No. S263972

In the

Supreme Court

of the

State of California

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

PLAINTIFFS AND RESPONDENTS PICO NEIGHBORHOOD ASSOCIATION AND MARIA LOYA'S RESPONSE TO THE AMICUS CURIAE BRIEF OF THE LEAGUE OF WOMEN VOTERS OF SANTA MONICA, ET AL.

After a Decision of the Court of Appeal
Second Appellate District, Division Eight
Case No. BC295935 (DEPUBLISHED)

Appeal from the Superior Court of Los Angeles
Case No. BC616804
Honorable Yvette M. Palazuelos

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

California Cases

Federal Cases

California Statutes

Federal Statutes

California Rules

Other Authorities

I. INTRODUCTION

The League of Women Voters of Santa Monica et al. ("Amici") offer no good reason for this Court to doubt the factual findings of the trial court or to alter the legal standards of the California Voting Rights Act ("CVRA").

Amici's principal argument is that there can be no vote dilution if the racial composition of the city council, at some point, is proportional to that of the electorate. Their proposed "proportionality" standard lacks any support in the statutory text or legislative history and purpose of the CVRA, and should be rejected. That same standard has been rejected in federal Voting Rights Act ("FVRA") cases challenging at-large elections, in favor of a more searching and practical evaluation of whether the protected class has been denied a fair electoral opportunity over time. There is no reason to apply the more restrictive "proportionality" standard to the CVRA – a statute the Legislature intended to "*expand* the protections against vote dilution provided by the federal Voting Rights Act." (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 807 (emphasis added).)

Factually, Amici's position relies on a deceptive reinvention of the elections both in and outside of the trial record. Taking Defendant's cue, Amici play a numbers game by seeking to artificially expand the number of "Latino-preferred" candidates while ignoring Latino voters' order of preference, emphasizing Gleam Davis' electoral success despite her lack of Latino support or public identification as a Latina, and making unfounded assertions about post-judgment electoral results outside the record. This Court should reject Amici's efforts to distract from the clear pattern found by the trial court—that Latino voters have overwhelmingly supported Latino candidates in almost every relevant election, but because those

candidates receive significantly less support from the rest of the electorate, "those candidates generally still lose." (24AA10700, citing *Thornburg v. Gingles* (1986) 478 U.S. 30, 58-61 ("*Gingles*").)

Amici attempt to justify their rewrite of the trial court record by arguing that vote dilution is a mixed question of law and fact that should be reviewed *de novo*. They are wrong. Indeed, the very cases cited by Amici compel the conclusion that a trial court's finding of vote dilution under the CVRA, based as it is on the careful weighing of complex evidence including statistical analyses, qualitative factors, and electoral history, should be reviewed under the deferential substantial evidence standard.

For all the reasons laid out in Plaintiffs' principal briefs before this Court, the trial court's findings are well-supported by the evidence and correctly apply the law. And for all the reasons laid out below, Amici's arguments to the contrary are without merit.

II. THE CVRA DOES NOT CALL FOR A COMPARISON TO "PROPORTIONALITY."

Unable to defend the Court of Appeal's majority-district standard, or Defendant's "near-majority-district" standard, for vote dilution, because they run directly contrary to the text, history and purpose of the CVRA, Amici instead conjure up their own standard for dilution – what they call a "rough proportionality baseline." But Amici's approach likewise finds no support in the text, history or purpose of the CVRA. Rather, Amici's proposal is based on a fundamental misunderstanding of the "proportionality" concept under the more restrictive – and in this respect inapplicable – FVRA.

A. There Is No Basis for Grafting a Proportionality Measure onto the CVRA.

1. "Proportionality" Applies Only to Evaluating Whether a Particular Configuration of Single-Member Districts Dilutes Minority Vote Under the FVRA; It Does Not Apply to the At-Large Elections Targeted by the CVRA.

In FVRA cases challenging single-member district maps, including those cited by Amici, "proportionality" refers to a comparison between "the number of majority-minority voting districts" and "minority members' share of the relevant population." (*Johnson v. De Grandy* (1994) 512 U.S. 997, 1014, fn. 11.) Amici mistakenly conflate two different concepts – "proportionality," a concept applicable to analysis of single-member district maps under the FVRA, is distinct (and different) from the "sustained success" that the U.S. Supreme Court in *Gingles* identified as inconsistent with a finding of racially polarized voting in at-large or multi-member district elections.

The two U.S. Supreme Court cases that Amici most heavily rely on in conjuring their proportionality proposal – *Johnson* and *Gingles* – make clear that the proportionality concept applies only to claims of dilution by single-member district maps, and not to at-large or multimember district elections. (See *Johnson*, 512 U.S. at 1012-13, fn. 10 ["challenges to multimember districts are likely to be the easier plaintiffs' cases … When the question thus comes down to the reasonableness of drawing a series of district lines in one combination of places rather than another, judgments about inequality may become closer calls."].) In *Gingles*, a case addressing multi-member districts, Justice O'Connor's concurring opinion mentions proportionality as one potential benchmark measure of dilution the Court could have adopted to address at-large and multi-member districts, but then

confirms that the Court adopted a less-restrictive standard in those cases. (*Gingles*, *supra,* 478 U.S. at 88-89.) The U.S. Supreme Court has never adopted a proportionality standard to determine whether at-large or multi-member districts dilute minority votes. On the contrary, the *Gingles* court explicitly rejected the appellant's contention "that if a racial minority gains proportional or nearly proportional representation in a single election, that fact alone precludes, as a matter of law, finding a § 2 violation." (*Gingles*, *supra,* 478 U.S. at 75-76 ["we hold that the District Court did not err, as a matter of law, in refusing to treat the fact that some black candidates have succeeded as dispositive of appellees' § 2 claim. Where multimember districting generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters."].)[1]

Other FVRA decisions have likewise rejected defendants' attempts to avoid liability by showing that the minority community had achieved representation proportional to their share of the population through at-large elections. For example, the court in *Mo. State Conf. of the NAACP v. Ferguson-Florissant School Dist.* (E.D. Mo. 2016) 219 F.Supp.3d 949

[1] The only other authority cited by Amici for its proportionality standard – a dissent in *Bartlett v. Strickland* (2009) 556 U.S. 1 – likewise confirms proportionality is a concept applicable only to claims that a particular single-member district configuration results in vote dilution. (*Bartlett*, *supra,* 556 U.S. at 40 ["A *districting plan* violates § 2 if it diminishes the ability of minority voters to 'elect representatives of their choice,' as measured under a totality of the circumstances against a baseline of rough proportionality." (emphasis added and internal citation omitted)].) Notably, that same dissent acknowledged that the 39% district at issue would afford African Americans the ability to elect their preferred candidate (*id.* at 42) – contradicting Defendant-Appellant's contention in this case that a minority community can only elect its preferred candidate if it has a "near-majority" in a district.

rejected precisely the argument Amici make here. (*Id*. at 954 [rejecting the defendant's argument "that because there are currently three African Americans (who, they argue, are all Black-preferred candidates) on the Ferguson-Florissant School Board, the current system results in proportionality and is thus legally acceptable and superior to any of the systems Plaintiff propose," and holding that "[a] finding of proportional representation at this moment would not, standing alone, negate [] liability" for vote dilution under the FVRA], citing *Harvell v. Blytheville School Dist. No. 5* (8th Cir. 1995) (en banc) 71 F.3d 1382, 1388-1389 ["Just as proportional representation is not mandated under Section 2, it also does not preclude finding a violation, because racial reference points do not necessarily reflect political realities …. [T]he white majority has no right under Section 2 to ensure that a minority group has absolutely no opportunity to achieve greater than proportional representation in any given race."].) The court in *Harper v City of Chicago Heights* (N.D. Ill. 1993) 824 F.Supp. 786 similarly rejected any proportionality test in cases concerning at-large or multi-member districts. (*Id*. at 801 ["Proportionate representation is not the focus of § 2 of the Voting Rights Act. The focus is on the minority's ability to elect their preferred candidate."].)

Even if federal courts made use of a proportionality concept in at-large election challenges (which they don't), such a standard would be inapplicable here. In enacting the CVRA, "the Legislature intended to expand the protections against vote dilution provided by the federal Voting Rights Act." (*Jauregui, supra,* 226 Cal.App.4th at 807.) "It would be inconsistent with the evident legislative intent to expand protections against vote dilution to narrowly limit" the CVRA by grafting a "proportionality" test that lacks any basis in the CVRA's text, especially since federal courts

have uniformly refused to apply that test to at-large elections challenged under the FVRA because it would be too restrictive. (*Id*.)

Moreover, even in cases challenging single-member district maps under the FVRA, proportionality is "never dispositive," as Amici propose it should be under the CVRA. In fact, in the very case on which Amici principally rely (*Johnson*), the U.S. Supreme Court rejected precisely what Amici argue for here – that proportionality should be a "safe harbor" precluding a finding of vote dilution. (See *Johnson, supra*, 512 U.S. at 1017-1018, 1025 [rejecting state's argument that proportionality should be a safe harbor, because such an "inflexible rule would run counter to the textual command of § 2, that the presence or absence of a violation be assessed 'based on the totality of circumstances.'"]; see also *League of United Latin Am. Citizens v. Perry* (2006) 548 U.S. 399, 436 ["[Proportionality] does not ... act as a 'safe harbor' for States in complying with § 2."].)[2] To construe the CVRA in a way that would shield a defendant from liability based on the concept of "proportionality" would do violence to the very purpose of the CVRA – to provide a voting rights statute that "expand[s] the protections against vote dilution provided by the federal Voting Rights Act." (*Jauregui, supra*, 226 Cal.App.4th at 807; see also Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2. [In enacting the CVRA, the Legislature sought to remedy what it considered "restrictive interpretations given to the federal act."].).

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[2] Even Justice O'Connor, writing for a minority of the court in *Gingles*, did not propose that proportional representation would always mean plaintiffs lose under the FVRA. (*Gingles, supra*, 478 U.S. at 104 ["I do not propose that consistent and virtually proportional minority electoral success should always, as a matter of law, bar finding a § 2 violation."].)

2. "Proportionality" Is One of the "Totality of the Circumstances" Factors Under the FVRA, and the CVRA Expressly Makes Those Factors "Not Necessary" to Prove a Violation.

Even in the cases challenging particular district configurations under the FVRA to which proportionality is an applicable concept, it is just one of at least seven factors to be considered under the "totality of the circumstances" test. (*League of United Latin Am. Citizens*, *supra,* 548 U.S. at 436; *see also Johnson, supra*, 512 U.S. at p. 1025 (O'Connor, J., concurring).) Some, but not all, of those factors are expressly incorporated in the CVRA, in some cases with revised wording. (Compare *Gingles, supra,* 478 U.S. at pp. 36-37 [listing factors from FVRA Senate report] and Elec. Code § 14028(e).) "Proportionality" is *not* listed in section 14028(e).

The CVRA differs from the FVRA with respect to the "totality of the circumstances" factors in one particularly significant respect. While a FVRA plaintiff must show that an electoral structure denies a racial or ethnic minority community equal "opportunity … to elect representatives of their choice" "based on the totality of circumstances" (52 U.S.C. § 10301(b)), the CVRA explicitly eschews that requirement (see Elec. Code § 14028(e)). Rather, as the amicus brief of Asian Americans Advancing Justice – Asian Law Caucus, et al. explains, the CVRA expressly provides the factors considered in the "totality of the circumstances" analysis in FVRA cases are "probative, but not necessary" to establish a violation of the CVRA. (Amicus Brief of Asian Americans Advancing Justice – Asian Law Caucus, et al., at p. 18, citing Elec. Code § 14028(e).) Essentially, Amici propose taking a qualitative factor from federal law that the CVRA could have, but did not, expressly incorporate in section 14028(e), and then

making that factor "necessary" to a finding of liability – exactly what section 14028(e) expressly precludes.[3]

Amici's proposed proportionality standard also lacks any support in the legislative history of the CVRA. As explained in Plaintiffs' Opening Brief ("OB") (OB-36-37, 43) and Plaintiffs' reply in support of their motion for judicial notice (pp. 5-10), nearly every document in the legislative history confirms that the vote dilution prohibited by the CVRA is established by showing racially polarized voting in at-large elections; vote dilution under the CVRA is not dependent on a minority community being geographically concentrated or any other superfluous condition such as a lack of proportionality between the racial composition of the governing board and the political subdivision's population.[4]

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[3] As the Coalition of 2001-2002 California Legislators, the Latino, Asian Pacific Islander and Black Legislative Caucuses, then-Secretary of State Alex Padilla, LULAC and Southwest Voter Registration Education Project, the California Latino School Board Association and California Association of Black School Educators each explain in their respective amicus letters in support of the petition for review in this case, it is precisely because the CVRA eschews the narrow interpretations federal courts have forced onto the FVRA, that the CVRA has been so successful at improving minority representation in California.

[4] Amici point to letters from MALDEF and the ACLU in support of passage of the CVRA, but those letters do not at all support their attempt to restrict the CVRA here. On the contrary, those letters simply identify underrepresentation of racial minorities in elective office as a problem – a problem that is lessened by the adoption of district-based elections regardless of whether a majority-minority district is possible. (See Amicus Brief of Sadhwani, et al. [extensive review of political and social science studies demonstrating conversion to district-based elections increase minority representation].) Capping minority representation by providing a "proportionality" safe harbor that insulates historically dilutive at-large election systems, as Amici suggest, would actually undermine the goal of increasing minority representation on governing boards – exactly the opposite of what supporters like MALDEF and the ACLU looked to the CVRA to do.

3. Latinos in Santa Monica Have Not Achieved the Sort of "Sustained Success" That Is Inconsistent with a Finding of Racially Polarized Voting.

While "proportionality" has no application to cases challenging at-large or multimember districts, as discussed above, a minority's "sustained success" (or lack thereof) in electing their chosen candidates is relevant to whether an at-large system dilutes their votes. Amici's argument that a finding of vote dilution is precluded by the supposed success of Latino candidates in Santa Monica elections proportional to their share of the electorate (a narrative wholly at odds with the factual record and trial court findings in this case, see Section III below) mistakenly conflates those two concepts. "Proportionality" is distinct from the "sustained success" that the *Gingles* court identified as inconsistent with a finding of racially polarized voting in a multi-member district. And here, applying a metric of "sustained success" does nothing to undermine the trial court's finding of racially polarized voting in this case.

A careful reading of the *Gingles* opinion reveals what is, and what is not, the sort of "sustained success" of minority candidates that is inconsistent with a finding of racially polarized voting. While Amici focus on the *Gingles* court's reversal of the district court's finding of vote dilution in House District 23, where "a black candidate had been elected in each of the last six elections" (478 U.S. at 103), Amici fail to reconcile the *Gingles* court's affirmance of the district court's findings of vote dilution in House Districts 21, 36 and 39 and Senate District 22. In House Districts 21 and 36, African Americans had achieved electoral success in the two most recent elections, and in House District 39 and Senate District 22, "a black candidate had been elected … in three of the last five elections." (*Id*. at

102-103.) In the most recent election considered by the *Gingles* court, African American candidates won two of the five seats in House District 39. (*Id.* at 82, appen. B.) Those African American successes resulted in representation "proportional or nearly proportional" to black population in these multimember districts, yet the U.S. Supreme Court affirmed the district court's findings that all of those multi-member districts diluted the African American vote. (*Id*. at 75-76 ["Where multimember districting generally works to dilute the minority vote, it cannot be defended on the ground that it sporadically and serendipitously benefits minority voters."].)

Gingles is instructive here because the Supreme Court did not stop at announcing a conceptual test for vote dilution under the FVRA, and instead went on to apply that test to the factual findings of the trial court. For the same reason, this Court should not just announce a test for vote dilution under the CVRA in the abstract and stop there as Defendant suggests; this Court should also apply that test to the trial court's findings in this case.

Defendant's election history – as found by the trial court rather than as creatively reimagined by Amici[5] – demonstrates that under the at-large system Latino voters have decidedly not achieved the sort of "sustained success" that the *Gingles* court described as being inconsistent with a finding of racially polarized voting. The only success of a Latino-preferred City Council candidate in the record here is that of Tony Vazquez in 2012 – where he eked out a fourth-place finish in what the trial court appropriately recognized as a particularly "unusual election, in which none of the incumbents who had won four years earlier sought re-election."

[5] For an accurate description of Defendant's election history as found by the trial court, see Plaintiffs' Opening Brief, OB-23-26, 58-64.

(24AA10686-10687, citing *Gingles*, 478 U.S. at p. 57, fn. 26 [discussing "special circumstances" that warrant disregarding the success of a minority-preferred candidate].) That is far less minority success than the U.S. Supreme Court found perfectly consistent with racially polarized voting, and corresponding vote dilution, in North Carolina's multimember House Districts 21, 36 and 39 and Senate District 22. (Compare *Gingles*, *supra,* 478 U.S. at 74-76, 82, fns. 35, 36, appen. B.)

B. In Contrast to the "Proportionality" Standard Proposed by Amici, the Statutory Interpretation Proposed by Plaintiffs-Respondents Is the Only One Consistent With the Text, History and Purpose of the CVRA.

As discussed more fully in Plaintiffs' Opening Brief (OB-40-47), and aptly explained in the amicus brief of Asian Americans Advancing Justice – Asian Law Caucus (pp. 18-19, 26),[6] the text of the CVRA is clear in its focus on racially polarized voting in identifying vote dilution. (Elec. Code § 14028(a).) That focus on racially polarized voting, however, does not mean that the effectiveness of potential remedies is never considered under the CVRA. Rather, the CVRA instructs the geographical concentration of a minority community "may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section, *but may be a factor in determining an appropriate remedy*." (Elec. Code § 14028(c) (emphasis added).)

[6] "Thus, for the CVRA, the Legislature removed the *Gingles* compactness precondition … The Legislature also removed the totality-of-the-circumstances requirement…Thus, the CVRA standard for vote dilution incorporates *only* the second and third *Gingles* preconditions" which together constitute "racially polarized voting."

This straightforward interpretation – racially polarized voting is the focus, and no particular minority proportion of a potential district must be shown – is consistent with the legislative history as well, as explained in Plaintiffs' Opening Brief (OB-36-37, 43), Plaintiffs' Reply Brief ("RB") (RB-14-15), Plaintiffs Reply in Support of Request for Judicial Notice (pp. 5-10), and Amicus Brief of Asian Americans Advancing Justice – Asian Law Caucus, et al. (pp. 16-18, 20-21). Indeed, the very report to the Assembly Committee on Judiciary, which Amici rely on (Amici Brief, at p. 49), makes the point that the focus is on racially polarized voting. In summarizing Senate Bill 976, the report states "this bill … [p]rohibits racially polarized voting, as defined, in elections for members of the governing body of a political subdivision …." Then, the report relays the remarks of Senator Polanco, the chief sponsor of SB 976:

> The author states that SB 976 "addresses the problem of racial block voting, which is particularly harmful to a state like California due to its diversity. SB 976 provides a judicial process and criteria to determine if the problem of block voting can be established. Once the problem is judicially established, the bill provides courts with the authority to fashion appropriate legal remedies for the problem.

(Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, at p. 3.) Finally, the report specifies how dilution is shown under the CVRA:

> This bill would allow a showing of dilution or abridgement of minority voting rights by showing the first two Thornburg requirements [i.e. racially polarized voting] without an additional showing of geographical compactness.

(*Id*.)

Amici argue incorrectly that Plaintiffs' straightforward interpretation of the CVRA would "read all of section 14027's dilution language out of the CVRA." (Amici's Brief, at p. 46.) A faithful reading of the statutory language shows the error of Amici's reasoning. The language of section 14028(a) provides the link between sections 14027 and 14028: "*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 …" (emphasis added). As Amici concede, "vote dilution is synonymous with section 14027" (Amici Brief, at p. 29), and section 14028(a) describes how "[a] violation of section 14027 is established" – by showing racially polarized voting in the defendant's elections. Moreover, both of Plaintiffs' proposed interpretations of Sections 14027 and 14028 ensure that there is an objective benchmark from which the court can determine whether the offending at-large system dilutes minority vote. That benchmark is found in the comparison of the meaningful opportunity of minority voters to elect their chosen candidates or influence election outcomes under potential remedial election systems, compared to the challenged at-large system. (See OB-40-47.)

Plaintiffs' interpretation would not "mandate district elections everywhere," as Amici argue. Rather, Plaintiffs' interpretation would not "mandate" district elections anywhere, as district elections are but one of many available remedies under the CVRA. (See Amicus Brief of FairVote, at pp. 15-22; Amicus Brief of Attorney General Rob Bonta, at p. 18.) Plaintiffs' interpretation only mandates that at-large elections not be utilized where, as in this case, they result in racially polarized voting, and an alternative system (such as district elections) would improve the "ability of a protected class to elect candidates of its choice or its ability to

influence the outcome of an election." (Elec. Code § 14027; see also Amicus Curiae Brief of Asian Americans Advancing Justice – Asian Law Caucus, at pp. 25-26.)

III. DEFENDANT'S CITY COUNCIL ELECTIONS ARE PLAGUED BY RACIALLY POLARIZED VOTING RESULTING IN THE CONSISTENT INABILITY OF LATINO VOTERS TO ELECT THEIR PREFERRED CANDIDATES, AS THE TRIAL COURT FOUND BASED ON SUBSTANTIAL EVIDENCE IN THE RECORD.

As the trial court found, the results of Santa Monica City Council elections from 1994 through 2016 are the "prototypical illustration of legally significant racially polarized voting – 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, citing *Gingles*, supra, 478 U.S. at pp. 58-61 ["We conclude 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."].) The trial court expressly agreed with Dr. Kousser's conclusion: "[b]etween 1994 and 2016 [] Santa Monica city council elections exhibit legally significant racially polarized voting" and "the at-large election system in Santa Monica result[s] in Latinos having less opportunity than non-Latinos to elect representatives of their choice" to the city council." (24AA10689.)

The trial court's findings are laid out comprehensively in its Statement of Decision (24AA10677-10707; 24AA10733-10735) and are further discussed at length in Plaintiffs' Opening and Reply Briefs in this

Court (OB-22-33, 58-72, RB-35-38). As the trial court summarized its own findings:

> Analyzing elections over the past twenty-four years, a consistent pattern of racially-polarized voting emerges. In most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for Defendant's city council, but, despite that support, the preferred Latino candidate loses. As a result, though Latino candidates are generally preferred by the Latino electorate in Santa Monica, only one Latino has been elected to the Santa Monica City Council in the 72 years of the current election system – 1 out of 71 to serve on the city council.

(24AA10680-10681.)

The trial court's findings are similar to what Amici's counsel recognized years earlier. His comments were played at trial:

> I would urge you, on the way out this evening, to walk by the gallery of photographs of past mayors and past councilmembers and I would urge you to reflect upon the severe lack of ethnic diversity of those photographs, which only go back to 1947 when we've been operating under the current electoral system.
>
> You don't have to go to Texas to find a city which has substantial problems in the area of maintaining adequate representation of African Americans and Hispanics. Santa Monica has had one Hispanic councilmember in that time period – Mr. Vazquez. If you want to know Mr. Vazquez's views on this issue, notwithstanding his election under the current scheme, I think you probably know he's an advocate of districting.
>
> There has never been an elected councilmember from the Pico neighborhood. I don't think it's a coincidence that the Pico neighborhood has the highest concentration of African American and Hispanic residents in the City and always has had the highest concentration.

> Santa Monica is not immune, as much as we'd like to think we are, from the larger problems of this state and this country and one of them is ensuring adequate participation by minorities in government and this city's track record is not a very good one ….

(RA179 at 2:19:33-2:20:42; RT3304:23-3305:27.)

Though Amici now advance a revisionist history based on purported facts outside the record, including post-judgment events, and a confusing mix of irrelevant elections and candidates purported to be but not recognized as Latino, Amici fail to address the trial court's factual findings that are all based on the record evidence. In putting forth and then arguing based on its own imaginative narrative of Santa Monica's election history, Amici are effectively asking this Court to step into the role of the fact-finder tasked with resolving disputed factual evidence at trial (as well as extra-record evidence). That is not, of course, this Court's role. But it is the trial court's role, and that court conscientiously fulfilled it, finding an election history bearing no resemblance to the one hypothesized by Amici.

IV. AMICI'S ASSERTIONS THAT DISTRICT ELECTIONS WOULD BE CONTRARY TO BOTH THE INTERESTS AND THE PREFERENCES OF LATINO VOTERS ARE FLATLY CONTRADICTED BY THE TRIAL COURT'S FINDINGS.

As the trial court found, district elections will "improv[e] Latinos' ability to elect their preferred candidate or influence the outcome of such an election." (24AA10707, 24AA10734.) That factual finding is inescapable when the relevant evidence presented over a six-week trial is considered.[7] The trial court pointed to:

[7] The record evidence is detailed more fully at pages 66-70 of Plaintiffs' Opening Brief.

- the significant Latino proportion of the remedial district in comparison to the citywide proportion (24AA10734);
- the precinct-level results of past city council elections which showed the Latino candidates preferred by Latino voters winning the remedial district (24AA10707, 24AA10734);
- the political organization of Latinos in the Pico Neighborhood "likely [to] translate to equitable electoral strength" in a district system (24AA10735);
- evidence that district elections, by reducing the size of the electorate and geographic area candidates have to cover in their campaigns, would "reduce the campaign effects of wealth disparities between the majority and minority communities, which are pronounced in Santa Monica" (24AA10735); and,
- the experience of other jurisdictions that recently adopted district elections showing that "[e]ven 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." (24AA10734.)

Non-district remedies, as the trial court found, would likewise "improve Latino voting power in Santa Monica." (24AA10733.) That finding too is inescapable based on the analysis other courts have utilized to evaluate the effectiveness of non-district remedies – a comparison of the minority proportion of eligible voters to the "threshold of exclusion" – and the experience of other jurisdictions, even where the minority proportion of eligible voters was less than the applicable threshold of exclusion. (See

OB-31-32, 54-56, 70-72; Amicus Curiae Brief of FairVote, at pp. 23-26, 33-34, 36-37, 39-40.)

While Amici argue that a move from at-large to district-based elections would somehow hurt Latino voters because a majority of Latinos reside outside the Pico Neighborhood district, Amici fail to address the legal authority that has categorically rejected that same argument, or the trial court's factual finding that district elections will "improv[e] Latinos' ability to elect their preferred candidate or influence the outcome of such an election." (24AA10707.) Nor do Amici cite a single case from any court anywhere that found a move from at-large to district elections would dilute minority votes.

In *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407, the defendant similarly argued that a move to district elections would hurt the "60% of the Hispanics eligible to vote in Watsonville [who] would reside in five districts outside the two single-member, heavily Hispanic districts in appellants' plan." (*Gomez*, *supra,* 863 F.2d at 1414.) The district court agreed with the defendant, but the Ninth Circuit reversed, holding that the "district court erred in [even] considering" that a majority of Hispanics resided outside the remedial districts. (*Id*.) The Ninth Circuit explained: "It is sadly ironic that the district court concluded that because many Hispanic voters would still not be able to elect representatives of their choice under the proposed plan, no Section 2 claim could be maintained, thereby relegating all Hispanic voters to having no political effectiveness." (*Id.*) The Fifth Circuit came to the same conclusion in *Campos v. City of Baytown* (5th Cir. 1988) 840 F.2d 1240, 1244 – "The fact that there are members of the minority group outside the minority district is immaterial." (See also *Clark v. Calhoun County* (5th Cir. 1994) 21 F.3d 92, 95.)

Presumably, Amici have read Plaintiffs' Reply Brief to this Court, and this legal authority is discussed at pages 45-46 of that brief. Yet, conspicuously missing from Amici's brief is any attempt to address *Gomez* or *Campos* or *Clark*.

Adopting Amici's contrary view – that liability is precluded where a majority of a jurisdiction's minority population lives outside a remedial district – would contravene the CVRA's command that "[t]he fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027 and this section" (Elec. Code § 14028(c).) A minority community would have to be exceptionally geographically concentrated for a majority of that community to reside within one of seven districts. As the trial court found, the elections of the 24 years preceding trial demonstrate Latinos have essentially no ability to elect their preferred candidate or influence the outcome of Defendant's at-large elections; that some Latinos would necessarily still have little ability to do so in district elections should not preclude relief for those who could.

Amici's corollary suggestion that Latinos oppose district elections is equally wrong; rather, the evidence at trial demonstrated that Santa Monica Latino voters favor district elections by a wide margin, and Santa Monica voters more generally also favor moving to district elections. (RT2865:23-2868:20.) Amici's counsel do not get to speak for Latino voters by conjuring up a non-existent entity they call "the Alliance of Santa Monica

Latino and Black Voters."[8] As explained in the amicus brief of Oscar de la Torre: "Across every ethnic group, and partisan affiliation, Santa Monica residents support adopting district-based elections." (Amicus Curiae Brief of Oscar de la Torre, at p. 19, citing RT2865:23-2868:20). As explained more fully in Mr. de la Torre's amicus brief (pp. 18-20), the 1975 and 2002 ballot measures upon which Amici rely were defeated for reasons having nothing to do with the choice between at-large and district elections, and therefore are not an accurate measure of support for district elections. When the question is just whether Defendant should adopt district elections or maintain its at-large elections, the choice of Santa Monica voters has consistently been to adopt district elections; it is only the self-interested councilmembers who have prevented any change that might result in their ouster. (*Id.* at pp. 18-21.)

Both the law and the well-supported factual findings of the trial court are clear: Defendant's at-large elections dilute Latino votes, rendering them politically ineffective, while the remedial district ordered by the Court would "improv[e] Latinos' ability to elect their preferred candidate or influence the outcome of such an election." (24AA10707.)

[8] In their opposition to Plaintiffs' motion to strike their brief, Amici do not dispute that they were, with only one exception, not in good standing with the California Secretary of State or California Attorney General, and Amici concede the "Alliance of Santa Monica Latino and Black Voters" is nothing more than a high-minded name concocted for the purpose of their amicus brief – in Amici's words, "an ad hoc organization formed … for the specific purpose of [] the Amicus Brief." (Amici's Opposition to Motion to Strike, at p. 5.)

V. THE TRIAL COURT'S FINDINGS OF RACIALLY POLARIZED VOTING AND VOTE DILUTION ARE ENTITLED TO DEFERENCE, SUBJECT TO SUBSTANTIAL EVIDENCE REVIEW.

Amici, much like Defendant, completely disregard these dispositive factual findings of the trial court. To justify ignoring everything the trial court found after a six-week trial, Amici argue that this Court should apply *de novo* review to the issue of vote dilution because, according to Amici, vote dilution is a mixed question of law and fact. It is not. The trial court's inquiry into vote dilution is, as the Attorney General explained in his amicus brief (p. 24), a fact-intensive issue that requires the trial court to apply its superior vantage point in a "searching practical evaluation of the past and present reality," and is therefore subject to substantial evidence review. (See *Gingles, supra,* 478 U.S. at 79 [holding that the ultimate finding of vote dilution is a question of fact subject to review only for clear error]; see also Amicus Curiae Brief of Asian Americans Advancing Justice – Asian Law Caucus, et al., at pp. 23-24.)

While Amici cite a few of this Court's cases generally discussing the standard of review applicable to mixed questions of fact and law, Amici fail to cite any authority holding that vote dilution is a mixed question of fact and law. On the contrary, the U.S. Supreme Court expressly rejected the notion that vote dilution is a mixed question of fact and law. (*Gingles, supra,* 478 U.S. at 77-80 [rejecting the defendant's contention "that the District Court's ultimate conclusion that the challenged multimember districts operate to dilute black citizens' votes is a mixed question of law and fact subject to de novo review on appeal."], citing *Rogers v. Lodge* (1982) 458 U.S. 613, 622-627, *City of Rome v. U.S.* (1980) 446 U. S. 156, 183 and *White v. Regester* (1973) 412 U.S. 755, 765-770.) Rather, the U.S.

Supreme Court explained, "the application of the clearly erroneous standard to ultimate findings of vote dilution preserves the benefit of the trial court's particular familiarity with the indigenous political reality without endangering the rule of law." (*Gingles, supra,* 478 U.S. at 79.) The U.S. Supreme Court's rationale for treating findings of vote dilution as factual, entitled to deference by appellate courts, applies with particular force in this case in which the trial court made its findings after receiving testimony from many lay and expert witnesses and hundreds of exhibits admitted in a six-week trial.

Even if racially polarized voting or vote dilution did present a mixed question of law and fact – and neither does – deferential review would still be appropriate given the factually intensive nature of the inquiries. In *Haworth v. Superior Court* (2010) 50 Cal.4th 372, this Court explained that "[s]election of the appropriate standard of review for mixed questions is influenced by concerns of judicial administration – 'efficacy, accuracy, and precedential weight.'" (*Id.* at 384.) In CVRA claims, where courts are required to weigh statistical and qualitative evidence from several elections and consider other social and political factors, deference is appropriate as trial courts "generally are in a better position to evaluate and weigh the evidence." (*Id.* at 385.) Here, because the findings of racially polarized voting and vote dilution are "predominantly factual," the trial court's findings should be reviewed "under the substantial evidence test." (*Id.* at 384.) This is the opposite of a "paper case," or one for which purely legal issues are dispositive – the type of case in which *de novo* review may be proper.

Amici's reliance on *Yumori-Kaku v. City of Santa Clara* (2020) 59 Cal.App.5th 385 for their contrary view is misplaced. *Yumori-Kaku* did not

hold that vote dilution is a mixed question of fact and law, as Amici misleadingly suggest. On the contrary, the *Yumori-Kaku* court acknowledged and agreed that the ultimate finding of vote dilution is a factual finding, to which deference is owed, and confirmed the CVRA demands a "fact-intensive expedition through the factors for ascertaining racially polarized voting." (*Id.* at 425.) *Yumori-Kaku* announced only that the particular issue presented by that case – *i.e.*, "whether an equal ratio of polarized to non-polarized elections precludes liability for racially polarized voting and vote dilution" – was a mixed question of fact and law. (*Id.* at 410.) In this case, the trial court found a significant majority of Defendant's elections exhibited racially polarized voting, so there is no need to reconsider the legal question decided by *Yumori-Kaku*. (24AA10677-10700.)

Yumori-Kaku's actual analysis further undermines Amici's position. The analysis in *Yumori-Kaku* traces the familiar path of applying *de novo* review to the legal question, and deferential review to the trial court's factual findings. First, the *Yumori-Kaku* court rejected, as a matter of law, the City of Santa Clara's argument that CVRA plaintiffs must show that racially polarized voting occurred in a numerical majority of elections in which a protected class candidate competed. (*Id.* at pp. 412-416.) Specifically, the court concluded that such a formulaic approach was inconsistent with a legal standard that "requires a consideration of local circumstances and weighing of factors." (*Id.* at 413.) Having rejected the City of Santa Clara's position on the legal issue, the appellate court deferred to the trial court's factual findings, for example, in assigning less weight to some of the elections in the record. (*See id.* at 416-420.) In so doing, the court underscored the imperative to avoid "overly restrictive"

standards "on the trial court's reasonable discretion to assign probative value," as such restrictions "would contravene the flexible, factfinding approach indicated in cases enforcing the federal Voting Rights Act (*Gingles, supra*, 478 U.S. at p. 62) and suggested by the language of section 14028." (*Yumori-Kaku*, *supra,* 59 Cal.App.5th at 419-420.)

The *Yumori-Kaku* court was correct; the language of section 14028 requires a "flexible, factfinding approach" premised on the trial court's duty to weigh the evidence. (*Id*.) Section 14028 calls for a court to "consider" several factors, acknowledges that some elections are "more probative" than others, and directs that the historic, socioeconomic and political factors listed in subsection (e) are "probative, but not necessary." (Elec. Code § 14028(a), (c), (e).) Just as in federal law, trial courts must weigh all the evidence in conducting a "searching practical evaluation of the 'past and present reality'" to determine whether an at-large system of elections is applied in a manner that dilutes the votes of a protected class. (*See Gingles*, *supra,* 478 U.S. at 79.) Therefore, just as in federal law, it is appropriate to apply deferential review to the trial court's findings on racially polarized voting and vote dilution.

VI. AMICI'S DISTORTIONS AND DISTRACTIONS SHOULD BE REJECTED.

Amici, like Defendant, fail to address the dispositive factual findings of the trial court, or rebut that those findings are supported by substantial evidence. Neither the trial court's discussion of the relevant city council elections, nor its discussion of how district elections will improve the Latino community's voting power, both in its detailed Statement of Decision, are mentioned or cited even once in Amici's brief. Rather, Amici attempt to distract this Court from the relevant election history, historical

discrimination, underrepresentation and unresponsiveness of Defendant to the Latino community, all detailed by the trial court (see 24AA10680-10706), with irrelevant exogenous election results, Amici's spin on events outside of the record, and Amici's unilateral and unexplained identification of candidates as Latino or Latino-preferred where the trial court found to the contrary.

A. Amici Improperly Go Outside the Record.

Unlike the trial court's findings, which are well-supported by the record evidence, there is no support in the record for Amici's revisionist history. Amici's invitation for this Court to look outside the record must be rejected. Amici, like the parties to an appeal, are not permitted to go outside the record; rather, "an amicus curiae must accept the case as it finds it and [] a 'friend of the court' cannot launch out upon a juridical expedition of its own unrelated to the actual appellate record." (*Pratt v. Coast Trucking, Inc.* (1964) 228 Cal.App.2d 139, 143 (following and quoting *Eggert v. Pacific States Savings & Loan Co.* (1943) 57 Cal.App.2d 239, 251.)

Instead of accepting the demographic figures in the record – e.g. that Latinos comprise 13.64% of Santa Monica eligible voters – Amici attempt to introduce new numbers with a declaration from Gary Brown they attach to their brief (in violation of Cal. Rules of Court, rule 8.520(h), see also Cal. Rules of Court, rule 8.204(d).) The unexplained estimates in that declaration, untested by cross examination at trial, cannot be accepted as a factual basis for Amici's arguments. The estimates in Brown's declaration are not official Census data, but are, according to Mr. Brown, "refined" by some unspecified method based on unidentified "updated projections," and

a "proprietary ethnic surname dictionary" and "proprietary database of identified race and ethnicity" that are not available to the parties or this Court. (Brown Decl. at ¶ 3.) Brown's estimates cannot be considered by this Court.

Similarly, Amici go outside the record to make arguments based on the 2020 election – held nearly two years after judgment was entered in this case – and the ethnic composition of the post-judgment council as a result of that election and post-judgment appointments. As explained more fully in Plaintiffs' Opposition to Defendants' Motion for Judicial Notice (pp. 2-12), post-judgment events, including post-judgment elections, are not properly considered by appellate courts except in rare circumstances not applicable here. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 405-406; *Jauregui, supra,*226 Cal. App. 4th at 791; see also *Gingles*, *supra,* 478 U.S. at 82, appen. B [reviewing election results from 1972 through 1982, not the 1984 election which occurred after the trial court's judgment].) And there is particularly good reason in this case not to consider the unexamined "facts" related to the 2020 election. As explained in the Amicus Curiae Brief of Oscar de la Torre (pp. 9-11, 14-16), the 2020 election was anomalous – the result of looting and police brutality on "the worst day in Santa Monica's history," and the electorate's support for district-based elections, a hot-button issue due to this case. That two Latino candidates, both of whom favor district-based elections, achieved success in a single post-judgment election does not undermine the trial court's finding of vote dilution in this case. (See Amicus Curiae Brief of Oscar de la Torre, at pp. 10-11, 16-17; compare *Gingles, supra,* 478 U.S. at 82, appen. B [affirming trial court's finding of racially polarized voting and vote dilution in House District 39, where African Americans won two of five seats in the most

recent election considered, resulting in representation "proportional or nearly proportional" to African American population in that multimember district].)[9]

B. Amici's Unsupported Assertions, Contradicted by the Trial Court's Findings, Regarding Latino-Preferred Candidates Should Be Rejected.

"Whether a given [] candidate … is the preferred representative [of the minority community] requires appraisal of local facts within the ken of the [trial] court and best left to it." (*Meek v. Metropolitan Dade County* (11th Cir. 1990) 908 F.2d 1540, 1548.) Yet Amici, like Defendant, ignore the trial court's identification of Latino-preferred candidates – Vazquez in 1994, Aranda in 2002, Loya in 2004, Vazquez in 2012 and de la Torre in 2016. (24AA10686-10688.) Instead, Amici, like Defendant, arbitrarily identify a broad group of candidates less-preferred by Latino voters than those candidates identified by the trial court. It is the trial court's identification of Latino-preferred candidates and searching practical evaluation of each election, not Defendant's alternative characterization of the evidence, that are before this Court and should serve as the basis for this Court's review. All of those candidates found by the trial court to be Latino-preferred lost, with only one "unusual" exception that the trial court

[9] Amici's journey outside the record goes so far it even takes them outside Santa Monica into other cities miles away. Specifically, Amici rely on attorney correspondence, sent years after the judgment in this case, regarding two cities other than Santa Monica. Amici would have this Court assume that those cities' elections do not violate the CVRA, based solely on the out-of-the-record demographics of those cities and the arguments made by one of those city's attorneys. Then, according to Amici, the lack of a CVRA violation in those cities somehow bears on this case against an entirely different city. That attorney correspondence is not only outside the record, it is not relevant to any issue in this case, and should therefore not be considered by this Court.

found exhibited "special circumstances." (24AA10686-10689.)

Compounding their disregard of the trial court's well-supported factual findings, Amici repeat the same errors made by Defendant in identifying Latino-preferred candidates to obfuscate the nearly unbroken string of losses by the Latino candidates most-preferred by Latino voters. Federal courts, like the trial court in this case, have repeatedly cautioned against the deceptive approach utilized by Defendant, and now mimicked by Amici, for several reasons applicable here.

First, contrary to the clear direction of the CVRA, Defendant's analysis, which Amici parrot, relies on elections that do not involve Latino candidates. (Cf. Elec. Code § 14028(b); *Yumori-Kaku*, *supra,* 59 Cal.App.5th at 414 [noting the CVRA "expressly directs the court to ascertain racially polarized voting by 'examining results of elections in which at least one candidate is a member of a protected class ....'"].) This provision of the CVRA follows federal precedent that elections involving minority candidates are more probative because "[t]he Act means more than securing minority voters' opportunity to elect whites." (See, e.g., *Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F.3d 543, 553-554.) Reliance on results of the 2006, 2010 and 2014 elections, in which no Latino candidates ran, simply disregards applicable law.[10]

[10] Nor does Gleam Davis' participation in those elections render them necessary or even relevant to the racially polarized voting analysis. The trial court's disregard of the 2006 and 2010 elections is supported by its factual findings that neither the Santa Monica electorate nor even Davis' council colleagues recognized her as Latina. (24AA10684-10685; RA50; RT2854:11-25; RT8025:2-8027:8.) Moreover, Davis was never the preferred candidate of Latino voters, making it particularly inappropriate to count her representation on the council as evidence that Latino voting rights are not diluted. (See, e.g., RA193-196.)

Second, Defendant, and now Amici, further inflate their list of "Latino-preferred candidates" by improperly including candidates who finished second, third, or even fourth among Latino voters. But as Plaintiffs have now explained in both their Opening Brief and Reply Brief, "[i]n multi-seat at-large elections like Defendant's, when minority voters exercise their right to cast all their votes it is 'virtually unavoidable that certain white candidates would be supported by a large percentage' of minority voters, even though they are just the least objectionable option." (OB-63, quoting *Ruiz*, 160 F.3d at 553-554; RB-40.) For all the reasons explained by Plaintiffs in prior briefs, the trial court's focus on Latino voters' first-choice candidates is proper under both the law and the facts of the case and should be affirmed. (OB-61-64; RB-40.) Amici had Plaintiffs' opening and reply briefs when drafting their brief, but fail to address any of the facts or law justifying the trial court's focus on Latino voters' first-choice candidates.

Third, after over-identifying candidates as "Latino-preferred," and ignoring Latinos' order of preference, Defendant, and now Amici, argue there is no racially polarized voting because more than half of the candidates they unilaterally labeled as "Latino-preferred" won. But courts have resoundingly rejected that mechanical approach. (See, e.g., *Ruiz*, *supra,* 160 F.3d at 554 [in employing the "simple mathematical approach" of "counting the number of successful Hispanic-preferred candidates divided by the number of elections," the trial court committed reversible error]; *Yumori-Kaku*, *supra,* 59 Cal.App.5th at 416 ["whether majority bloc voting usually enables defeat of the minority preferred candidate cannot be reduced to a simple mathematical or doctrinal test."].) Again, this was

explained in Plaintiffs' prior briefs (see, e.g., RB-40-41) but Amici fail to respond to any of it.

The U.S. Supreme Court described, in the simplest terms, circumstances that constitute racially polarized voting – "each facet of the proper legal standard" is "satisfactorily addresse[d]" where minority voters "supported [minority] candidates, while to the [minority] candidates' usual detriment, whites rarely did." (*Gingles*, *supra,* 478 U.S. at 61.) That is exactly what the trial court correctly found in this case, and is supported by the evidence: "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; see also OB-23-26 and evidence cited therein.) This Court cannot disregard, or fail to give deference to, that factual finding by the trial court based on Amici's efforts to obfuscate the record by improperly focusing on irrelevant elections and less-preferred non-Latino candidates.[11]

[11] Amici's misquotation of *Gingles* on pages 32-33 of its brief is telling. Amici claims to be quoting pages 50-51 of the *Gingles* decision when it claims the third Gingles precondition is "the majority group votes sufficiently as a bloc to enable it 'usually to defeat the minority's preferred candidates.'" But Amici's quote leaves out an important qualification from the very sentence Amici is quoting, and changes "candidate" from singular to plural. The full sentence from *Gingles* is as follows: "Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it -- ***in the absence of special circumstances***, such as the minority candidate running unopposed, see, infra, at 478 U. S. 57, and n. 26 -- usually to defeat the minority's preferred ***candidate***." (*Gingles, supra,* 478 U.S. at 51.) The *Gingles* court never contemplated, as Amici assume here, that election of minority voters' second-, third, or even fourth-choice candidate could defeat a vote dilution claim.

C. Amici Rely on Irrelevant "Exogenous" Elections.

The CVRA specifies the elections that are to be evaluated for racially polarized voting – "elections for members of the governing body of the [defendant]." (Elec. Code § 14028(a).) In the language of federal voting rights case law, these are considered "endogenous" elections, while elections for other offices are considered "exogenous" elections. The overwhelming majority of FVRA cases agree: endogenous elections are far more probative than exogenous elections. (See, e.g., *Bone Shirt v. Hazeltine* (8th Cir. 2006) 461 F.3d 1011, 1021, 1027 [citing case law that exogenous elections are "not as probative as endogenous elections," and commenting the defendant's racially polarized voting analysis "diluted the proper analysis" by relying on exogenous elections.].) In *Gingles*, the case announcing the standard for determining racially polarized voting, only endogenous elections were considered. (*Gingles*, *supra,* 478 U.S. at 80, appen. A.)

The trial court's non-exclusive focus on endogenous elections is particularly appropriate in this case. As it found, "several witnesses confirmed[] the political reality of Defendant's city council elections is very different than that of elections for other governing boards with more circumscribed powers." (24AA10692; see also RT3624:8-3624:28; RT6397:6-6398:5; RT6502:17-6503:5; RT6510:2-6510:27; RT6511:23-6512:5.) In any event, the success of minority candidates in exogenous elections cannot properly be used as Amici seek – to undermine a finding of racially polarized voting in the endogenous elections actually at issue in the case. (See *Cottier v. City of Martin* (8th Cir. 2006) 445 F.3d 1113, 1121-1122 [reversing district court's reliance on exogenous elections to undermine RPV in endogenous elections]; *Rural West Tenn. African Am.*

Affairs Council v. Sundquist (W.D. Tenn. 1998) 29 F.Supp.2d 448, 457 ["[V]oting patterns in exogenous elections cannot defeat evidence, statistical or otherwise, about endogenous elections."].)

Amici fail to address, or even acknowledge, the primacy of endogenous elections or the trial court's findings concerning the differences between Defendant's elections and those for the governing boards of other political subdivisions. Rather, Amici, like Defendant, attempt to excuse the vote dilution in Defendant's elections based on the success of minority candidates in other political subdivisions' elections – precisely what the CVRA and the courts in *Bone Shirt, Cottier* and *Rural West Tenn. African Am. Affairs Council* reject as a matter of law. As the trial court aptly explained, to allow Defendant to continue to dilute the Latino vote in its elections because Latino candidates have been successful in other elections, "would only serve to perpetuate the sort of glass ceilings that the CVRA and FVRA are intended to eliminate." (24AA10693.)[12]

[12] Amici even confuse who the defendant is in this case, and what relief the trial court's judgment ordered, arguing that two specific Latinas on the Santa Monica-Malibu Unified School District board and the Santa Monica College board would not personally benefit from district elections for those governing boards because they reside outside the Pico Neighborhood. (Amici Brief, at p. 54.) The defendant in this case is the City of Santa Monica, not a school district or community college district. Accordingly, the trial court ordered the implementation of district elections for Defendant's governing board – its city council – not the governing board of unrelated political subdivisions. (24AA10739.) Even if it were appropriate to consider the consequences of district-based elections to particular candidates as opposed to voters, implementing district-based elections for Defendant's city council has absolutely no effect on candidates for offices unaffected by the judgment.

VII. CONCLUSION

Plaintiffs agree with Amici on one thing: "This Court should address the vote dilution issue in the context of Santa Monica's specific circumstances." (*See* Amici's Application for Leave to File Brief, at p. 10.) The trial court's detailed findings of fact, and the well-developed record from a six-week trial, provide that context, and afford this Court the opportunity to demonstrate how the vote dilution prohibited by the CVRA is established. By doing so, this Court can provide long-awaited guidance to lower courts, political subdivisions and the public. Because Amici rely on inapposite law and on a distorted and mistaken view of the factual record, however, their brief has nothing to offer the Court in carrying out that important task.

Dated: August 11, 2021

Respectfully submitted,

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/s/ Kevin Shenkman

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rules 8.2024(c)(1).)

I, the undersigned appellate counsel, certify that this brief consists of 9,239 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 2016 computer program used to prepare the brief.

Dated: August 11, 2021

Respectfully submitted,

SHENKMAN & HUGHES

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PROOF OF SERVICE

I am a citizen of the United States, am over the age of 18 years, and not a party to the within entitled action. My business address is 155 Grand Avenue, Suite 900, Oakland, CA 94612. I declare that on the date hereof I served the following documents:

PLAINTIFFS AND RESPONDENTS PICO NEIGHBORHOOD ASSOCIATION AND MARIA LOYA'S RESPONSE TO THE AMICUS CURIAE BRIEF OF THE LEAGUE OF WOMEN VOTERS OF SANTA MONICA, ET AL.

☒ **By Electronic Service:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service address(es) as set forth below

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☒ BY U.S. MAIL: By placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Oakland, California addressed as set forth below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 11th day of August 2021, at Oakland, California.

Stuart Kirkpatrick

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PICO NEIGHBORHOOD ASSOCIATION v. CITY OF SANTA MONICA**
Case Number: **S263972**
Lower Court Case Number: **B295935**

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

8/11/2021

Date

/s/Stuart Kirkpatrick

Signature

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Last Name, First Name (PNum)

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