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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA;

Plaintiffs,

v.

CITY OF SANTA MONICA; and DOES 1–100, inclusive,

Defendants.

CASE NO. BC 616804 (filed Apr. 12, 2016)

REPLY IN SUPPORT OF DEMURRER BY CITY OF SANTA MONICA TO FIRST AMENDED COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES

[*Supplemental Request for Judicial Notice and Declaration of Tiaunia N. Henry Filed Concurrently Herewith*]

Cal. Gov. Code § 6103
HEARING:
Date/Time: May 22, 2017, at 8:45 a.m.
Dept.: 28
Res ID: 170203193236
Trial Date: October 30, 2017
Assigned to Hon. Yvette M. Palazuelos

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INTRODUCTION

Plaintiffs fall far short in their attempt to comply with this Court's Order Granting the City of Santa Monica's Motion for Judgment on the Pleadings. This Court ordered Plaintiffs to amend their deficient complaint to allege the "who, where, when, what, and how" (Order at p. 25) of the alleged violation of the California Voting Rights Act ("CVRA"), and to state facts and not "mere conclusions that the intent of the at-large system enacted in 1946 was to discriminate against minorities" (Order at p. 29). Instead, Plaintiffs add only a few names of candidates they conclusorily label as Latino-preferred and again simply parrot the elements of racially polarized voting. (FAC, at ¶¶ 21-24.) Similarly, the FAC again fails to plead facts sufficient to state an equal protection claim, with Plaintiffs merely repeating the conclusory allegations the Court already found inadequate and adding only a few assertions that do not go to conduct attributable to the lawmakers. (*Id.* at ¶¶ 35-44.) Plaintiffs' Opposition tilts at strawmen and complains about the supposed difficulty of pleading *facts* that support the elements of a CVRA cause of action. But having been accorded two opportunities to attempt to state their case, Plaintiffs fail to salvage their claims, and the demurrers should be sustained.

Plaintiffs' CVRA claim remains legally insufficient for the reasons stated in City's Demurrer. Plaintiffs cannot show a pattern of legally significant racially polarized voting in which a white bloc usually defeats a Latino preferred candidate. Plaintiffs address only a select group of the elections they previously conceded were relevant, but nonetheless they cannot show that Latino voting power is "impair[ed]" "as a result of dilution" in an at-large election. Among other things, as Plaintiffs admit, Latinos are 13% of Santa Monica's population and at least 1 of 7 (over 14%) of the City's council members is Latino and even a Latino-preferred candidate. (FAC ¶¶ 15, 19, 21.) Like the Federal Voting Rights Act, "[n]othing in the [CVRA] requires a remedy imposing overproportional representation." (See *Hines v. Mayor and Town Council of Ahoski* (4th Cir. 1993) 998 F.2d 1266, 1274.)

Plaintiffs' equal protection claim must allege "beyond mere conclusion, that the at-large system was enacted at least in part with a discriminatory purpose" (Order at p. 29.) While Plaintiffs added length to their equal protection claim, fluff does not substitute for facts, and Plaintiffs' claim fails. What little new material the FAC includes is not linked to any intent on the part of lawmakers.

Accordingly, this Court should sustain the City's demurrers without leave to amend.

I. Plaintiffs Have Not Pleaded and Cannot Plead a CVRA Violation.

A. Plaintiffs' Selective Pleading Cannot Evade the Facts of Latino Electoral Success.

Plaintiffs represented to this Court in opposing the City's Motion for Judgment on the Pleadings and at the related hearing that "there is no reason why a non-Hispanic white, black or Asian person could not be the preferred candidate of Latino voters," and called it "frankly, offensive" for the City to (according to Plaintiffs) "suggest[] that the Latino identity of certain candidates equates to those candidates being the choice of Latino voters."[1] (MJOP Opp. at p. 8.) Now, Plaintiffs retreat from this position and assert that *only* elections involving Latino candidates are relevant. (See Opp. at p. 2 ["the CVRA ***confines the relevant elections*** to those including at least one candidate that is a member of the applicable minority group"]; *id.* at p. 6 ["under the CVRA ***only those*** elections including at least one Latino candidate are relevant." [emphases added]; see also MJOP Hearing Trans. (02/03/17) at pp. 4:3-6 [Court: "I mean, some of the candidates that you claim were running who were favored by the Latinos aren't necessarily Latino, but it's not clear."]; see also *id.* at p. 5:1-3 [Mr. Shenkman explicitly admitted ". . . ***to answer Your Honor's question, it is Latino-preferred candidates. It doesn't necessarily have to be Latino.***"] [emphasis added]).

Plaintiffs were correct the first time: The CVRA does not make analysis of racially polarized voting turn exclusively on elections in which a Latino candidate runs. Section 14028(b) describes such elections as "one circumstance that may be considered" and plaintiffs admit that analogous federal cases that Section 14026(e) incorporates into the CVRA have considered elections in which no protected class members were candidates. (See Demurrer Opp. at p. 2, fn. 1 [citing *Lewis v. Almance Cty.* (4th Cir. 1996) 99 F.3d 600].) But the FAC fails even under Plaintiffs' new theory, because even focusing on just the ethnicity of Latino candidates is insufficient to establish a CVRA claim.

Plaintiffs previously represented that "there have been ***nine (9) separate Latino candidacies***" (MJOP Opp. p. at 1 [emphasis added]), but Plaintiffs now address only "***4 Latino candidates*** (Tony Vazquez, Josefina Aranda, Maria Loya, and Oscar de la Torre) who participated in a total of 5 elections (1994, 2002, 2004, 2012, 2016)" (Demurrer Opp. at p. 6); see also MJOP Opp. at p. 5 ["But to

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[1] The City made no such assertion, but rather attempted to ferret out which candidates Plaintiffs considered Latino-preferred, since the Complaint failed to do so and Plaintiffs refused to respond to discovery propounded last August that would answer the question—a refusal that continues.

avoid any doubt, over the last 22 years, it is at least the city council elections in 1994, 1996, 1999, 2002, 2004, 2008, 2012 and 2016 that fit the bill."].)[2] Yet, Plaintiffs' carefully selected allegations evade judicially noticeable facts that defeat Plaintiffs' claim. In particular, Plaintiffs identify Mr. Vazquez as a Latino-preferred candidate for the 1994 election (when they think it beneficial to them because he was defeated) (FAC ¶ 21), but fail to address the judicially noticeable facts of Mr. Vazquez's subsequent successes in 2012 and 2016, as well as his recent term as Mayor. (See Demurrer at pp. 1, 5, 6-7, 9.) Further, although Plaintiffs previously admitted that Mr. Vazquez participated in the 2012 election (see Demurrer Opp. p. at 6), the FAC attempts to omit the 2012 election. Plaintiffs "should not be allowed to bypass a demurrer by suppressing facts which the court will judicially notice." (*Marina Tenants Ass'n*, 181 Cal.App.3d at 130 ["The rule is well settled that a complaint otherwise good on its face is nevertheless subject to demurrer when facts judicially noticed render it defective . . . ."] [internal quotations and citations omitted]; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604 ["[A] pleading valid on its face may nevertheless be subject to demurrer when matters judicially noticed by the court render the complaint meritless."].) Plaintiffs' subterfuge is unavailing. Vazquez's victories undermine and defeat Plaintiffs' theory that Latino candidates usually lose, and render the CVRA allegations insufficient to sustain a claim.

B. Plaintiffs' Conclusory Assertions Fail to Allege Racially Polarized Voting.

Plaintiffs' opposition cannot save the FAC's failure to offer any actual facts to support the labels and mere incantation of the elements of racially polarized voting. Rather than provide the "who, where, when, what, and how" (Order at p. 25) of facts supporting a valid claim, Plaintiffs merely parrot the legal elements of racially polarized voting adding only four cherry picked candidates' names. Specifically, the FAC asserts the following conclusions: "Latino voters cohesively preferred [name] – [himself/herself] a [Latino/Latina]. But, the non-Hispanic white majority of the electorate voted as a bloc against [name], and thus due to the at-large election system [name] lost." (See FAC ¶¶ 21-24.) But as this Court held, "[s]tatutory causes of action must be pled with particularity," (Order at pp. 24-25), and Plaintiffs provide no facts supporting their legal conclusions that Latinos and whites voted as

[2] In fact in *Jenkins v. Red Clay Consol. School Dist. Bd. of Educ.* (3d Cir. 1993) 4 F.3d 1103, 1126-28, relied on by Plaintiffs (Demurrer Opp. at p. 2 fn. 1), the court evaluated all seven of the pre-trial elections in which a member of the protected class participated as a candidate.

blocs and that the white bloc usually defeats the Latino bloc. (See *id.* at 24.)

Indeed, Plaintiffs have no response to the City's showing that voting in Santa Monica City Council elections is so fragmented that no white bloc voting exists, much less one that "usually" defeats the Latino-preferred candidate, evidently conceding the argument. (See Demurrer at pp. 6-7; see *Jibilian v. Franchise Tax Bd.* (2006) 136 Cal.App.4th 862, 866-67 [affirming order sustaining demurrer in part because plaintiff failed to refute certain arguments in the opposition].) Simply stating who won and lost a subset of elections does not meaningfully allege facts of racially polarized voting. Contrary to Plaintiffs' claim, the City is not suggesting that this Court count the number of successful Latino candidates and divide by the number of elections like the error seen in *Ruiz v. City of Santa Maria*. (See *Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F.3d 543, 554.; see Demurrer Opp. at p. 5.) Instead, the Court should rule that Plaintiffs' conclusory allegations over a 22-year period of only 4 losses by Latino candidates in 13 elections, which attracted 159 candidates for forty-five Council seats, cannot be sufficient to show a pattern that, more often than not, *Latino-preferred* candidates are defeated by white bloc voting. (Demurrer at p. 1.)

Plaintiffs complain about the supposed onerousness of having to plead facts, rather than conclusions, but that is just basic California pleading law. No California appellate court has addressed pleading requirements under the CVRA, and there is no reason to think that when faced with the issue it would adopt a special pleading rule, as Plaintiffs appear to seek.[3] Simply put, for Plaintiffs to allege that a candidate is or is not a Latino-preferred, they must have a good-faith basis. There is no justification for refusing to tell the Court and the City what it is, if it exists. Plaintiffs' attempt to hide behind expert schedules is not a valid excuse. Other CVRA plaintiffs have included in their complaints detailed allegations about the relevant voting data. (*See* Supplemental RJN, Ex. 1.[4]) While

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3 Plaintiffs' reliance on the unpublished district court decision in *Luna v. Kern Cty* (E.D. Cal. Sept. 2, 2016) 2016 WL 4679723, Case No. 1:16-cv-00568-DAD-JLT is misplaced. It is not a CVRA case and the plaintiffs were not challenging an at-large election system, but rather a redistricting plan. (See Plaintiffs' RJN, Ex. 1 at p. 1.) The court relied on the juxtaposition between the actual results in the actual Latino-majority district and the Latino-minority districts to draw inferences of Latino political cohesion and majority bloc voting, but the FAC has no such allegations. Also, there is no indication that defendant in *Luna* challenged the legal sufficiency of plaintiffs' complaint based on either Plaintiffs' hybrid race-geography theory or the fragmented voting that is characteristic of each Santa Monica city council election negating any potential majority bloc voting.

4 Plaintiffs appear to be "confus[ing] pleading with proof." "In order to earn the right to make an evidentiary record…[P]laintiffs [are] first required to satisfy Code of Civil Procedure section 425.10,

Plaintiffs want the opportunity "to investigate the historical record, analyze statistical data, and develop expert testimony," they are not excused from initially satisfying the California pleading requirements merely because an expert may ultimately be used. (See *Rubin v. Padilla* (2015) 233 Cal.App.4th 1128, 1155 ["there is nothing remarkable about granting a motion to dismiss in an election-law case if careful consideration of the complaint shows that the plaintiff has not stated a claim"] [quoting *Stone v. Board of Election Com'rs for City of Chi* (7th Cir. 2014) 750 F.3d 678, 686].)

Furthermore, despite identifying eight elections in their Opposition to the City's Motion for Judgment on the Pleadings and arguing that the "elections including at least one Latino candidate are relevant" (Demurrer Opp. at p. 6), Plaintiffs fail to fully address all those elections. (See MJOP Opp. at p. 5 [identifying "city council elections in 1994, 1996, 1999, 2002, 2004, 2008, 2012 and 2016. . . ."].) To do so, Plaintiffs would have to admit that Mr. Vazquez, an individual they concede is a Latino-preferred candidate (FAC, ¶ 6), won in 2012 and 2016. (Adler Decl., ¶¶ 2(b) and 3(a), Exs. A-B.) These wins alone preclude finding a pattern of legally significant racially polarized voting.

Moreover, Plaintiffs pursue a hybrid race-geography CVRA theory discounting the fact that Mr. Vazquez is a current city council member (FAC, ¶ 19), but two paragraphs later include Mr. Vazquez for purposes of analyzing whether racially polarized voting exists even though they admit that he is a resident of Sunset Park not the Pico Neighborhood. (FAC, ¶ 21; Declaration of Tiaunia Henry Ex. 3 at No. 12; Ex. 4 at No. 16; *Del E. Webb Corp.*, 123 Cal.App.3d at 604 [courts considering a "demurrer may look to . . . plaintiff's answers to interrogatories"] [citations omitted].) Plaintiffs cannot have it both ways. Plaintiffs also fail to address the City's argument that no such hybrid race-geography CVRA claim is viable—a tacit admission that no such claim exists. (*See* Demurrer at pp. 7-9; see *Jibilian*, 136 Cal.App.4th at 866-67.)

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by pleading facts sufficient to support their causes of action." (*Rubin*, 233 Cal. App. 4th at pp. 1154-1155.) And despite Plaintiffs' efforts to reframe cases like *Bockrath v. Aldrich Chemical Co., Inc.* (1999) 21 Cal.4th 71, no case simply holds that plaintiffs may state allegations in conclusory fashions because of future expert testimony. In *Bockrath*, the court held that in cases such as product liability where plaintiffs may have limited knowledge of how specific toxins caused their injury, they may make conclusory allegations as to proximate cause. The court then immediately clarifies that "[p]laintiffs who know more should, of course, allege additional facts that are important in apprising the defendant of the basis for the claim." (*Id.* at 80.) And here there are no facts known uniquely to defendant.

C. Plaintiffs' White Bloc Voting and "Usual" Allegations Also Fail.

Plaintiffs make a strained argument to support a pattern of white bloc voting usually defeating the Latino preferred candidate. They cherry pick four candidacies and ignore the other elections and candidacies including those they admit are relevant, and ask the court to limit its analysis to those elections. This is not sufficient. Instead, to establish that Latino-preferred candidates "usually" lose, Plaintiffs must at a minimum allege facts (not legal conclusions) concerning who the Latino-preferred candidates were in all the relevant elections, that Latinos voted as a bloc in that election, whether the Latino-preferred candidate was successful, whether whites voted as a bloc, and whether the white bloc (if any) resulted in the defeat of the Latino-preferred candidate. (See Order at pp. 24-25; *McDonnell v. Am. Trust Co.* (1995) 130 Cal.App.2d 296, 300 ["mere labels pinned on by the pleader" are not factual allegations].) Indeed, in view of Plaintiffs' prior representations about the relevance of *all* of those races, the absence of such allegations is tantamount to an admission that the Latino-preferred candidates won. The failure to do so here alone defeats the CVRA claim.

D. Plaintiffs Have Not Alleged Causation or Injury

Even if the Court were to accept Plaintiffs' conclusory assertions as adequate to allege a CVRA claim, Plaintiffs allege no injury. Contrary to Plaintiffs' contention, racially polarized voting is not in and of itself an injury satisfying the statute's causation requirement. (Demurrer Opp. at pp. 8-9.) Indeed, the CVRA is not designed to rid communities of racially polarized voting, but to ensure that cohesive voting on the part of a protected class is not "impair[ed]" "as a result of dilution" in an at-large election. (Elec. Code. § 14027.) And the CVRA is designed to correct ongoing violations. Even under Plaintiffs' new framework of selected elections, Latinos are 13% of Santa Monica's population and at least 1 of 7 (over 14%) of City's council members is a Latino and a Latino-preferred candidate. (FAC ¶¶ 15, 19, 21.) Thus, Latinos are duly represented. (See Elec. Code. §§ 14025 *et seq.*; *Hines v. Mayor and Town Council of Ahoski* (4th Cir. 1993) 998 F.2d 1266, 1274 ["Nothing in the [Federal Voting Rights Act] requires a remedy imposing overproportional representation."].)

II. The FAC Fails to Adequately Plead a Claim Under California's Equal Protection Clause

Plaintiffs concede that the City changed from a seven member Ward system to an at-large

three-Commissioner system of governance in 1914, and that there are no allegations that this change was done for a discriminatory purpose. Plaintiffs also do not challenge the fact that in 1946 the three-Commissioner at-large system was expanded to a seven member Council-Manager system, which necessarily increased the voting power of any cohesive voting group in the City, including minorities. Thus, Plaintiffs' claim necessarily is reduced to a claim that City officials intentionally chose not to go further in 1946 and did not adopt a district system of election when they expanded the number of seats and the form of governance, because they wanted to discriminate against minority voters. Despite attempts to re-characterize what is actually included in the FAC, Plaintiffs are simply unable to allege facts to show (1) disparate impact and (2) discriminatory intent.

A. The FAC Fails to Sufficiently Plead Facts Which Show Disparate Impact

On its face, the initial expansion from three Commissioners elected at large to seven Council Members elected at large mathematically cannot constitute a disparate impact, and the claim should fail for that reason alone. Plaintiffs fail to explain otherwise. Instead, they repeat one lonely factual assertion, that only one out of 71 council members since 1946 has been Latino and this "lack of success" of Latino candidates can itself establish a disparate impact. (*Id.*) This court flatly rejected that argument and asked the Plaintiffs to plead the details showing who the Latino-preferred candidates were in the elections since 1946, including the who, what, when, where and how for each relevant election. (Order at p. 25.) Plaintiffs made no attempt to comply with the court's instructions. Plaintiffs also fail to provide facts connecting the 1946 adoption of a Council-Manager system to any specific election result. They fail to identify what happened in the elections immediately following the 1946 change, or to identify details about any election between 1946 and 1994 (nearly 50 years), including who the Latino preferred candidates were, whether Latino residents voted for such candidates, or even what the Latino population in Santa Monica was over the past 70 years or, importantly, whether Latino-preferred candidates won any of the elections since 1946. In fact, Plaintiffs' sole fact in support of their disparate impact allegation proves that Latinos are currently experiencing representation at least proportionate to their population. The current council member whom Plaintiffs have identified as Latino-preferred makes up one seventh of the council, or 14%, while 13% of the City's population are Latino. (FAC ¶¶ 15, 19, 21.) No equal protection analysis ever guaranteed a

protected class proportional representation. (*Seastrunk v. Burns* (5th Cir. 1985) 772 F.2d 143, 153 ["Nor has any equal protection analysis ever imposed such a guarantee of electoral success."].)

To attempt to overcome this flaw, Plaintiffs mischaracterize *Bolden v. City of Mobile*, incorrectly asserting that the case supports the blanket proposition that the lack of success of minority candidates over several decades "can in itself establish a disparate impact." (*Id.*) But the court in *Bolden* did not simply hold that a lone statistic was sufficient to show disparate impact in an equal protection claim or analyze its pleading requirements. (See *Bolden v. City of Mobile* (1982) 542 F.Supp. 1050, 1054-68.) Rather, the court's conclusions were heavily dependent on the extensive facts before it:

> [T]he adverse racial impact of the at-large elections is starkly clear. Where as many as ten blacks had served on the 24-member Board of Aldermen under the July, 1868 law, which had given the Republican governor of Alabama the authority to appoint all members of Mobile's city government, all black candidates were defeated in the elections subsequent to 1874.

(*Id.* at 1074.) Contrary to Plaintiffs' assertion, the court does not simply hold that a lack of success by minority candidates shows disparate impact, and thus this case cannot save Plaintiffs' claim.

B. FAC Fails to Sufficiently Plead Discriminatory Intent

Plaintiffs concede they have no facts showing any intent to discriminate in 1914 when the City moved to at-large elections. (See Demurrer Opp. at 13) Instead, Plaintiffs spend over six pages stacking citations to their FAC in an attempt to create a scene of racial division in Santa Monica. (See Demurrer Opp. at pp. 11-15.) Despite the clutter, the FAC fails to plead any facts showing discriminatory intent by the relevant lawmakers themselves. Indeed, Plaintiffs still cannot identify who the lawmakers were at the time, clearly deviating from the level of supporting facts shown in leading voting rights cases that Plaintiffs themselves cite.

Plaintiffs' reference to "Caucasian Clauses" and "racial discrimination in employment" are not linked to the 1946 measure (or the original enactment in 1914). (See Demurrer Opp. at p. 10.) The court should infer that the reason Plaintiffs provide no link to the lawmakers, the 1946 measure, or direct statements made by any relevant individuals from the time period is because they do not have those facts. As this Court previously held (Order at p. 29), the conclusory statement that "the charter provision was adopted with the intent to prevent racial minorities from electing candidates of their choice to city council" is insufficient to plead discriminatory intent and Plaintiffs' insertions of

scattered examples of unverified racially-motivated statements made by anonymous declarants (Plaintiffs make no attempt to attribute such statements to the lawmakers) fail to meet the pleading standards necessary for an equal protection claim.

Plaintiffs' use of innuendo from a newspaper snippet (which they do not contend was published by or quotes any lawmaker) is also insufficient to establish discriminatory intent. (*See* FAC ¶ 36.) Tellingly, Plaintiffs did not include this article with their FAC or their Opposition as an exhibit for the Court to review. The Evening Outlook article that Plaintiffs contend is a smoking gun for discriminatory intent merely states in an opinion piece favoring the at-large system:

> The arguments made by some groups for election by wards may apply to cities of very large and diverse population, but they emphatically do not apply to a small city as compact as Santa Monica. The cry that "minorities must be represented" would mean, if carried to its logical conclusion, that every religious group and every neighborhood have its special representative.

(Henry Decl., Ex. 2.) In *Bolden*, in clear contrast, the newspaper articles quoted key legislative players from legislative committee meetings. (*Bolden*, 542 F.Supp. at p. 1063.) One article revealed that the Chairman of the Democratic Executive Committee himself confirmed at a 1908 legislative committee meeting that "[t]he primary will be purely Democratic and only WHITE Democrats will be allowed to participate." (*Id.*) The articles in *Bolden* revealed names of the lawmakers and their specific statements clearly evidencing their intent to prevent African-Americans from voting. (See *id.* at pp. 1063-1064). In other words, the "who, where, when, what and how" that Plaintiffs' FAC is sorely lacking. The snippet above that Plaintiffs hang their hat on pales in comparison to the specificity of *Bolden's* newspaper articles and the pages of facts documenting the centuries-long practice of disenfranchising African-Americans in Alabama proven by the plaintiffs in *Bolden*. Thus, Plaintiffs have wholly failed to provide the factual support showing discriminatory intent required by the Court's prior Order, and this claim should be dismissed.

Within the same vein, Plaintiff also mischaracterizes this Court's Order stating that "this Court only ruled that a single statement by opponents of at-large elections is not enough, standing alone, to show at-large elections were chosen with the purpose of discriminating against racial minorities." (Demurrer Opp. at p. 12 fn. 9 (citing Order at p. 29).) However, in addition to finding that "[t]he allegation that an advertisement calling for the rejection of at-large elections in 1946 warned

that such system could be used for discrimination of minority groups is insufficient to show discriminatory intent in enacting the at-large system," this Court also found that "Plaintiffs only allege mere conclusions that the intent of the at-large system enacted in 1946 was to discriminate against minorities." (Order at p. 29.) Plaintiffs' assertions in the FAC are no less conclusory.

Plaintiffs also misunderstand the City's argument regarding the 1975 and 2002 ballot measures whereby voters twice declined to unnecessarily switch to a district-based system for their small and progressive city. (*Compare* Demurrer at pp. 13-14 *with* Demurrer Opp. at p. 13-14.) Plaintiffs seemingly interpreted the City's point as suggesting there have been ameliorative changes that erase the alleged discriminatory undertone of the law. This is not the City's argument. Rather, Plaintiffs cannot provide sufficient facts that the at-large system was adopted or reaffirmed *at any time* with discriminatory intent. Plaintiffs rely on *Bolden* and *Hunter v. Underwood*, but in both cases there was no doubt from the facts presented that when the post-Civil War election systems were originally enacted, the Alabama lawmakers intended to disenfranchise African-American voters. (See *Bolden*, 542 F. Supp. at 1074 [finding that the "historical background leading up to the express codification of the at-large feature" revealed the intent to disenfranchise African-Americans]; *Hunter v. Underwood* (1985) 471 U.S. 222 [finding that "[t]he explanation concedes [] that discrimination against blacks…was a motivating factor" in adopting the provision].) In contrast to *Bolden* and *Hunter v. Underwood*, Plaintiffs cannot show based on the facts pleaded that Santa Monica lawmakers acted with discriminatory intent at any time—not in 1914, when the at-large system was first adopted, not in 1946 when the representation was expanded from 3 to 7 members, and not in 1975 or 2002 when the voters twice rejected a district-based system.[5]

CONCLUSION

For all the foregoing reasons, the Court should sustain the demurrers without leave to amend.

DATED: May 15, 2017

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[5] And Plaintiffs notably do not complain about Santa Monica's 1992 adoption of at-large elections for Santa Monica's school board—under which Mr. de la Torre has repeatedly succeeded.