumulative voting and unstaggering of elections, and measuring the effectiveness of cumulative voting by comparing the threshold of exclusion to the Hispanic proportion of eligible voters (CVAP)—"[I]t seems highly likely to this Court that a dramatic change in the electoral structure to give Hispanics a better opportunity to participate would likely result, for myriad reasons, in a marked change in voter turnout. Accordingly, it would be counterintuitive to determine that depressed turnout among Hispanics—a condition that may very well be a direct byproduct of the existing electoral regime—should be a reason to preclude the creation of a new electoral structure."]; *Missouri State Conference of the NAACP v. Ferguson-Florissant School Dist.* (E.D.Mo. 2016) 219 F.Supp.3d 949, 956-957; *Cane v. Worcester County* (D.Md. 1994) 847 F.Supp. 369, 372, revd. in part on other grounds (4th Cir. 1994) 35 F.3d

921.) That is consistent with the California Supreme Court's focus on a minority's "'*potential*' to elect its preferred candidates." (*Pico*, *supra,* 15 Cal.5th at pp. 322-323, emphasis in original, citing *Gingles*, *supra,* 478 U.S. at p. 50, fn. 17.) Registering to vote, and then casting a ballot, is within the ability of every citizen of voting age; so, a minority group has the potential, through registration and get-out-the-vote efforts, to comprise at least as great a proportion of actual voters as they are of eligible voters.

Moreover, the trial court had every right as the finder of fact to reject Defendant's hypothesizing that these remedies would be ineffective due to low turn-out. The trial evidence amply supports a finding that even if the Latino proportion of the electorate that turned out for a particular election were less than the threshold of exclusion it is still likely cumulative, limited or ranked-choice voting would enable Latino voters to elect their preferred candidates because there is some majority-crossover voting for the Latino-preferred candidate in each election, just

not enough to elect those candidates in the current at-large system which has a threshold of exclusion of 50%. (RT3021:2-19, RT3057:22-3089:12; RT3171:5-3199:24; RT5515:22-5524:19; RT5528:1-5537:9; RA56-76; RA193-215.) Further, both experimental and historical studies demonstrate the adoption of these non-district remedies increase voter turnout particularly among groups, like Latinos in Santa Monica, that had experienced depressed voter turnout due to a sense of futility. (See, e.g., Bowler et al., *Election Systems and Voter Turnout: Experiments in the United States* (2001) 63 Journal of Politics 902; Casella et al., *Minority Turnout and Representation Under Cumulative Voting, an Experiment* (2024) 141 Games and Economic Behavior 133.)

3. The Experiences of Other Similar Jurisdictions That Use Cumulative, Limited and Ranked-Choice Voting.

The evidence of other jurisdictions' use of cumulative voting, limited voting, and ranked-choice voting presented at trial likewise supports the trial court's finding that those systems would afford Latino voters in Santa Monica the ability to elect

their preferred candidate—an ability they lack in the current at-large system. The trial court heard evidence that cumulative voting and limited voting have been "effective in providing minorities, even a low proportion of minorities, the opportunity to both influence and elect candidates of choice," even in jurisdictions where the minority proportion of the electorate was *less* than the threshold of exclusion. (RT6963:1-6965:10 (cumulative voting); RT6971:14-6972:7 (limited voting).) Professor Levitt described "two jurisdictions where the African-American population … was 10.2 percent and 10.6 percent" that used cumulative voting to elect "seven members to their city council[s]" (the same number at issue here). (RT6963:1-6964:7.) In both jurisdictions African American voters "succeeded in electing candidates of their choice to the governing board." (*Ibid.*) Professor Levitt also relayed a study of "a large set of cities and towns that implemented limited voting as a result of [] Voting Rights Act settlement[s]" that revealed "members of the African-American community were able to elect candidates of their choice

with … as low as 10 percent" of eligible voters. (RT6971:14-6972:7.) That evidence was, and remains, unrebutted. It is also consistent with the academic studies of jurisdictions that have adopted cumulative, limited or ranked-choice voting. (See, e.g., Mulroy, *The Way Out: A Legal Standard for Imposing Alternative Electoral Systems as Voting Rights Remedies* (1998) 33 Harv. C.R.-C.L. L. Rev. 333, 349-350 ["Wherever minority candidates ran under a cumulative voting system, they won for the first time in decades (or for the first time ever."]; Engstrom, *Modified Multi-Seat Electoral Systems As Remedies for Minority Vote Dilution* (1992) 21 Stetson L.Rev. 743, 752-60; also see FairVote Amicus Brief, pp. 27-33 for a more complete discussion of such studies.)

4. Characteristics of the Specific Locality, Including Section 14028(e) Factors

Just as with district-based elections as the benchmark, the cohesiveness of Latino voters in Santa Monica, and their strong political organization—both found by the trial court and never disputed by Defendant—further support the trial court's finding

that "cumulative voting, limited voting, and ranked choice voting would each enhance Latino voting power and their ability to elect candidates of their choice." (*Pico*, *supra,* 15 Cal.5th at p. 317; see also 24AA10706-10707, 24AA10733.) As noted above in Section IV.A.3.g, the Latino community's extraordinary organization and dedicated leaders were demonstrated at trial, and never disputed by Defendant. Likewise, as the trial court found, the record evidence from both Plaintiffs' and Defendant's experts shows that Latino voters in Santa Monica are politically cohesive, and Defendant has never disputed that either. (See 24AA10686 ["The ecological regression analyses of these elections also reveals that when Latino candidates run for the Santa Monica City Council, Latino voters cohesively support those Latino candidates."]; RT3021:2-19; RT3057:22-3089:12; RT3171:5-3199:24; RT5515:22-5524:19; RT5528:1-5537:9; RA56-76; RA193-215.) Particularly with cumulative or limited voting, which rely on minority voters coalescing around a preferred candidate, that organization and consistent cohesiveness among Latino voters further supports the

trial court's view that non-district remedies would "enhance Latino voting power and their ability to elect candidates of their choice." (*Pico*, *supra,* 15 Cal.5th at p. 317; see also 24AA10706-10707, 24AA10733.)

Additionally, the trial court's findings on several of the qualitative factors set out in Elections Code section 14028, subdivision (e) and discussed above in Section IV.A.3, support the trial court's ultimate finding of vote dilution using cumulative, limited or ranked-choice voting as the benchmark.

C. The Electoral Opportunity Afforded By District and Non-District Remedies Alike Is In Stark Contrast to the Current At-Large System.

The trial court evaluated the electoral strength of Latino voters under not only these alternative systems, but also under the current at-large system. That comparison of the meaningful electoral opportunity offered by the alternative systems to the consistent pattern of losses by Latino-preferred Latino candidates under the current system demonstrates that "some lawful alternative method of election would improve the protected class's overall ability to elect its preferred candidates." (*Pico*,

supra, 15 Cal.5th at p. 322.) In other words, "the alternative voting systems [] offer the protected class at least a 'potential' to elect its preferred candidates that did not exist under the at-large system." (*Ibid*.)

1. The Trial Court Found that Latino Voters Lack the Ability to Elect Their Preferred Candidate in Defendant's At-Large Elections.

The trial court made specific findings concerning each of the elections it found most probative—namely, the elections involving Latino candidates, which are also the elections the CVRA expressly directs courts to evaluate (see Elec. Code § 14028, subds. (a) and (b)). Both the law and the factual record support the trial court's focus on this set of elections. (See *infra*, Sec. V.B; Elec. Code § 14028, subd. (b) [directing a focus on elections involving protected-class candidates]; *Yumori Kaku, supra*, 59 Cal.App.5th at p. 419 [affirming the right of the trial court to "weigh the usefulness of the election evidence presented and to assign probative value where appropriate"]; 24AA24AA10680, 24AA10684-10689; 24AA10699; RT3061:25-3062:16, RT6786:9-6787:6 [discussing the pattern of "dramatic

support" by Latino voters for leading Latino city council candidates that is absent from elections lacking recognized Latino candidates].)

Evaluating the election outcomes under the current at-large system over the previous 24 years, the trial court found that, absent unusual circumstances, Latinos have not been able to elect their preferred Latino candidate in any of those elections. (24AA10684-10689.):

- In 1994, Latino voters heavily favored the lone Latino candidate—Tony Vazquez—but he lost.
- In 2002, the lone Latina candidate and resident of the Pico Neighborhood—Josefina Aranda—was heavily favored by Latino voters, but she lost.
- In 2004, the lone Latina candidate and resident of the Pico Neighborhood—Maria Loya—was heavily favored by Latino voters, but she lost.
- In 2008, the lone Latina candidate and resident of the Pico Neighborhood—Linda Piera-Avila—received significant support from Latino voters, [but she lost].
- In 2012, two incumbents—Richard Bloom and Bobby Shriver—decided not to run for re-election, and the two other incumbents who had prevailed in 2008 – Ken Genser and Herb Katz – died during their 2008-12 terms. The leading Latino candidate—Tony Vazquez—was heavily favored by Latino voters but

did not receive nearly as much support from non-Hispanic white voters. He was able to eke out a victory, coming in fourth place in this four-seat race.

- Finally, in 2016, a race for four city council positions, Oscar de la Torre—a Latino resident of the Pico Neighborhood—was heavily favored by Latinos, but lost. In 2016, Mr. de la Torre received more support from Latinos than did Mr. Vazquez.

(24AA10687-10688.) The trial court summed up its view of these elections collectively:

> [W]hen Latino candidates run for the Santa Monica City Council, Latino voters cohesively support those Latino candidates—in all but one of those six elections, a Latino candidate received the most Latino votes, often by a large margin. And in all but one of those six elections, the Latino candidate most favored by Latino voters lost … . Even in that one instance (2012—Tony Vazquez) the Latino candidate barely won, coming in fourth in a four-seat race in that unusual election, in which none of the incumbents who had won four years earlier sought re-election. (24AA10686-10687.)

The evidence at trial amply supports the trial court's findings. (See RT3021:2-3021:19; 3057:22-3089:12; RT3171:5-3199:24; RT6762:27-6764:22; RT6771:20-6799:4; RT6804:7-6811:25; RA56-76; RA193-215.) Indeed, as the trial court recognized, the ecological regression estimates of group voting behavior by both Plaintiffs' expert (Dr. Kousser) and Defendant's expert (Dr.

Lewis) "reveal[ed] the same thing." (24AA10680; also see 24AA10686; 24AA10690; RA56-76; RA193-215.) The qualitative evidence, such as the endorsement of the Mexican American Political Action Committee, likewise supports the trial court's findings. (See, e.g., RT3061:25-3062:16.)

The trial court not only evaluated the voting strength of Latinos under the current system and potential alternatives, respectively, but also explicitly compared those voting strengths, as the California Supreme Court instructed. (*Pico*, *supra,* 15 Cal.5th at p. 322.) Just as the Supreme Court recognized, "[t]he trial court [] found that the City's at-large voting system unlawfully diluted the electoral strength of its Latino residents within the meaning of the CVRA, in that several alternative voting systems—e.g., district-based elections, cumulative voting, limited voting, and ranked choice voting—would ***better*** enable Latino voters to elect candidates of their choice or influence the outcomes of elections." (*Id.* at p. 309, emphasis added, internal

quotations omitted.) Indeed, the trial court's Statement of Decision repeatedly emphasizes this comparison:

- "At trial, Plaintiffs presented several available remedies (district-based elections, cumulative voting, limited voting and ranked choice voting, each of which would ***enhance*** Latino voting power over the current at-large system." (24AA10706-10707, emphasis added.)
- "Based on that evidence, the Court finds that the district map developed by Mr. Ely … will likely be effective, ***improving*** Latinos' ***ability to elect their preferred candidate*** … ." (24AA10707, emphasis added.)
- "cumulative voting, limited voting and ranked choice voting, are possible options in a CVRA action and would ***improve*** Latino voting power in Santa Monica" (24AA10733, emphasis added.)

2. The Role of This Court Is Not to Second-Guess the Trial Court's Assessment of the Evidence Concerning the At-Large Elections or the Effectiveness of the Potential Remedies.

Defendant, to be sure, has a different view of the evidence adduced at trial than that of the trial court. In Defendant's view, it is enough that Latinos can sometimes, in the current system, elect their less-preferred second, third or fourth choice candidates, as long as those candidates are not themselves

Latino, under the current system. But, not only does Defendant's view defy the law (see ROB, pp. 53-60), it is the trial court's findings and the evidence viewed in the light most favorable to those findings, not Defendant's contrary view, that is the proper subject of this Court's review. (See *Crawford, supra,* 3 Cal.2d at p. 429; *In re K.H.* (2022) 84 Cal.App.5th 566, 601 ["[A] reviewing court should not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. The determinations should 'be upheld if ... supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.' The standard recognizes that trial courts generally are in a better position to evaluate and weigh the evidence than appellate courts."], internal quotations and citations omitted.) As the trial court found, and substantial evidence supports, by employing any of the district or non-district remedies, Latino voters in Santa Monica would be empowered to elect their preferred candidate, their first choice—an ability they

lack with the current system. That evidence is extensive and robust here, but even if it were minimal, it would still be sufficient to require affirmance of the trial court's judgment. (See *Bruno v. Hopkins* (2022) 79 Cal.App.5th 801, 823 ["A single witness's testimony may constitute substantial evidence to support a finding"].)

The identification of the trial court's findings that match the legal standard announced by the California Supreme Court, and confirmation that record evidence supports those findings, is where this Court's analysis must end, even if it might believe it would have made different factual findings if it were the trial court. That has long been the rule concerning the proper roles of trial and appellate courts, and remains so today. (See *Crawford, supra,* 3 Cal.2d at p. 429 ["It is an elementary, but often overlooked principle of law, that when a verdict is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the

conclusion reached by the [trier of fact]. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court."].)

V. THE SIXTH DISTRICT'S DECISION IN *YUMORI-KAKU* SHOWS WHY DEFENDANT'S ARGUMENTS REGARDING RACIALLY POLARIZED VOTING MUST BE REJECTED.

In its appeal, Defendant has attempted to retry the trial court's finding of racially polarized voting, disagreeing with the trial court about which elections are most probative and what inferences should be drawn from the evidence regarding those elections. In its December 2020 decision in *Yumori-Kaku, supra,* 59 Cal.App.5th at pages 419-420, the Sixth District Court of Appeal rejected a strikingly similar attack on a CVRA judgment and affirmed the trial court's "flexible, factfinding" role and its discretion to identify the most probative aspects of the record evidence regarding elections.

Yumori-Kaku also confirms that, contrary to Defendant's arguments on appeal, the trial court properly based its racially

polarized voting determination on evidence from elections involving Latino candidates, declining to apply a simplistic mechanical approach to the election evidence, and considering the race of the candidates.

This Court should follow *Yumori-Kaku*'s reasoning in this case because it applies proper standards of appellate review, is consistent with caselaw governing determinations of racially polarized voting, and correctly decides that determinations of racially polarized voting under recognized standards raise no constitutional issues.

A. *Yumori-Kaku* Emphasizes Deference to the Trial Court's Findings on Racially Polarized Voting.

In reviewing the trial court's findings of racially polarized voting, *Yumori-Kaku* repeatedly emphasizes the trial court's fact-finding role in undertaking "a searching practical evaluation" of local political history, weighing and interpreting the evidence, and drawing conclusions from a complex qualitative and statistical record. (See *Yumori-Kaku, supra,* 59 Cal.App.5th at p. 425.) The appellate court deferred to the trial court's judgment

on which elections should be given more probative value than others (see *id.* at pp. 416-420), whether those elections exhibited racially polarized voting (see *id.* at pp. 420-426), and even "the extent of racially polarized voting" necessary to establish liability under the CVRA in a particular case (*id.* at p. 417). The *Yumori-Kaku* court summed it up:

> We conclude that a court's analysis of racially polarized voting … invariably depends on its ability to weigh the usefulness of the election evidence presented and to assign probative value where appropriate. … To impose an overly restrictive interpretation on the trial court's reasonable discretion to assign probative value would contravene the flexible, factfinding approach indicated in cases enforcing the federal Voting Rights Act and suggested by the language of section 14028.

(*Id.* at pp. 419-420.) *Yumori-Kaku* thus makes clear it is not appropriate to re-try this case in the appellate courts, or for an appellate court to second-guess the trial court, as Defendant asks here. The trial court has the right and the duty to canvass the factual record, determine the weight to be accorded to different aspects "of the election evidence presented," and draw its own factual conclusions. (*Id.* at p. 419.) An appellate court should not

substitute its own judgment in place of "the trial court's reasonable discretion to assign probative value." (See *id.* at p. 420.) These same principles should guide this Court's review of the trial court's well-supported finding of racially polarized voting in this case, reached after a six-week trial.

B. *Yumori-Kaku* Confirms the Trial Court Here Properly Evaluated Defendant's Elections for Racially Polarized Voting.

Both *Yumori-Kaku* and then the California Supreme Court in this case embraced the standard announced in *Gingles* for determining the existence of racially polarized voting. (*Pico*, *supra,* 15 Cal.5th at p. 306; *Yumori-Kaku, supra,* 59 Cal.App.5th at pp. 412-416.) The Court in *Gingles* "conclude[d] that the District Court's approach, which tested data derived from three election years in each district, and which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard" for racially polarized voting. (*Gingles*, *supra,* 478 U.S. at p. 61.)

That is precisely the standard applied by the trial court here as well. After evaluating the 7 elections the trial court identified as most probative consistent with the CVRA, and explaining what each of those elections showed (24AA10684-10690), the trial court's finding mirrored the standard announced in *Gingles*: "Latino voters favor Latino candidates, but non-Latino voters vote against those candidates, and therefore the favored candidates of the Latino community lose." (24AA10688-10689.) Defendant attacks the trial court's detailed analysis and straightforward application of the standard for racially polarized voting with arguments that were all rejected in *Yumori-Kaku*.

First, Defendant criticizes the trial court for focusing on the city council elections involving at least one Latino candidate. (*See* Appellant's Opening Br. ("AOB") at pp. 34-35.) But, as the *Yumori-Kaku* court recognized, that is exactly what the CVRA directs. (*Yumori-Kaku*, 59 Cal.App.5th at p. 418 ["The trial court properly considered the 10 city council elections in which Asian American candidates participated"].) Indeed, the language of the

CVRA, quoted in *Yumori-Kaku*, could not be clearer on this point: "[t]he occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class." (*Yumori-Kaku*, *supra,* 59 Cal.App.5th at pp. 395-396, quoting Elec. Code § 14028, subd. (b).) It is hard to imagine how the trial court's "approach is legally invalid," as Defendant argues (AOB at p. 34), when it is merely complying with the express direction of the statute. (See Elec. Code § 14028, subd. (b); *Yumori-Kaku*, *supra,* 59 Cal.App.5th at pp. 395-396, 418.)

Second, Defendant criticizes the trial court for refusing to apply a mechanically arithmetic approach to both the identification of Latino-preferred candidates and a tally of elections to determine whether those Latino-preferred candidates usually lose. (*See* AOB at pp. 36-39, 41-44.) That criticism fares no better in light of *Yumori-Kaku*. In rejecting a similarly

mechanical approach to identifying minority-preferred candidates as that concocted by Defendant here, the *Yumori-Kaku* court eschewed any "bright-line rule tying legal sufficiency of cohesion to a mathematical formula or statistical method." (*Yumori-Kaku*, *supra,* 59 Cal.App.5th at p. 425.) Rather, the *Yumori-Kaku* court emphasized that "when assessing statistical evidence of racially polarized voting, courts should keep in mind the broader legal principles described in *Gingles* and be neither [] wedded to, nor hamstrung by, blind adherence to statistical outcomes, [because no case] requires the use of a particular statistical methodology, or demands a particular statistical outcome before a court may conclude that racial bloc voting exists." (*Ibid.,* quoting *United States v. City of Euclid* (N.D. Ohio 2008) 580 F.Supp.2d 584, 596.) Doing what Defendant insists the trial court here should have done would, as the *Yumori-Kaku* court confirmed, shirk the trial court's responsibility to engage in the "fact intensive … searching practical evaluation of the past and present reality of the electoral system's operation … with a functional, rather than a

formalistic, view of the political process." (*Id.* at pp. 425-426.) In this respect, *Yumori-Kaku* is in line with the significant majority of federal caselaw that also rejects any mechanical approach to identification of minority-preferred candidates, and specifically the mechanical approach Defendant proposes here. (See Respondent's Opening Brief ("ROB") at pp. 55-60.)[3]

[3] It should be noted that the particular way that the trial court in *Yumori-Kaku* determined whether there were Asian-preferred candidates in that case is not applicable here. Unlike here, the at-large elections at issue in *Yumori-Kaku* were for "numbered posts," where each election was for a single seat. (See *Yumori-Kaku*, *supra,* 59 Cal.App.5th at p. 396 [describing the "numbered post" system].) In such a system, voting for candidates is a zero-sum proposition: a vote for one candidate necessarily denies a vote to the other candidates competing for the seat. In contrast, in a multi-seat race like the at-large elections in Santa Monica where voters can each cast multiple votes, it is "virtually unavoidable" that even lesser-preferred candidates will nonetheless garner a significant number of minority votes. (*See Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F3d 543, 553-54 (*Ruiz*), quoting *Citizens for a Better Gretna v. City of Gretna* (5th Cir. 1987) 834 F.2d 496, 502.) Therefore, it would be inappropriate to say that there is no minority-preferred candidate in the multi-seat elections here whenever the support for the leading candidate among minority voters does not far exceed that for every other candidate. (See *Collins v. City of Norfolk* (4th Cir. 1989) 883 F.2d 1232, 1238 [finding black candidate who received the most support from black voters in

The *Yumori-Kaku* court similarly rejected the notion that a court evaluating racially polarized voting should simply tally the numbers of wins and losses among the candidates it identifies as Latino-preferred to determine if the Latino-preferred candidates usually lost, as Defendant insists the trial court should have done here. (Compare AOB at pp. 41-44, 48 with *Yumori-Kaku*, *supra,* 59 Cal.App.5th at pp. 411-416.) Rather, in upholding the trial court's finding of racially polarized voting, *Yumori-Kaku* held that "whether majority bloc voting usually enables defeat of the minority preferred candidate cannot be reduced to a simple mathematical or doctrinal test" (*Yumori-Kaku, supra,* 59 Cal.App.5th at p. 416), and that the trial court has the discretion

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multi-seat election to be minority-preferred, but not the white candidate who received 15% less support from black voters than the black candidate]; *Harper v. City of Chicago Heights* (N.D.Ill. 1993) 824 F.Supp. 786, 790-791 [finding black candidate who received the most support from black voters in multi-seat election to be minority-preferred, but not another black candidate who received 11% less support from black voters than their top choice].) In either case, as *Yumori-Kaku* explained, it is improper to apply a bright-line "mathematical formula or statistical method" in determining whether a minority is politically cohesive. (See *Yumori-Kaku, supra,* 59 Cal.App.5th at p. 425.)

both to determine the most probative elections (*id.* at pp. 416-420) and to interpret "the evidence produced by statistical analysis" and assess its probative value without being constrained by any bright-line "mathematical formula or statistical method" (*id.* at pp. 425, 426). As *Yumori-Kaku* held, "whether a majority voting bloc is 'usually' able to defeat a cohesive minority group's preferred candidate ... is not measured by mathematical formula but by the trial court's searching assessment of statistical and other evidence presented." (*Id.* at p. 413; accord, *Ruiz, supra,* 160 F.3d at p. 554 [the trial court "erred in applying a simple mathematical approach—counting the number of successful Hispanic-preferred candidates divided by the number of elections" as that "mechanical approach failed to fulfill the district court's duty to make 'a searching practical evaluation of the past and present reality' with 'a functional view of the political process.'"].)

Third, Defendant criticizes the trial court for considering the candidates' respective ethnicities, and focusing on the levels

of support for the Latino candidates. (*See* AOB at pp. 29-33.) But, what Defendant ignores is that the trial court did not just focus on Latino candidates before finding a "consistent pattern" in which Latino voters "strongly prefer" a Latino candidate over their other choices. (24AA10680 *quoted in Pico*, 15 Cal.5th at 308-09.) As the trial court recognized, "where the choice is available, Latino voters strongly prefer a Latino candidate ... but, despite that support, the preferred Latino candidate loses." (24AA10680.) The leading Latino candidates in 1994, 2002, 2004, 2012, and 2016 all received overwhelming support from Latino voters (ranging from 82.6% to constructively unanimous support). (24AA10680, RA57, RA63, RA66, RA72, RA75.)

Contrary to Defendant's contention, the *Yumori-Kaku* court confirmed that it is appropriate to focus on the minority candidates seeking a seat on the defendant's governing board when they are preferred by minority voters, just as the trial court did in this case. (*Yumori-Kaku, supra,* 59 Cal.App.5th at p. 418 ["By its plain language, section 14028 suggests that courts look to

'the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of' an action for vote dilution under the Act"], italics removed.) Indeed, the *Yumori-Kaku* court affirmed the judgment of the trial court in that case based on the analysis of the same expert (Dr. Kousser) whose analysis the trial court in this case relied upon, following the same methodology he applied in *Yumori-Kaku*. (*Id.* at p. 420 [affirming the trial court's judgment – "the trial court credited Dr. Kousser's analytical methodology"]; 24AA10680-10691.)[4] That analysis demonstrated, and the trial court found, those Latino candidates preferred by the Latino electorate lost in

[4] See also *Campos v. Baytown* (5th Cir. 1988) 840 F.2d 1240, 1248-1249 [finding RPV based on differing levels of support for minority candidates from minority and white voters, respectively]; *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, 1416-1417 [same]; *Teague v. Attala County* (5th Cir. 1996) 92 F.3d 283, 291 [describing evidence of differing levels of support for black candidates from white and black voters, respectively, as "overwhelming evidence of racial polarization"].

five out of the six elections that the trial court found most probative, showing that majority-bloc voting has consistently defeated these Latino-preferred candidates. (24AA10684-10689; see *Pico*, *supra,* 15 Cal.5th at p. 315; *Yumori-Kaku, supra*, 59 Cal.App.5th at pp. 411-420.)

C. *Yumori-Kaku* Rejected the Same Meritless Constitutional Argument that Defendant Makes Here.

On appeal, Defendant has raised two constitutional arguments. The California Supreme Court has already rejected the first argument, which sought to use the doctrine of constitutional avoidance to narrow the CVRA more to Defendant's liking. (See *Pico, supra*, 15 Cal.5th at pp. 322-323.)

Defendant's second constitutional argument is that that the trial court's consideration of the race of the candidates was unconstitutional stereotyping—though Defendant's analysis provides no reasoned basis for that dismissive and incorrect characterization. (*See* AOB at pp. 13, 29, 33.) The trial court's factual findings regarding the "salience of the races of the candidates" in Defendant's city council elections are grounded in

evidence—including the expert statistical analyses that show Latino voters support ranging from 82.6% to 100% for their preferred Latino candidates—not stereotype. (See 24AA10699; RA57, RA63, RA66, RA72, RA75.) Indeed, the trial court explicitly acknowledged: "In this analysis, it is not that minority support for minority candidates is presumed; to the contrary, it must be demonstrated." (24AA10684.)

Yumori-Kaku rejected a nearly identical argument, observing that the defendant's objection to the race-conscious elements of the racially polarized voting analysis failed in the face of "settled California authority" holding that the race-conscious provisions of the CVRA "do not trigger strict scrutiny" as "the [CVRA] does not favor any race over others or allocate benefits or burdens on the basis of race." (*Yumori-Kaku*, *supra,* 59 Cal.App.5th at p. 427, citing *Sanchez v. Modesto* (2006) 145 Cal.App.4th 660, 680-81, 687-88.) Just as in *Yumori-Kaku*, Defendant has done nothing to show that the trial court's race conscious analysis, which is entirely in line with the express

language of the CVRA, "allocate[s] benefits or impose[s] burdens on the basis of race." (*Ibid.*)

VI. BECAUSE THE TRIAL COURT'S DECISION SATISFIED EVERY ASPECT OF THE SUPREME COURT'S STANDARD FOR DETERMINING VOTE DILUTION, NO REMAND IS NECESSARY.

Remand is unnecessary and a "waste of judicial resources" when the trial court has already considered all the relevant factors. (*People v. Berdoll* (2022) 85 Cal.App.5th 159, 165 (*Berdoll*) ["It is not for this court to order the trial court to once again weigh the factors the trial court already considered."]; see also *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 372 (*Malibu Mountains Recreation*) [declining to remand where the trial court's statement of decision indicated that it would have reached the same result under the correct legal standard].)

Here, as the California Supreme Court recognized, the trial court has already made the finding required to establish vote dilution, namely, that "under some lawful alternative electoral system, the protected class would have the potential, on its own

or with the help of crossover voters, to elect its preferred candidate." (See *Pico, supra,* 15 Cal.5th at pp. 307-308, 321-322.) The trial court made that precise finding as to "several alternative election systems," including "district-based elections, cumulative voting, limited voting, and ranked choice voting." (*Id.* at p. 309; see also *id.* at p. 317; 24AA10706-10707; 24AA10733.)

Moreover, in reaching that finding the trial court made a "searching evaluation of the totality of the facts and circumstances," including the precise factors identified by the Supreme Court as relevant to vote dilution: the design and function of the alternative systems, Santa Monica's electoral history and precinct-level results within the proposed remedial district, its qualitative characteristics including the factors enumerated in Elections Code section 14028, subdivision (e), and the experiences of comparable jurisdictions with the benchmark alternative electoral systems. (See *Pico, supra,* 15 Cal.5th at pp. 308, 320, 324 [discussing relevant factors]; Section IV, *supra* [discussing the trial court's findings on each of those factors and

substantial evidence in the record supporting those findings].) In short, there is no prejudicial omission or error in the trial court's findings that could support a remand. (See *Malibu Mountains Recreation, supra*, 67 Cal.App.4th at p. 372 ["A judgment will only be reversed if the error at the trial court level resulted in a miscarriage of justice to the extent that a different result would have been probable without the error"], citations omitted.)

Accordingly, the Supreme Court gave no instructions to remand to the trial court, nor any indication that it found the trial court's findings incompatible with the legal standard it announced. That stands in contrast to its actions in other cases in which it does require remand to the trial court, for example when the trial court's application of an incorrect legal standard prevents it from addressing relevant factual issues or "resolv[ing] inconsistent testimony presented at trial" on a pertinent issue. (*Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 802-03 (*Ramirez*) [collecting cases]; see also, e.g., *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 824 (*Richards*) [remanding where the

trial court had failed to consider one of the factors relevant to Court's newly announced standard].) In such cases, when the Supreme Court announces a new legal standard that encompasses facts or factors not considered by the trial court, it remands "with directions to remand to the trial court" to address the outstanding issues. (See *Richards, supra*, 26 Cal.4th at p. 825; *Ramirez, supra*, 20 Cal.4th at p. 803 [directing remand to the trial court to resolve "significant factual discrepancies" overlooked by the trial court due to its incorrect interpretation of the governing Wage Order].)

In this case, the issue of whether an alternative voting system would provide Latino voters greater ability to elect their preferred candidates has already been tried to judgment, and the trial court has already made factual findings consistent with the Supreme Court's newly announced dilution standard while considering and rejecting Defendant's view of the evidence. It would thus be a "waste of judicial resources" to remand this matter to the trial court to reconsider the factors that it has

already considered. (See *Berdoll, supra*, 85 Cal.App.5th at p. 165.)

VII. CONCLUSION

This is not the only CVRA case to have gone to trial or been appealed, but it is the first to have been reviewed by the Supreme Court. In reviewing this case, the Supreme Court spelled out the standards to be applied in implementing the CVRA's substantive provisions. The trial court undertook exactly the analysis laid out by the Supreme Court, based on the extensive evidence it heard during a six-week trial. Consistent with the general principles governing appellate court review of trial court decisions, this Court must defer to the findings the trial court reached based on its "searching evaluation" of local political circumstances. Because the trial court's findings are fully consistent with the Supreme Court's standards and are based on substantial evidence in the trial record, this Court must now affirm those well-supported findings without further proceedings.

Respectfully submitted,

Dated: December 6, 2023

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CERTIFICATE OF WORD COUNT

I, the undersigned appellate counsel, certify that this brief consists of 13,851 words exclusive of those portions of the brief specified in California Rules of Court, rule 8.204(c)(3), relying on the word count of the Microsoft Word computer program used to prepare the brief.

Dated: December 6, 2023 **SHENKMAN & HUGHES**

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PROOF OF SERVICE

I, Scott G. Grimes, declare as follows:

I am employed in the County of Alameda, State of California, I am over the age of eighteen years, and I am not a party to this action. My business address is 155 Grand Avenue, Suite 900, Oakland, CA 94612, in said County and State. On December 6, 2023, I served the following document(s):

PLAINTIFFS' SUPPLEMENTAL BRIEF AFTER REMAND

On parties stated below, by the following means of service:

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

Executed on December 6, 2023, in Oakland, California.

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