

No. S263972

IN THE SUPREME COURT OF CALIFORNIA

PICO NEIGHBORHOOD ASSOCIATION,
Plaintiff-Respondent,

V.

CITY OF SANTA MONICA,
Defendant-Appellant.

**On Appeal from the Second Appellate District,
Division Eight
Case No.: B295935
Honorable John Shepard Wiley Jr., Justice**

**Application For Leave to File Amicus Curiae Brief and Amicus Brief
of The UCLA Voting Rights Project on Behalf of UCLA Social
Scientists Matt Barreto, Lorrie Frasure, Chelsea Jones, Natalie
Masuoka, Gary Segura, Efrén Pérez, and Chris Zepeda-Millán**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
APPLICATION TO FILE AMICUS BRIEF	1
INTEREST OF AMICUS	3
CORPORATE DISCLOSURE STATEMENT.....	7
I. INTRODUCTION.....	8
II. SUMMARY OF ARGUMENT.....	9
III. ARGUMENT	11
I. Under the Text of the CVRA, A Plaintiff Prevails If They Prove Racially Polarized Voting.....	11
II. Both the Plain Meaning and the Legislative History of the CVRA Show the Legislature Intended to Only Require Plaintiff Prove RPV.	12
III. Published Methods to Observe Racial Polarization in Voting Are Reliable.	14
IV. The Legislative Policy Choice to Require Only Racially Polarized Voting in Order to Prove a Violation is Supported by Social Science.	17
CONCLUSION	35
CERTIFICATE OF WORD COUNT	36
DECLARATION OF SERVICE.....	37

TABLE OF AUTHORITIES

Cases

<i>Burden v. Snowden</i> , 2 Cal.4th 556 (1992).....	10, 11
<i>Cal. Tchrs. Assn. v. Governing Bd. of Rialto Unified Sch. Dist.</i> , 14 Cal.4th 627 (1997).....	11
<i>Cal. Tchrs. Assn. v. San Diego Cmty. Coll. Dist.</i> , 28 Cal.3d 692 (1981).....	10
<i>Dyna-Med, Inc. v. Fair Emp. & Hous.</i> , 43 Cal.3d 1379 (1987).....	10, 11, 12
<i>Higginson v. Becerra</i> , 786 Fed. Appx. 705 (2019)	8-9
<i>People v. Overstreet</i> , 42 Cal.3d 891 (1986).....	11, 12
<i>Sanchez v. City of Modesto</i> , 145 Cal.App.4th 660 (2006).....	12, 13
<i>Thornburg v. Gingles</i> , 478 U.S. 30, 53 n. 21 (1986).....	6, 8
<i>Yumori-Kaku v. City of Santa Clara</i> , Cal. App.5th 385 (2020).....	8, 17

State Statutes

Cal. Elec. Code §14025	8
Cal. Elec. Code §14026(e).....	13
Cal. Elec. Code §14028	8, 13
Cal. Elec. Code §14028(a).....	12

Federal Statues

52 U.S.C. 1030112

Other Authorities

S. Res. 976, Third Reading, 2001 Sen., (Ca. 2002) 14

Loren Collingwood, Kassra Oskooji, Sergio Garcia-Rios and Matt Barreto, “*eiCompare: Comparing Ecological Interference Estimates across EI and EI: RxC.*” *The R Journal*. 8:2. (2016)..... 15

Bernard Grofman, *Multivariate Methods and the Analysis of Racially Polarized Voting: Pitfalls in the Use of Social Science by the Courts*. *Social Science Quarterly*, 72(4): 826-833 (1991) 15

M.V. Hood III, Peter A. Morrison, and Thomas M. Bryan, *From Legal Theory to Practical Application: A How-To for Performing Vote Dilution Analyses*, 99 *Soc. Sci. Q.* 536, 536-552 (2018)..... 16, 18

Barreto et al., *A Novel Method for Showing Racially Polarized Voting: Bayesian Improved Surname Geocoding*, *NYU Rev. L. & Soc. Change* (forthcoming) 17

V.O. Key Jr. and Alexander Heard, *Southern Politics: In State and Nation* (Caravelle ed., 1949). 19

Michael W. Giles & Kaenan Hertz, *Racial Threat and Partisan Identification*, 88 *Am Pol. Sci. Rev.* 317 (1994)..... 20

Martin Gilens, Paul M. Sniderman, & James H. Kuklinkski, *Affirmative Action and the Politics of Realignment*, 28 *Brit. J. Pol. Sci.* 159 (1998).... 20

John M. Powers, *Statistical Evidence of Racially Polarized Voting in the Obama Elections, and Implications for Section 2 of the Voting Rights Act*, 102 *Geo. L.J.* 881 (2013)..... 20, 21

Keith Reeves, *Voting Hopes or Fears? White Voters, Black Candidates & Racial Politics in America* 74 (Oxford Univ. Press 1997)..... 21

Michael Tesler, *Post-Racial or Most-Racial?: Race and Politics in the Obama Era* (Univ. of Chi. Press ed., 2016) 21

Zoltan L. Hajnal, <i>White residents, black incumbents, and a declining racial divide</i> , 95 <i>Am. Pol. Sci. Rev.</i> 603 (2001).....	22
Peyton McCrary, <i>Racially Polarized Voting in the South: Quantitative Evidence from the Courtroom</i> , 14 <i>Social Science History</i> 507 (1990).....	24
Imtiaz Hussain et al., <i>Attitudes Toward “Illegal” Immigration Into the United States: California Proposition 187</i> , 23 <i>Hispanic J. Of Behavioral SCI.</i> 430, 434-40 (2001).....	26
Loren Collingwood & Sean Long, <i>Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act</i> , <i>Urb. Aff. Rev.</i> (2019)	26
Kareem Crayton, <i>Beat ‘Em or Join ‘Em? White Voters and Black Candidates in Majority-Black Districts</i> , 58 <i>Syracuse L. Rev.</i> 548, 554-58 (2008)	27
Baodong Liu & James M. Vanderleeuw, <i>Racial Transition and White-Voter Support for Black Candidates in Urban Elections</i> , 23 <i>Journal of Urban Affairs</i> 309 (2001)	27
Peter K Eisinger, <i>Black Employment in Municipal Jobs: The Impact of Black Political Power</i> , 76 <i>Am. Pol. Sci. Rev.</i> 380 (1982).....	28
Rene R. Rocha & Rodolfo Espino, <i>Racial Threat, Residential Segregation, and the Policy Attitudes of Anglos</i> , 62 <i>Political Research Quarterly</i> 415 (2009)	29
Alberto Alesina, Reza Baqir, & William Easterly, <i>Public Goods and Ethnic Divisions</i> , 114 <i>Q.J. of Econ.</i> 1243 (1999)	29
Joe Soss, Sanford F. Schram, Thomas P. Vartanian, & Erin O’Brien, <i>Setting the Terms of Relief: Explaining State Policy Choices in the Devolution Revolution</i> , 45 <i>Am. J. of Pol. Sci.</i> 378 (2001).....	29
Matthew C. Fellowes & Gretchen Rowe, <i>Politics and the New American Welfare States</i> , 48 <i>Am. J. of Pol. Sci.</i> 362 (2004).....	30
Michiko Ueda, <i>The Impact of Minority Representation on Policy Outcomes: Evidence from the U.S. States</i> (Cal. Inst. Of Tech., Social Science Working Paper 1284, 2008).....	31

Robert R. Preuhs. *The Conditional Effects of Minority Descriptive Representation: Black Legislators and Policy Influence in the American States.* 68 J. of Pol. 585 (2006)..... 28

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APPLICATION TO FILE AMICUS BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, *amicus*, social scientists Matt Barreto, Lorrie Frasure, Chelsea Jones, Natalie Masuoka, Gary Segura, Efrén Pérez, and Chris Zepeda-Millán (collectively “UCLA Social Scientists”) respectfully requests leave to file the attached brief of *amicus curiae* in support of plaintiff-appellants. This application is timely made pursuant to Rule 8.520(f)(2) of the California Rules of Court.

As set forth in more detail below, *amicus curiae* have a special interest in protecting the voting rights of Californians. The Court of Appeal’s decision, if allowed to stand by this Court, would be a substantial setback to minority voting rights in California, and perhaps also in other states that have been inspired by the California Voting Rights Act (CVRA) to enact their own voting rights statutes with nearly provisions. That harm to minority voting rights would likewise impact amici’s research. Amici hold unique training, education and research that the Court may find useful in determining this case. The brief addresses the Legislature’s choice to trigger CVRA liability on racially polarized voting alone, and the ample reasons, supported by social science, the Legislature could have relied upon in crafting the statutory text. Therefore, *amicus curiae* respectfully asks this Court to allow the filing of the attached brief.

Pursuant to Rule 8.520(f)(4) of the California Rules of Court, no party or any counsel for a party in the pending appeal authored the

proposed amicus brief or made any monetary contribution intended to fund the preparation or submission of the proposed amicus brief; and no person or entity, other than the UCLA Voting Rights Project, its members and its counsel, made a monetary contribution intended to fund the preparation or submission of the brief.

INTEREST OF AMICUS

The UCLA Voting Rights Project is a project of the Latino Politics & Policy Initiative, Luskin School of Public Affairs, University of California, Los Angeles (UCLA). UCLA Voting Rights Project works to advance justice through research, advocacy, and education. Participants in the project are principally drawn from the Schools of Public Affairs, Law, Division of Social Sciences, and other parts of the university, as the issues require.¹ The UCLA Voting Rights Project does not, in this brief or otherwise, represent the official views of the State of California or the University of California, Los Angeles.

The UCLA Social Scientists are scholars on race and ethnic political behavior and voting. The UCLA Social Scientists have a special interest in supporting the correct social science methods related to their studies, including racially polarized voting. Drawing from their experience and expertise, amici have a strong interest in ensuring that courts receive important social science and academic information pertaining to a dispute prior to deciding critical matters that will define the event horizon of our democracy.

¹ We would like to acknowledge the students who assisted in the preparation of this brief: Chelsea Jones, political science doctoral candidate in the UCLA College of Social Science—expected graduation in 2022; Tye Rush, political science doctoral candidate in the UCLA College of Social Science—expected graduation in 2022; Ronak Patel, J.D. candidate at UCLA School of Law—expected graduation in 2020; and Crandalyn Jackson, J.D. candidate at UCLA School of Law—expected graduation in 2020. These names are in no particular order.

Social scientist Dr. Matt A. Barreto, PhD, is Professor of Political Science and Chicana/o and Central American Studies at UCLA. He is the faculty director of the UCLA Voting Rights Project and has published numerous social science articles on the topic of racially polarized voting, vote dilution and voting rights and voting behavior of racial and ethnic minorities. He has authored expert reports and testified as an expert witness in dozens of California VRA and Federal VRA lawsuits.

Social scientist Dr. Lorrie Frasure, PhD, is an Associate Professor of Political Science and African American Studies at UCLA. She is currently the Acting Director of the Ralph J. Bunche Center for African American Studies at UCLA. Dr. Frasure's research focuses include racial/ethnic political behavior, African American politics, and state and local politics. She has published numerous political science papers and a book, *Racial and Ethnic Politics in American Suburbs*.

Chelsea Jones, MPP, is a Doctoral Student in Race, Ethnicity, and Politics at UCLA. She is a research associate for both the Ralph J. Bunche Center for African American Studies and the UCLA Voting Rights Project. Jones investigates voter suppression through polling closures in Black communities throughout the United States as well as the role of Black Christian churches as sites of political socialization and community policy centers.

Social scientist Dr. Natalie Masuoka, PhD, is an Associate Professor of Political Science and Asian American Studies. Dr. Masuoka's research includes studying racial and ethnic politics, immigration, and political behavior and public opinion. She has written multiple books on racial politics in the United States. Dr. Masuoka has written numerous social science papers on race and politics and has been cited over one-thousand times.

Social scientist Dr. Gary M. Segura, PhD, is the Dean of the Luskin School of Public Affairs at UCLA. His work focuses on issues of political representation and social cleavages, the domestic politics of wartime public opinion, and the politics of America's growing Latino minority. His work has been published in the *American Political Science Review*, *American Journal of Political Science*, *Journal of Politics*, *Political Research Quarterly*, and the *Annual Review of Political Science*. He has provided expert testimony on discrimination in voting rights cases and civil rights cases.

Social scientist Dr. Efrén Pérez, PhD, is a Full Professor of Political Science and Psychology at UCLA. His scholarship area is political psychology, with a focus on racial and ethnic politics, language and political thinking, implicit political cognition, and the measurement of political concepts. He is the author of numerous articles in leading political science journals.

Social scientist Dr. Chris Zepeda-Millán, PhD, is an Associate Professor of Political Science at UCLA. His research has been published in top political science and interdisciplinary academic journals, such as the *American Journal of Political Science (AJPS)*, *Political Research Quarterly (PRQ)*, *Politics, Groups and Identities (PGI)*, *Critical Sociology*, the *Chicana/o Latina/o Law Review*, *Social Science Quarterly (SSQ)*, and the *Journal of Ethnic and Migration Studies (JEMS)*.

The UCLA Social Scientists, as *amicus*, are uniquely positioned to opine on the issues before the Court because of amici's work as social scientists studying race and voting. As such, they request permission to file the attached brief in order to answer the following question before the California Supreme Court in this case: what must a plaintiff prove in order to establish vote dilution under the California Voting Rights Act (CVRA)?

Accordingly, the UCLA Voting Rights Project on behalf of the UCLA Social Scientists respectfully request that this Court grant this application to appear as *amicus curiae* and allow the attached brief to be filed.

CORPORATE DISCLOSURE STATEMENT

Pursuant to California Rules of Court 8.520(f), undersigned counsel for amici make the following disclosures:

The UCLA Voting Rights Project is an education, research and advocacy project of The University of California, Los Angeles, a not-for-profit educational institution chartered by the State of California. Neither the University of California, Los Angeles or the UCLA Voting Rights Project have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

I. INTRODUCTION

The California Legislature specifically passed the California Voting Rights Act of 2001(CVRA) to ensure that communities in California had more robust protections against vote dilution and discrimination in voting than provided for under the Federal Voting Rights Act of 1965 (FVRA). *See Yumori-Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385 (2020). Indeed, Section 1 of the CVRA states that “the Legislature finds and declares that the purpose of this act is to address ongoing vote dilution and discrimination in voting as matters of statewide concern...” Cal. Elec. Code § 14025. Passed in 2001, the CVRA was constructed to work with the FVRA but also address harms that, since its passage in 1965, the FVRA had not been successful remedying.

The CVRA is purposefully different from the FVRA and does not require of plaintiffs the same evidence to show a violation. The CVRA provides that a violation of the CVRA is established if it is shown that racially polarized voting occurs in elections for members of the challenged governing body of the political subdivision or in elections incorporating other electoral choices by voters of the political subdivision. Cal. Elec. Code § 14028. The Ninth Circuit recently rejected the argument that the CVRA violates the federal constitution because it only requires the showing of racially polarized voting to trigger the Act’s remedies. *See Higginson v.*

Becerra, 786 Fed. Appx. 705 (9th Cir. 2019).² The Court of Appeals was incorrect to read more requirements into the Act.

This brief does not make comment on the merits of the underlying vote dilution case, nor do Amici opine on whether racially polarized voting exists or existed within the challenged jurisdiction — amici have not analyzed the data. Amici’s argument addresses the question the Court has posed: whether a showing of racially polarized voting is the sole requirement of what a plaintiff must prove in order to establish vote dilution under the CVRA.

II. SUMMARY OF ARGUMENT

The Legislature, supported by the social science, had ample policy reasons to trigger the CVRA’s remedies with only evidence of racially polarized voting. Racial polarization exists when there is a difference in the choice of candidates between the majority and minority voting populations. When a clear candidate of choice exists for each of these voting blocs and the majority voting population votes in such a way that effectively *blocks* the minority voters from electing candidates of choice, racially polarized voting has occurred. Racially polarized voting is linked to a history of discrimination and is associated with racial animus. When politics is centered on excluding a group in the minority from participation,

² The UCLA VRP participated in *Higginson*, also as counsel for amici.

discriminatory policies are further perpetuated. A lack of racial representation in politics leads to inherently exclusive and discriminatory policy outcomes, which often affects government responsiveness. The inclusion and integration of members of underrepresented communities serves as a remedy to the racially inequitable implementation of public policies, as these members increase government responsiveness toward underserved groups and advocate for issues pertinent to their co-ethnics. Therefore, a key determinant of equitable policy outcomes, increased government responsiveness, and healthy constituent-public service relationships is adequate racial representation, which cannot prevail in the midst of racially polarized voting.

Guided by the social science, the plain text of the CVRA requires proof of racial polarized voting, and nothing more, to show a violation. The first step California courts take in interpreting state statutes is to determine the Legislature's intent in its creation. *Dyna-Med, Inc. v. Fair Emp. & Hous.*, 43 Cal.3d 1379, 1386-87 (1987). The Legislature's intent can be ascertained by examining the plain meaning of the statute's language. *Burden v. Snowden*, 2 Cal.4th 556, 562 (1992) (citing *Cal. Tchrs. Assn. v. San Diego Cmty. Coll. Dist.*, 28 Cal.3d 692, 698 (1981)). The CVRA's language is clear and unambiguous. There is no need for a court to construct it. The plain meaning and the legislative history of the CVRA show that the Legislature intended for a plaintiff to prevail if they prove

racially polarized voting occurs in the jurisdiction and, as this brief demonstrates, there were ample reasons to do so.

III. ARGUMENT

I. Under the Text of the CVRA, A Plaintiff Prevails If They Prove Racially Polarized Voting.

A. California's Rules of Statutory Interpretation Are Clear.

This court has stated on numerous occasions that the “first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law.” *Dyna-Med, Inc. v. Fair Emp. & Hous.*, 43 Cal.3d 1379, 1386-87 (1987); *see also Cal. Tchrs. Assn. v. Governing Bd. of Rialto Unified Sch. Dist.*, 14 Cal.4th 627, 632 (1997); *People v. Overstreet*, 42 Cal.3d 891, 895 (1986). To understand the Legislature’s intent, a court must “look first to the language of the statute, giving effect to its plain meaning.” *Burden v. Snowden*, 2 Cal.4th 556, 562 (1992) (citing *California Tchrs. Assn. v. San Diego Cmty. Coll. Dist.*, 28 Cal.3d 692, 698 (1981)). The court should “giv[e] to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose.” *Dyna-Med, Inc.*, 43 Cal.3d at 1386-87. Further, this Court has stated, “[t]he words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.” *Id.* at 1386-87.

In cases like that of the CVRA, “[w]hen statutory language is clear and unambiguous, there is no need for construction and courts should not indulge in it.” *Overstreet*, 42 Cal.3d at 895. In the case of other statutes, where the text of the statute is considered to be ambiguous, the statute’s history can be used to ascertain legislative intent. As this Court has said, “[b]oth the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent.” *Dyna-Med, Inc.*, 43 Cal.3d 1386-87.

II. Both the Plain Meaning and the Legislative History of the CVRA Show the Legislature Intended to Only Require Plaintiff Prove RPV.

The purpose of the CVRA can be construed from the language and structure of the text. The CVRA explicitly states that a CVRA violation is established by the plaintiff’s showing that racially polarized voting occurs in the district. *Sanchez v. City of Modesto*, 145 Cal.App.4th 660, 670 (2006). Section 14028(a) provides, “[a] violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Cal. Elec. Code §14028(a). The Legislature defined racially polarized voting to be “voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965, 52 U.S.C. 10301 *et seq.*, in the choice of candidates or other electoral

choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate.” Cal. Elec. Code §14026(e). The CVRA’s statutory language is clear and unambiguous. There is no need for the Court’s construction.

The CVRA instructs plaintiffs to bring a claim by showing evidence of racially polarized voting. Cal. Elec. Code §14028. The Legislature was clear in how to determine whether racially polarized voting has occurred. “The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.” Cal. Elec. Code §14028. Courts have followed the CVRA’s definition of vote dilution by interpreting it as a “combination of racially polarized voting and an at-large election system.” *Sanchez*, 145 Cal. App. 4th at 666.

The California Assembly transcripts are consistent with the clear language of the CVRA. The transcripts demonstrate that the legislature intended for vote dilution to include racially polarized voting. SB 976 “[e]stablishes that voter rights have been abridged if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other

electoral choices by the voters of the political subdivision.”³ SB 976 “[p]rovides that upon a finding of racially polarized voting the court shall implement appropriate remedies, including the imposition of district-based elections.”⁴ The addition of other requirements would make the clear language of the law redundant.

III. Published Methods to Observe Racial Polarization in Voting Are Reliable.

Published methods to observe the occurrence of racial polarization in voting are reliable. Amici, UCLA Voting Rights Project Faculty, and UCLA Voting Rights Project fellows have performed collectively hundreds of such racially polarized voting analyses using current court-approved methods. These analyses have been provided as testimony in federal court and accepted as reliable by state and federal courts. See e.g., *Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, (S.D. Tex. 2013); *Cisneros v. Pasadena Indep. Sch. Dist.*, CIVIL ACTION NO. 4:12-CV-2579, (S.D. Tex. Apr. 25, 2014); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1385 (E.D. Wash. 2014). Additionally, Dr. Matt A. Barreto served as a consultant to the California Citizen’s Independent Redistricting Commission in 2011 to assist in evaluating racially polarized voting in California.

³ S. Res. 976, Third Reading, 2001 Sen., (Ca 2002).

⁴ *Id.*

Polarized voting analysis uses ecological inference, a statistical methodology that allows social scientists to examine aggregate units and sort out patterns within the data.⁵ It is used in the fields of biology, ecology, zoology, anthropology, sociology, and political science. For political science purposes, when social scientists lack perfect information on how individuals behave, they can attempt to infer that behavior by examining patterns in larger aggregate units. Within the field of political science, ecological inference is often used to study voting patterns among different racial or ethnic groups, in the United States or across any number of different countries. To do this, political scientists take precinct-by-precinct election results and correlate how precinct votes were cast and the racial or ethnic demographics of the voters within a given precinct.⁶ California courts, as well as the United States Supreme Court have accepted these types of analyses of voting patterns using ecological inference as a proper tool to adjudicate vote dilution claims. *See e.g., Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986). In addition, political scientists regularly use this methodology to publish peer-reviewed academic scholarship in books and journals.⁷

⁵ Loren Collingwood, Kassra Oskooii, Sergio Garcia-Rios & Matt Barreto, *eiCompare: Comparing Ecological Inference Estimates across EI and EI: RxC*, 8:2 THE R JOURNAL. 92-101 (2016).

⁶ Bernard Grofman, *Multivariate methods and the analysis of racially polarized voting: pitfalls in the use of social science by the courts*, 72(4) SOCIAL SCIENCE QUARTERLY. 826–833 (1991).

⁷ GARY KING, ET AL., ECOLOGICAL INTERFERENCE: NEW METHODOLOGICAL STRATEGIES 1-12 (2004).

An analysis of voting patterns using ecological inference methodology can be used to detect polarized voting. Often called *racially polarized voting*, this analysis is simply a statistical measurement of how different precincts across a jurisdiction voted.⁸ The use of polarized voting analysis is itself not a method of racial classification, nor does it dictate an outcome of a racial quota system for political representation. A polarized voting analysis is merely a social science methodology that allows practitioners to assess whether or not elections for city council (or other offices) can be characterized by opposing voting coalitions – hence polarized.⁹ Using demographic data about the race or ethnicity of the voters within a precinct, social scientists can use the ecological inference method to determine whether or not a certain candidate for political office was preferred by the racial group that is a numeric minority in the city. Beyond this, ecological inference analysis can reveal whether the same candidate was preferred or blocked by voters who make up the numeric majority in the jurisdiction. To aid ecological inference, federal courts have accepted the use of Bayesian Improved Surname Geocoding (BISG) to improve estimates of racially polarized voting, by relying upon both surnames and census-based geographic data to understand the racial

⁸ M.V. Hood III, Peter A Morrison, & Thomas M Bryan, *From legal theory to practical application: A how-to for performing vote dilution analyses*. 99 SOCIAL SCIENCE QUARTERLY 536-552 (2017).

⁹ GARY KING, A SOLUTION TO THE ECOLOGICAL INFERENCE PROBLEM (1997).

demographics of voters.¹⁰ See e.g., *NAACP Spring Valley v. East Ramapo Central School District*, 462 F.Supp. 3d 368 (S.D. N.Y. 2020); *Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213, 219 (2nd Cir. 2020); *United States v. City of Eastpointe*, 378 F. Supp. 3d 589, 613 (E.D. Mich. 2019). When courts, and in this case the Legislature, have prescribed a polarized voting analysis, they are adopting the proper, standard methods regularly used in many fields of social science as recognized in law. Both federal and California courts have accepted racially polarized voting analysis that utilized ecological inference. See e.g. *Yumori-Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385 (2020).

IV. The Legislative Policy Choice to Require Only Racially Polarized Voting in Order to Prove a Violation is Supported by Social Science.

Evidence of racially polarized voting is sufficient to prove vote dilution because the existence of racially polarized voting in a political subdivision demonstrates harm that is contemporaneously occurring to the minority group. Evidence of racial polarization in voting reveals that minority votes and/or the ability of the minority to influence elections are being diluted. If minority voters in an at-large system – of any race or ethnicity – are trying to elect their candidate of choice or influence the outcome of elections

¹⁰ Barreto et al., *A Novel Method for Showing Racially Polarized Voting: Bayesian Improved Surname Geocoding*, NYU REV. L. & SOC. CHANGE 19 (forthcoming).

through cohesive voting patterns, but the majority voting population bloc votes against their choice, that is evidence of vote dilution.

A. Identifying Racially Polarized Voting in Jurisdictions.

Thornburg v. Gingles defines racial polarization, stating that "racial polarization" exists where there is "a consistent relationship between [the] race of the voter and the way in which the voter votes," or to put it differently, where "black voters and white voters vote differently." *Thornburg v. Gingles*, 478 U.S. 30, 53 n. 21 (1986). Social science and voting rights scholars today have adapted this definition to instances where the bloc of voters in the majority vote differently from the racial minority group(s). When there is a clear candidate of choice for each of these voting blocks, that constitutes racially polarized voting. This occurs when the voting blocs reach a simple majority for any of the candidates in a race between two candidates.¹¹ Racially polarized voting can and does occur in multi-candidate races when white and non-white candidates receive less than majority support from their respective voting blocs.

According to political scientists M.V. Hood III, Peter A. Morrison, and Thomas M. Bryan:

“Polarization in the vote dilution context may be thought of as the degree of support of a racial/ethnic group for a candidate measured against the level of support of another racial/ethnic group for the same candidate. For example, if

¹¹ M.V. Hood III, Peter A. Morrison, & Thomas M. Bryan, *From Legal Theory to Practical Application: A How-To for Performing Vote Dilution Analyses*, 99 Soc. Sci. Q. 536-552 (2018).

91.0 percent of black voters in a congressional district voted for the Democratic candidate, while 34.0 percent of white voters did so, the level of polarization would be 57.0 (91.0 – 34.0).”¹²

It is important to note, however, that racially polarized voting will produce a unique and individualized result for every single election examined. In some instances, the results may show racially polarized voting patterns between two or more different racial groups. In other instances, the results may not show any evidence of racially polarized voting. The result is entirely dependent on how different precincts and parts of town cast their ballots. That is, the method itself is agnostic about the results; it is a tool for analysis, and the individual precincts and their racial composition in each jurisdiction are what determine the results.

B. Racially Polarized Voting is an Objective Measure of Historical Discrimination.

In areas where politics is centered on the exclusion of a racial group from participation, discriminatory policies are further perpetuated.¹³ Political scientists Key and Heard analyzed the behavior and careers of southern politicians, along with the structures and political processes of southern governments. They found that politics in historically racially exclusionary areas are chaotic and factional. Social science research has

¹² *Id.* at 545.

¹³ V.O. KEY JR., AND & ALEXANDER HEARD, SOUTHERN POLITICS: IN STATE AND NATION (Caravelle ed., 1949).

documented extensively that the underlying catalysts triggering bloc voting are racial attitudes and stereotypes.¹⁴

Racially polarized voting is a longstanding feature of many jurisdictions, both statewide and local.¹⁵ Additionally, social scientist John M. Powers analyzed the relationship between racially polarized voting and racial animus (prejudice). He concluded that “[r]acially polarized voting is not an aberration but a longstanding pervasive and continuing feature of numerous jurisdictions’ electoral histories - both at statewide levels and local levels.”¹⁶ A preponderance of the scholarship supports this claim that harboring negative racial attitudes is the underlying mechanism responsible for producing racial bloc voting among whites, against minority candidates for elected office. For example, in a large-scale study of racial attitudes and voting, Professor Keith Reeves finds that “a significant number of Whites harbor feelings of antipathy toward Black Americans as a categorical group – feelings and sentiments that are openly and routinely expressed.... And

¹⁴ EDWARD G. CARMINES & JAMES A. STIMSON, *ISSUE EVOLUTION: RACE AND THE TRANSFORMATION OF AMERICAN POLITICS* (1989); THOMAS B. EDSALL & MARY D. EDSALL, *CHAIN REACTION: THE IMPACT OF RACE, RIGHTS, AND TAXES ON AMERICAN POLITICS* (1991); Michael W. Giles & Kaenan Hertz, *Racial Threat and Partisan Identification*, 88 *AM. POL. SCI. REV.* 317-326 (1994); ROBERT HUCKFELDT & CAROL WEITZEL KOHFELD, *RACE AND THE DECLINE OF CLASS IN AMERICAN POLITICS* (1989); Martin Gilens, Paul M. Sniderman & James H. Kuklinski, *Affirmative Action and the Politics of Realignment*, 28 *BRIT. J. POL. SCI.* 159-183 (1998).

¹⁵ John M. Powers, *Statistical Evidence of Racially Polarized Voting in the Obama Elections, and Implications for Section 2 of the Voting Rights Act*, 102 *GEO. L.J.* 881-925 (2013).

¹⁶ *Id.* at 891.

where such prejudices are excited.... they constitute the critical linchpin in Black office-seekers' success in garnering White votes.”¹⁷

In areas with a history of racial exclusion, racial animus underlies white voting behavior and political thinking. Powers, analyzing data from the 2008 and 2012 elections found evidence that racial animus underlies whites' voting behavior and political attitudes.¹⁸ With the evidence from his analysis, Powers concluded that white voters historically voting as a bloc against Black candidates is the result of racial animus. This contemporary study shows that, as recently as the Obama 2008 and 2012 elections, anti-Black racism was shown to be a predictor in national racially polarized voting against Obama.

Racially polarized voting and political preferences are associated with racial animus.¹⁹ Professor of Political Science at the University of California, Irvine, Michael Tesler analyzed the relationship between racial attitudes and political preferences.²⁰ Looking at political preferences across several different sources of nationally representative survey data, Tesler found evidence of racial polarization surrounding attitudes toward Barack Obama, which transfers over to policy preferences.²¹ White voters' anti-

¹⁷ KEITH REEVES, VOTING HOPES OR FEARS? WHITE VOTERS, BLACK CANDIDATES & RACIAL POLITICS IN AMERICA 74 (1997).

¹⁸ John M. Powers, *Statistical Evidence of Racially Polarized Voting in the Obama Elections, and Implications for Section 2 of the Voting Rights Act*, 102 GEO. L.J. 881, 900 (2013).

¹⁹ MICHAEL TESSLER, POST-RACIAL OR MOST-RACIAL?: RACE AND POLITICS IN THE OBAMA ERA (2016).

²⁰ *Id.*

²¹ *Id.* at 151.

Black racial attitudes negatively impacted their support for policies that are associated with Obama, like provisions in the Affordable Care Act, but these effects disappeared when researchers distanced these policies from Obama.²²

Given the choice, the vast majority of white Americans will vote for a white candidate, even if it means switching parties.²³ Professor of Political Science at the University of California, San Diego, Zoltan Hajnal argued that a majority of white voters have little to no personal experience with the leadership of Black elected officials, and due to this lack of personal experience, those white voters instead rely on racial stereotypes.²⁴ When white people know little about a candidate other than race, they rate Black candidates worse than whites on nineteen out of twenty leadership and personality characteristics: they view a black candidate as less trustworthy, less able to get things done, and even less intelligent.²⁵ Additionally, Hanjal found that when there is a greater proportion of Black voters in the electorate, there is a greater anti-Black effect, increased racial resentment, and a greater sense of racial group conflict.²⁶

²² *Id.* at 141.

²³ Zoltan L. Hajnal, *White Residents, Black Incumbents, and A Declining Racial Divide*, 95 AM. POL. SCI. REV. 603, 603 (2001).

²⁴ *Id.* at 604.

²⁵ *Id.*

²⁶ *Id.* at 604-5.

The contemporary events of racially polarized voting against Latino candidates did not develop in a vacuum. As historians have documented, California has an unfortunate history of anti-Latino discrimination, hate crimes, and even state-sanctioned violence, particularly with the targeting of California Mexican Americans.²⁷ In published research from a national dataset of Whites, and with large samples from California, statistical analysis of voting patterns and public opinion makes clear that a new resurgence of anti-immigrant attitudes are correlated with anti-Latino affect.²⁸ In particular, these scholars make the case that anti-Latino attitudes are not a historical artifact, but that in modern times they have clearly resurfaced anew, pointing to California as a place where whites continue to demonstrate prejudice against Latinos.²⁹

Professors Matt Barreto, Loren Collingwood, Sergio Garcia-Rios and Kassra AR Oskooii conducted a racially polarized voting analysis on three states, across 14 different elections from 2004 to 2012 and found evidence of racially polarized voting in several counties in California.³⁰ The analysis results were developed using two methods, iterative ecological inference, and the row by column approach, which both showed minority

²⁷ ALFREDO MIRANDÉ, *GRINGO INJUSTICE: INSIDER PERSPECTIVES ON POLICE, GANGS, AND LAW* (2020).

²⁸ Regina Branton, et al., *All Along the Watchtower: Acculturation Fear, Anti-Latino Affect, and Immigration*, 73 J. OF POLIT. 664, 664-679 (2011).

²⁹ *Id.*

³⁰ Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios, and Kassra AR Oskooii. "Estimating Candidate Support in Voting Rights Act Cases: Comparing Iterative EI and EI-R×C Methods." *Sociological Methods & Research*, 1 – 34 (2019)

voting cohesion, but immense disparities in vote choice between white and Latino voters. Looking at the 2005 Los Angeles mayoral runoff election between Antonio Villaraigosa and James Hahn, study results show that while 82 to 84 percent of Latinos voted for Villaraigosa, the Latino candidate, only 44 to 50 percent of white voters made that same choice.³¹

These results are corroborated by the LA Times and additional ecological inference tests conducted using the eiCompare statistical package.³² With this package, Professors Loren Collingwood, Kassra Oskooii, Sergio Garcia-Rios and Matt Barreto found additional evidence of racially polarized voting in California wherein white voters voted as a bloc in opposition to the preferred Latino candidate, even where there were more than two candidates in the race.³³ An example of this is the 2006 Corona, California election, where four city council candidates were on the ballot. Latino and white voters diverged in their first-choice preference, as Latino voters favored the one Latino candidate and white voters voted as a bloc in opposition of that candidate.³⁴

Even in politically progressive states, at-large, polarized voting leads to racially inequitable outcomes.³⁵ After reviewing numerous examples of

³¹ *Id.* at 20.

³² *Supra* note 5.

³³ *Id.*

³⁴ *Id.* at 95.

³⁵ Peyton McCrary, *Racially Polarized Voting in the South: Quantitative Evidence from the Courtroom*, 14 SOC. SCI. HIST. 507, 507-31 (1990).

racially polarized voting analyses conducted for Voting Rights Act lawsuits, James Peyton McCrary found evidence of racial discrimination in education policy and education outcomes, which correlated with rates of racially polarized voting.³⁶ For example, in Marengo County, education policy and disparate education outcomes were linked to decades of polarized voting.³⁷

California also provides examples of how the use of at-large election systems undermine the interests of minority voters. Even 20 years ago, the 2000 census showed tremendous growth of Latinos, making up 46 percent of the Los Angeles County population. This growth, however, did not cause increased representation on the Board of Supervisors.³⁸ A study conducted by Absoch, Barreto, and Woods noted that political gains made by Latinos equated to losses by non-Latinos “and subsequently non-Latinos may try to keep Latinos out of office by systematically voting against Latino candidates.”³⁹ The authors assessed elections from 1994 to 2003 wherein a Latino candidate was present or an issue of concern to the Latino community was on the ballot. They found robust and consistent evidence that non-Latinos voted substantially against Latino candidates and issues.⁴⁰

³⁶ *Id.* at 513.

³⁷ *Id.*

³⁸ Matt Barreto et al., *Estimating Candidate Support in Voting Rights Act Cases: Comparing Iterative EI and EI-R×C Methods*, 1 SOC. METHODS & RSCH. 1, 1-34 (2019).

³⁹ Yishaiya Absoch et al., *An Assessment of Racially Polarized Voting For and Against Latino Candidates in California*, in VOTING RIGHTS ACT REAUTHORIZATION OF 2006 107, 109 (2007).

⁴⁰ *Id.* at 108.

These findings substantiate the prior passing of the discriminatory anti-immigrant bill, Proposition 187, which set to prohibit immigrants from using non-emergency social services in California. Scholars have shown that the bill was highly supported by White voters and opposed by Latino voters.⁴¹ Racially polarized voting patterns have persisted in California and have worked to block adequate political representation for Latinos.⁴²

Political scientists Loren Collingwood and Sean Long examined the California Voting Rights Act and the impact of California jurisdictions shifting from at-large elections to single-member districts.⁴³ They found that this shift from at-large to single-member districts led to increases in minority representation on city councils.⁴⁴ Specifically, their findings show a 10 to 12 percent increase in minority representation, “primarily manifested in cities with larger shares of Latino residents (upward of 20 percentage points),” equating to one full council seat in high-density Latino cities.⁴⁵ The authors note that shifting from at-large to single district city councils should increase diversity of the council by about 21 percent on average.⁴⁶

⁴¹ Imtiaz Hussain et al., *Attitudes Toward “Illegal” Immigration Into the United States: California Proposition 187*, 23 HISPANIC J. OF BEHAVIORAL SCI. 430, 434-40 (2001).

⁴² *Id.*

⁴³ Loren Collingwood & Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, 57 URB. AFF. REV 731, 734 (2019).

⁴⁴ *Id.* at 734.

⁴⁵ *Id.*

⁴⁶ *Id.* at 755.

Numerous social science studies have also described the ways in which polarized voting impedes the ability of voters in protected groups to realize their political power – e.g., allying with different constituencies, competing for statewide offices, and advancing broader policy interests.⁴⁷ When white voters comprise the numerically dominant group, they typically occupy major elected offices, outcompeting minority groups in a racially polarized electoral environment.⁴⁸ Professors Baobong Lui and James M. Vanderleeuw analyzed the relationship between Black population density and white crossover voting (white voters voting for Black candidates), finding that the level of white crossover voting was lowest in the white-dominant context.⁴⁹ They go on to state that the “explanation for the low level of white crossover in the white dominant context is that white strategic voting for a Black candidate is unnecessary in this setting, given the small chance that a Black candidate will be elected.”⁵⁰ Lui and Vanderleeuw also observed that in a context with low to no racially polarized voting, the likelihood of a Black candidate being elected increased, and stronger black candidates competed for office.⁵¹ The positive

⁴⁷ See Kareem Crayton, *Beat ‘Em or Join ‘Em? White Voters and Black Candidates in Majority-Black Districts*, 58 SYRACUSE L. REV. 548, 554-58 (2008) (summarizing social science data).

⁴⁸ Baodong Liu & James M. Vanderleeuw, *Racial Transition and White-Voter Support for Black Candidates in Urban Elections*, 23 JOURNAL OF URBAN AFFAIRS, 309 - 322 (2001).

⁴⁹ *Id.* at 315

⁵⁰ *Id.*

⁵¹ *Id.*

relationship between Black density and white crossover voting shows a “strategic adjustment of white voters to a changing racial context.”⁵²

C. Lack of Racial Representation in Politics Results in Inequities in Policy Outcomes

Social science literature shows that the general orientation of policy distribution is to be inequitable to minority communities and communities of color. This orientation stems from the historical makeup of governing bodies, as predominantly male and White groups representing the interests of their co-ethnics and gender counterparts.⁵³ As such, policies birthed from the interests of racially homogenous groups are inherently exclusive to the interests of those present and thus err toward being discriminatory of those not represented.⁵⁴ According to political scientist Peter Eisinger, a “politics of ethnicity” exists in American cities, wherein the distribution of economic goods to groups is “a consequence of that group’s political power.”⁵⁵ Thus, racial representation, and the lack thereof, in groups of political influence is a key determinant in the equitable writing and passing of policies.⁵⁶

Racial representation is a critical intervention because state and local policies have historically been shaped by a variety of social factors such as

⁵² *Id.* at 320.

⁵³ Robert R. Preuhs, *The Conditional Effects of Minority Descriptive Representation: Black Legislators and Policy Influence in the American States.* 68 J. OF POL. 586, 585-99 (2006).

⁵⁴ Jane Mansbridge, *Should Blacks Represent Blacks and Women Represent Women? A Contingent ‘Yes’*, 61 J. OF POL. 635, (1999).

⁵⁵ Peter K Eisinger, *Black Employment in Municipal Jobs: The Impact of Black Political Power*, 76 AM. POL. SCI. REV. 380 (1982).

⁵⁶ *Id.*

racial animus, jurisdiction demographic makeup, language preferences and perceived levels of integration among language minorities.⁵⁷ As noted by social scientists Alberto Alesina, Reza Baqir and William Easterly, “the public goods problem [inequities in the distribution of public goods] is linked to another problem that also appears almost insurmountable: ethnic divisions.”⁵⁸ This finding points to the key concept that policy outcomes, especially in racially homogeneous environments, are driven by underlying racial biases, particularly biases toward racial groups on the receiving end of social programs.⁵⁹

Examples of the link between racial bias and policy outcomes occur in city government spending patterns. “Spending on productive public goods (education, roads, sewers and trash pickup) in U.S. cities is inversely related to the city’s ethnic fragmentation.”⁶⁰ Findings in the same study showed that jurisdictions with a majority of white voters, “choose *lower public goods* when a significant fraction of tax revenues collected by white residents are used to provide public goods shared with other ethnic groups.”⁶¹ Among those public goods, spending on core goods like

⁵⁷ Rene R. Rocha & Rodolfo Espino, *Racial Threat, Residential Segregation, and the Policy Attitudes of Anglos*, 62 POL. RES. Q. 415, 415-426 (2009).

⁵⁸ Alberto Alesina, Reza Baqir, & William Easterly, *Public Goods and Ethnic Divisions*, 114 Q.J. OF ECON. 1243, 1243-84 (1999).

⁵⁹ Joe Soss, Sanford F. Schram, Thomas P. Vartanian, & Erin O’Brien, *Setting the Terms of Relief: Explaining State Policy Choices in the Devolution Revolution*, 45 AM. J. OF POL. SCI. 378, 378-95 (2001).

⁶⁰ Alesina et al., *supra*, note 31 at 1243.

⁶¹ *Id.* at 1244.

education and roads has been found to be lower in more ethnically diverse jurisdictions.⁶² These findings reinforce Jane Mansbridge’s conclusions on the role of representation in public policy, in that without appropriate representation, public spending fails to reflect the policy needs of each group.⁶³

The outcomes in the distribution of social programs provide evidence of the need for adequate racial representation, as race played a key role in the implementation of many prominent programs. A 2004 study by Matthew Fellowes and Gretchen Rowe on the passage of the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) and subsequent distribution of the Temporary Aid to Needy Families (TANF) and Aid for Families with Dependent Children (AFDC) programs found that as states become more diverse, welfare policies become stricter as a result of underlying racist attitudes among government officials.⁶⁴ Across a number of factors tested, “only race has a significant effect on the majority of welfare [policies] analyzed.”⁶⁵ The trend shows that as minorities increase in proportion of program recipients, the strictness of program entry requirements increases; revealing that government responsiveness is a

⁶² *Id.* at 1274.

⁶³ Mansbridge, *supra*, note 54 at 644.

⁶⁴ Matthew C. Fellowes & Gretchen Rowe, *Politics and the New American Welfare States*, 48 AM. J. OF POL. SCI. 362, 362-73 (2004).

⁶⁵ *Id.* at 362.

result of perceptions of the constituency it serves.⁶⁶ Where there are gaps in representation of that constituency, policy outcomes are decided based on unchallenged stereotypes of the constituency, resulting in discriminatory welfare policies, among other social policies.

D. Increases in Minority Racial Representation Result in Increased Government Responsiveness

The inclusion and integration of members of underrepresented communities serves as a remedy to the racially inequitable implementation of public policies, as these members increase government responsiveness toward underserved groups and also advocate for issues pertinent to their co-ethnics. According to Professor Michiko Ueda, “racial composition of legislators does matter, not just in a symbolic sense, but also for policy outcomes that reflect diverse interests of society.”⁶⁷ Racial representation is an activity wherein representatives are, “acting in the interests of the represented,” ultimately “[altering] the direction of public policy that, in their absence leaves minority groups worse off.”⁶⁸ According to Mansbridge, racial representation benefits disadvantaged groups in a multitude of ways that have particular benefits for cases where minority

⁶⁶ *Id* at 370.

⁶⁷ Michiko Ueda, *The Impact of Minority Representation on Policy Outcomes: Evidence from the U.S. States* (Cal. Inst. of Tech., Social Science Working Paper 1284, 2008).

⁶⁸ Robert R. Preuhs, *Descriptive Representation as a Mechanism to Mitigate Policy Backlash: Latino Incorporation and Welfare Policy in the American States*, 60 *POL. RSCH.* q. 277, 277-92 (2007).

voters have little ability to elect the candidate of their choice.⁶⁹ Mansbridge notes that the presence of descriptive representatives in elected positions provides adequate lines of communication between minority groups and governing bodies where dialogue and accountability was once absent.⁷⁰ The article also notes that descriptive representatives provide innovative thinking towards policy solutions when a minority group has uncrystallized social interests.⁷¹ For areas where minority leaders have been historically blocked from elections, especially in the contexts of past discrimination, their new presence leads to changes in the social meanings of who is qualified and able to rule, as well as increases in the polity's "de facto legitimacy."⁷²

Racial representation in public office is a key strategy to ensure that officials and constituents have congruent policy interests, and that the allocation of goods and services reflect those shared interests.⁷³ The effectiveness of this strategy has been evidenced in studies on the federal allocation of aid to school districts, as studies have found that "the political representation of African Americans is associated with a more equitable allocation of state aid to school districts."⁷⁴ The same study found that

⁶⁹ Mansbridge, *supra*, note 54.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 639.

⁷³ Mansbridge, *supra*, note 54 at 644.

⁷⁴ Ueda, *supra*, note 67.

political representation was not only beneficial to the jurisdictions directly impacted, but policies also had spillover effects on other jurisdictions.⁷⁵ “In states where African Americans gained greater representation, high minority enrollment districts saw a greater increase in aid compared to high minority enrollment districts in states where African Americans remained underrepresented in the state legislature.”⁷⁶ Similarly in local education policy, researchers found that racial representation on school boards is associated with equitable representation in teaching staff, Black student college acceptance rates, and more Black students admitted in gifted and enriched classes.⁷⁷

According to social science literature, increased government responsiveness is a proven effect of racial representation on all levels of politics and for multiple racial groups.⁷⁸ Studies on descriptive representation show that “increases in Latino representation and legislative incorporation offset the negative effects of Latino population size on social welfare policy.”⁷⁹ This means that minority representation effectively counteracts the policy inequities instituted in racially homogeneous environments. This has been evidenced on the local level, as scholars have

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Kenneth J. Meier & Robert E. England, *Black Representation and Educational Policy: Are They Related?*, 78 AM. POL. SCI. REV. 392, 392-403 (1984).

⁷⁸ Preuhs, *supra*, note 68.

⁷⁹ *Id.*

found a clear relationship between minority representation in government positions and increases in municipal employment opportunities for Black and Latino people. According to Dye and Renick, “[f]or Blacks and Hispanics, employment in top city jobs appears to be a function of political power as it is reflected in city council representation.”⁸⁰ Throughout multiple streams of research, it is evident that the key determinant of equitable policy outcomes, increased government responsiveness and healthy constituent-public service relationships is adequate racial representation, even and especially where minority voters are unable to elect the candidate of their choice. As noted by Mansbridge, the benefits of racial representation are not simply in policy implementation, but also psychologically for voters who have been systematically disenfranchised.⁸¹

* * *

The Legislature’s determination that evidence of racial polarization in voting, alone, is sufficient to trigger the remedies it provided for in the California Voting Rights Act is supported by social science and careful observations of qualified historians, political scientists and experts in voter psychology. The legislative policy judgment should be supported by this Court.

⁸⁰ Meier & England, *supra*, note 77.

⁸¹ Mansbridge, *supra*, note 54.

CONCLUSION

For the forgoing reasons, this Court should hold that under the California Voting Rights Act, a plaintiff need only show proof of racially polarized voting to find vote dilution.

Dated: June 11, 2021

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CERTIFICATE OF WORD COUNT

I certify pursuant to California Rules of Court 8.204(c)(1) that the foregoing Amicus Curiae Brief is proportionally spaced, has a typeface of 13 points or more, contains 7,491 words, excluding the cover, tables, signature block, and this certificate. Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

Dated: June 11, 2021

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DECLARATION OF SERVICE

Case Name: PICO NEIGHBORHOOD ASSOCIATION v. CITY OF
SANTA MONICA Division SF
No.: S263972

I, Sonni Waknin, declare that I am a citizen of the United States, over the age of 18 years, not a party to the above-entitled action and has a business address at 3250 Public Affairs Building, Los Angeles, CA

On June 11, 2021, I electronically served the foregoing **Amicus Brief of The UCLA Voting Rights Project on Behalf of UCLA Social Scientists Matt Barreto, Lorrie Frasure, Chelsea Jones, Natalie Masuoka, Gary Segura, Efrén Pérez, and Chris Zepeda-Millán In Support of Plaintiff** by transmitting a true copy via this Court's TrueFiling system addressed, or for recipients not registered with TrueFiling, placed a true copy thereof in a sealed envelope with postage fully prepaid in the United States Mail at Los Angeles, California, addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed June 11, 2021, at Los Angeles, California.

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STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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Case Number: **S263972**

Lower Court Case Number: **B295935**

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/s/Gwen Kelly

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