SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/07/17			DEPT. 28
HONORABLE YVETTE M. PALAZUELOS	JUDGE	N. RAYA	DEPUTY CLERK
HONORABLE #	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
M. Tavakoli, C.A.	Deputy Sheriff	NONE	Reporter

8:45 am	BC616804	Plaintiff Counsel	
	PICO NEIGHBORHOOD ASSOCIATION E AL		NO APPEARANCES
	VS	Defendant Counsel	
	CITY OF SANTA MONICA CALIFORNIA		

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

On the matter previously taken under submission, the court issues its ruling.

The court's ruling, filed this date, is adopted as the final ruling of the court and incorporated herein by reference to the case file.

The clerk shall give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the
COURT'S ORDER
upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in LOS ANGELES, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE YVETTE M. PALAZUELOS	JUDGE	N. RAYA	DEPUTY CLERK
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NATURE OF PROCEEDINGS:

Dated: JUNE 7, 2017

Sherri R. Carter, Executive Officer/Clerk

By: _____
N. RAYA

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FILED
Superior Court of California
County of Los Angeles

JUN 07 2017

Sherri R. Carter, Executive Officer/Clerk
By Neil M. Raya Deputy
Neil M. Raya

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION, et al.,	Case No.: BC616804
Plaintiffs,	[TENTATIVE]
vs.	
CITY OF SANTA MONICA,	RULINGS/ORDERS
Defendant.	

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Defendant's Demurrer to the First Amended Complaint (FAC) is OVERRULED.

Defendants shall file and serve an Answer within 20 days of service of the notice of ruling.

Defendant's Requests for Judicial Notice are GRANTED, except for Defendant's Request for Judicial Notice submitted for the first time on reply, which is DENIED.

Plaintiffs' Requests for Judicial Notice are GRANTED as to Exhibit 1 (existence only) and Exhibit 2.

I.

INTRODUCTION

Plaintiffs Pico Neighborhood Association ("PNA"), Maria Loya ("Loya"), and Advocates for Malibu Public Schools ("AMPS")[1] filed the Complaint against Defendant City of Santa Monica ("City") for (1) violation of the California Voting Rights Act of 2001 ("CVRA") and (2) violation of the Equal Protection Clause of the California Constitution. Plaintiffs allege that Defendant is in violation of the CVRA and that the provision of the Santa Monica City Charter that requires at-large election of the city council as well as the governing board of the Santa Monica Malibu Unified School District ("SMMUSD") is unconstitutional. Plaintiffs allege that the prior system of district-based elections was abandoned and at-large elections were adopted in 1946 to purposefully prevent non-Anglo Santa Monica residents residing primarily around and south of what is now Interstate 10 from achieving representation in their local governments. Plaintiffs claim that at-large elections has diluted Latino voting power and denied effective political participation in the elections of the Santa Monica City Council.

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[1] On July 21, 2016, Plaintiff AMPS only filed a request to dismiss the Complaint, without prejudice.

According to Plaintiffs, the at-large method of election prevents Latino residents from electing candidates of their choice or influencing the outcome of Santa Monica's City Council elections. Plaintiffs seek 1) declarations that the at-large method of election used by Defendant violates the CVRA and the California Constitution's Equal Protection Clause; 2) injunctive relief enjoining Defendant from further using its current at-large method of election; and 3) an order requiring Defendant to implement district based elections or some other alternative relief tailored to remedy the violations of the CVRA and California Constitution.

Defendant demurs to the FAC on the grounds that (1) the FAC does not allege a violation of the CVRA because it does allege racially polarized voting in that Latinos have preferred certain candidates and voted as a bloc, that whites have also voted as a bloc, and that the white bloc usually outvotes the Latino bloc and the FAC fails to allege injury, or causation because there are no facts to show Latino-preferred candidates would have won office under an alternative electoral system; and (2) the FAC does not allege a claim under the Equal Protection Clause because there are no facts that the adoption of Defendant's current at-large electoral system was motivated by discriminatory purpose or has had a discriminatory effect.

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In opposition, Plaintiffs argue that they adequately addressed any deficiencies in the pleadings after being allowed leave to amend following the motion for judgment on the pleadings which challenged the Complaint. Further, Plaintiffs argue that Defendant improperly argues inferences and evidence which is not appropriate at the pleading stage.

In reply, Defendant argues that Plaintiffs rely on nothing more than unsupported and conclusory allegations.

II.

DISCUSSION

A. Applicable Law - Generally

1. Demurrer

A demurrer for sufficiency tests whether the complaint states a cause of action. Hahn v. Mirda (2007) 147 Cal.App.4th 740, 747. When considering demurrers, courts read the allegations liberally and in context. In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. Donabedian v. Mercury Ins. Co. (2004) 116 Cal.App.4th 968, 994; Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2011) ¶7:8. "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed (Code Civ. Proc., §§ 430.30, 430.70). The only issue involved in a demurrer hearing

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is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." Hahn 147 Cal.App.4th at 747. A complaint will be upheld against a demurrer if it pleads facts sufficient to place the defendant on notice of the issues sufficient to enable the defendant to prepare a defense. Doe v. City of Los Angeles (2007) 42 Cal.4th 531, 549-50.

Statutory causes of action must be pled with particularity, and particularity means pleading the who, where, when, what, and how. Lopez v. So. Cal. Rapid Transit Dist. (1985) 40 Cal.3d 780, 795; Lazar v. Superior Court (1996) 12 Cal.4th 631, 645.

2. Declaratory Relief

To plead a cause of action for declaratory relief, Plaintiff must plead the following elements: (1) person interested under a written instrument or a contract; or (2) a declaration of his or her rights or duties (a) with respect to another or (b) in respect to, in, over or upon property; and (3) an actual controversy. CCP §1060; Ludgate Ins. Co. v. Lockheed Martin Corp. (2000) 82 Cal. App. 4th 592, 605-06; Bennett v. Hibernia Bank (1956) 47 Cal. 2d 540, 549; Stonehouse Homes v. City of Sierra Madre (2008) 167 Cal.App.4th 531, 542 ("For declaratory relief, the party must show it has either suffered or is about to suffer an injury of 'sufficient magnitude reasonably to assure that all of the relevant facts and issues

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will be adequately presented."); Cal. Ins. Guar. Ass'n v. Sup. Ct. (1991) 231 Cal. App. 3d 1617, 1624 ("availability of another form of relief that is adequate will usually justify refusal to grant declaratory relief" but "[t]he refusal to exercise the power is within the court's legal discretion . . . ."); Pellegrini v. Weiss (2008) 165 Cal.App.4th 515, 529 ("The question whether declaratory relief is appropriate in a given case is addressed to the trial court's discretion.")

An action for declaratory relief lies when there is an actual bona fide dispute between parties as to a legal obligation arising under the circumstances specified in CCP §1060 and, in addition, the controversy must be justiciable - i.e., presents a question as to which there is more than one answer. Western Motors Servicing Corp. v. Land Development & Inv. Co. (1957) 152 Cal.App.2d 509. "Actual controversy" is a controversy which admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion on a particular or hypothetical state of facts. The judgment must decree, not suggest, what the parties may or may not do. Selby Realty Co. v. San Buenaventura (1973) 10 Cal.3d 110. A mere difference of opinion is not an "actual controversy" within § 1060. The "actual controversy" language in CCP §1060 encompasses present or probable future controversies relating to the legal rights

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and duties of the parties. Declaratory relief generally operates prospectively to declare future rights, rather than to redress past wrongs; it is used to declare rights rather than execute them. County of San Diego v. State (2008) 164 CaI.App.4th 580, 606-608; Gafcon, Inc. v. Ponsor & Assocs. (2002) 98 Cal. App. 4th 1388, 1404 ("declaratory relief operates prospectively only, rather than to redress past wrongs....")

A complaint seeking declaratory relief must merely allege facts which justify the declaration of rights or obligations in respect of a matter of actual controversy, within the purview of § 1060, and involving justiciable rights. Foster v. Masters Pontiac Co. (1958) 158 Cal.App.2d 481. The rule that a complaint is to be liberally construed is particularly applicable to one for declaratory relief. Id.

B. California Voting Rights Act

1. Statutory Definitions

> "At-large method of election" means one of the following methods are used to elect members of the governing body of the political subdivision: (1) voters of the entire district elect the members of the governing body; (2) candidates are required to reside within given areas of the jurisdiction and voters of the entire jurisdiction elect the members of the governing body; or (3) one that combines at-large elections with district-based elections."

Elec. Code § 14026(a)(1)-(3).

> "'District-based elections' means a method of electing members to the governing body of a political subdivision in which the candidate must reside within

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an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district."

Elec. Code § 14026(b).

"'Political subdivision' means a geographic area of representation created for the provision of government services, including, but not limited to, a general law city, general law county, charter city, charter county, charter city and county, school district, community college district, or other district organized pursuant to state law."

Elec. Code § 14026(c).

"'Protected class' means a class of voters who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et seq.)[2]."

Elec. Code § 14026(d).

"'Racially polarized voting' means voting in which there is a difference, as defined in case law regarding enforcement of the federal Voting Rights Act of 1965, in the choice of candidates or other

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[2] "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b)." 52 U.S.C. § 10301(a). "A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided,* That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 52 U.S.C. § 10301(b). "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group." 52 U.S.C. § 10303(f)(2).

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electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate. The methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the federal Voting Rights Act of 1965 to establish racially polarized voting may be used for purposes of this section to prove that elections are characterized by racially polarized voting."

Elec. Code § 14026(e) (internal citations removed).

"An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class, as defined pursuant to Section 14026."

Elec. Code § 14027.

"A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision."

Elec. Code § 14028(a).

"Elections conducted prior to the filing of an action pursuant to Section 14027 and this section are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action."

Elec. Code § 14028(a).

"The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the

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rights and privileges of members of a protected class."

Elec. Code § 14028(b).

"One circumstance that may be considered in determining a violation of Section 14027 and this section is the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class, as determined by an analysis of voting behavior, have been elected to the governing body of a political subdivision that is the subject of an action based on Section 14027 and this section."

Elec. Code § 14028(b).

"In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis."

Elec. Code § 14028(b).

"The 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, but may be a factor in determining an appropriate remedy."

Elec. Code § 14028(c).

"Proof of an intent on the part of the voters or elected officials to discriminate against a protected class is not required."

Elec. Code § 14028(d).

"Other factors such as the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a

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> protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns are probative, but not necessary factors to establish a violation of Section 14027 and this section."

Elec. Code § 14028(e).

> "Any voter who is a member of a protected class and who resides in a political subdivision where a violation of Sections 14027 and 14028 is alleged may file an action pursuant to those sections in the superior court of the county in which the political subdivision is located."

Elec. Code § 14032.

2. The Allegations Are Sufficient

Defendant argues that the FAC again fails to allege racially polarized voting ("RPV") because the FAC does not identify (1) Latino-preferred candidates for Santa Monica's City Council, (2) how the Latino and white voters voted as a bloc, and (3) that the white bloc usually acted to defeat the Latino-preferred candidates. But Defendant argues that Plaintiffs rely on a conclusory statement that a white bloc "usually" outvotes a Latino bloc without providing sufficient facts to show what "usually" happens by making specific allegations of facts that show a pattern which proves that "over a period of years, whites vote sufficiently as a bloc to defeat minority candidates most of the time." Uno v. City of Holyoke (1st Cir. 1995) 72 F.3d 973, 985 (the electoral history relied upon to show RPV must

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cover "a series of elections" and cannot be "an isolated snapshot of a single election" because otherwise nothing is shown more than that "just those elections that, taken in isolation, reveal…[RPV]"). Defendant argues the FAC is "over-inclusive" and that to the extent Plaintiffs rely on elections that occurred before the 2003 enactment of the CVRA such elections are irrelevant because statutes are ordinarily interpreted to operate prospectively in the absence of contrary legislative intent[3], but that the FAC is also "under-inclusive" because the election history cited by Plaintiffs makes allegations regarding the electoral defeat of four candidates out of 159 total over a 22 year period. FAC ¶¶ 21-25; Defendant's Request for Judicial Notice ("DRJN") Exh. B. Defendant argues the scattershot of elections in 1994, 2002, 2004, and 2016 does not meet the standard set by the statute and the federal case law it incorporates because it cannot show a white bloc "usually" outvotes a Latino bloc. Lewis v. Alamance County, N.C. (4th Cir. 1996) 99 F.3d 600, 606 n. 4 (terms such as "usually", "normally", and "generally" "mean something more than just 51%" because the white bloc must vote to defeat the minority-preferred candidates "most of the time"). Defendant argues that Plaintiffs were specifically given the opportunity

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[3] Quarry v. Doe I (2012) 53 Cal.4th 945, 955-56.

on amendment to allege specific examples and if they cannot allege anything more, one must conclude Plaintiffs in good faith could not allege any more elections. Defendant argues that the FAC is silent about nine City Council elections that occurred between 1994 and 2006[4] and neglects to mention one of the four named losing candidates that lost a reelection bid in 1994, Tony Vasquez, won two elections in 2012 and 2016 and served a term as mayor. DRJN Exh. A.

By Plaintiff's own allegations, there are no facts to show whites or Latinos voted cohesively or that a white voting bloc acted to usually defeat a Latino voted bloc. Defendant argues while Plaintiffs allege in 2004 that Bobby Shriver received the most votes citywide and won the most votes in six of seven of the City's neighborhood, and that Loya received the most votes in the Pico neighborhood, there is nothing more than a conclusory assertion that Loya was "strongly preferred" by voters in that neighborhood and by Latinos throughout the city because Plaintiffs do not allege total or Latino population figures in 2004 and if the population figures resemble those from the 2000 census, then the majority of Latinos then, as they do now, lived outside of the Pico neighborhood. FAC ¶¶ 15, 23; DRJN Exh. D. Defendant urge that it is therefore just as

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[4] Occurring in 1996, 1998, 1999, 2000, 2006, 2008, 2010, 2012, and 2014.

possible that Shriver won because of citywide Latino support and the same could be true for any of the candidates that actually won the elections at issue and no facts are alleged to the contrary. Defendant note that voting in 2004 was fragmented as sixteen candidates ran for only four City Council seats and nine of those candidates, including Loya, received at least 5% of the vote and that although Shriver had the highest vote total, he won only about 16% of the vote. DRJN Exh. B. Similarly in 2016, there were eleven candidates for City Council and Plaintiffs state in a conclusory manner that Oscar de la Torre was the preferred candidate of Latino voters without observing there were four seats available and that Tony Vazquez, who Plaintiffs allege was the Latino-preferred candidate in 1994, won a council seat in 2016 for the second time with the second highest total of 16% of the vote, and that voting was again fragmented because seven of the eleven candidates received at least 5% of the vote. FAC ¶¶ 21, 24; DRJN Exh. B. Defendant states that there are similarly no allegations to show who was the "preferred candidate" of any supposed white voting bloc and that Vasquez, who was once alleged to be the Latino-preferred candidate, received the second highest vote total in 2016. Defendant argues that Plaintiffs again merely parrot language of statutory authority and case law that provides nothing more than mere labels and conclusions, but are not specific factual

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allegations required to state a claim. Plaintiffs fail to allege what "alternative system" Latino-preferred candidates would have fared better under and in any event, such assertion is belied by the fact Vasquez won multiple elections and was the second highest vote-getter in 2016.

Plaintiffs respond that the FAC alleges that Defendant uses an at-large method of election for selecting members of the city governing board and there has been RPV in elections for Santa Monica's City Council in which Latino voters preferred Tony Vazquez in 1994, Josefina Aranda in 2002, Maria Loya in 2004, and Oscar de la Torre in 2016, only for each Latino-preferred candidate to lose because the non-Hispanic white majority of the electorate voted as a bloc against them. FAC ¶¶ 1-2, 16-17, 20-25, 30-32, 49-50. In each of these elections, the non-Hispanic white majority's top three choices were instead victorious. FAC ¶¶ 21-24. Any argument as to whether Vasquez remained the "Latino-preferred" candidate in subsequent elections is a disputed fact or an inference that is not appropriate to be decided on demurrer. And Plaintiffs argue that the FAC alleges examples that show the "probative but not necessary factors" listed in Section 14028(e) of the CVRA, including (1) a history of discrimination; (2) denial of access to the processes that determine what candidates will receive financial or other support in an election; (3) the extent Latinos bear the effects

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of past discrimination in areas such as education, employment, and health and that such effects hinder the ability to participate effectively in the political process; (4) and the use of overt or subtle racial appeals in political campaigns. FAC ¶¶ 26-29. The FAC alleges such factors contribute to the dilutive effect of at-large elections in Santa Monica such that the high cost of City Council campaigns combined with RPV impairs Latinos, who tend to have more modest financial means compared to non-Hispanic whites, from electing candidates of their choice or to influence the outcome of City Council elections. FAC ¶¶ 26-29.

Defendant's arguments as to whether Plaintiff can show Latino voter cohesiveness and majority bloc voting to defeat Latino-preferred candidates and whether the four specific "exemplary" elections cited in the FAC are sufficient to show RPV, goes not to the sufficiency of the pleadings, but to the sufficiency of Plaintiff's evidence. FAC ¶¶ 1-2, 20-25, 30-33, 50. Plaintiff argues that such analysis, including what preferred voting districts should be implemented or would result in more success for Latino-preferred candidates, requires expert analysis and more than can be expected at the pleading stage. Plaintiffs further argue that they can rely on evidence of elections prior to the CVRA. According to Plaintiffs, it would frustrate the purpose of the CVRA if a government could not be

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challenged on the basis of continuing violations and if an action was limited only to post-2004 elections. How much weight to give the November 2016 election, which occurred after the lawsuit was filed, is not a matter for demurrer. Plaintiffs argue that Defendant's position that there may be other or different Latino-preferred candidates than those identified again goes to the evidence and the Court cannot draw inferences against Plaintiffs at this stage. Plaintiffs state that RPV itself is recognized as harmful.

Here, Plaintiffs have sufficiently alleged a violation of the CVRA. The FAC alleges that Defendant uses an at-large method of election for selecting members of the city governing board and that there has been RPV in elections for Santa Monica's City Council in which Latino voters preferred Tony Vazquez in 1994, Josefina Aranda in 2002, Maria Loya in 2004, and Oscar de la Torre in 2016, only for each Latino-preferred candidate to lose because the non-Hispanic white majority of the electorate voted as a bloc against them. FAC ¶¶ 1-2, 16-17, 20-25, 30-32, 49-50. In each of these elections, the non-Hispanic white majority's top three choices were victorious. FAC ¶¶ 21-24. Whether such allegations ultimately end up being true, and the weight that should be afforded to certain allegations and evidence, such as whether Vasquez was also the "Latino-preferred" candidate and experienced later electoral success,

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are matters of evidence and not matters for demurrer. Much of the arguments raised by Defendants addresses the weight or sufficiency of Plaintiffs' evidence. Whether such arguments will carry the day is not a matter the Court can determine on the pleadings.

The FAC also alleges examples that show the "probative but not necessary factors" listed in Section 14028(e) of the CVRA, including (1) a history of discrimination; (2) denial of access to the processes that determine what candidates will receive financial or other support in an election; (3) the extent Latinos bear the effects of past discrimination in areas such as education, employment, and health and that such effects hinder the ability to participate effectively in the political process; (4) and the use of overt or subtle racial appeals in political campaigns. FAC ¶¶ 26-29. The FAC alleges such factors contribute to the dilutive effect of at-large elections in Santa Monica such as that the high cost of City Council campaigns combined with RPV impairs Latinos, who tend to have more modest financial means compared to non-Hispanic whites, from electing candidates of their choice or to influence the outcome of City Council elections. FAC ¶¶ 26-29. Arguments as to whether Plaintiff can show Latino voter cohesiveness and majority bloc voting to defeat Latino-preferred candidates and whether the four specific "exemplary" elections cited in the FAC are

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sufficient to show RPV goes not to the sufficiency of the pleadings, but the sufficiency of Plaintiff's evidence. And Plaintiffs can rely on allegations of RPV in elections before the CVRA was passed. Kizer v. Hanna (1989) 48 Cal.3d 1, 7-8 (a law is not retroactive just because some facts or conditions of the law's application came into existence prior to the enactment); In re E.J. (2010) 47 Cal.4th 1237, 1258 (retroactivity is usually determined by whether the last act necessary for the law's application occurred before or after the effective date); People v. Grant (1999) 20 Cal.4th 150 (a statute requiring three violations was not retroactive as long as one of the required acts occurred after the effective date). There is nothing in the CVRA that limits evidence and allegations of RPV to elections occurring after the CVRA was passed and it would frustrate the purpose of the CVRA if, before RPV could be challenged, there was a "waiting" period to challenge RPV in which enough elections would need to be accumulated to show RPV that occurred only after the CVRA was passed.

Plaintiffs have properly alleged an injury and the fact that Latinos in Santa Monica may not be concentrated in a certain neighborhood or divisible "district" does not mean the claim fails. Rey v. Madera Unified School Dist. (2012) 203 Cal.App.4th 1223, 1229 (proving a violation of the CVRA requires

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a showing that voting was racially polarized, but there is no requirement to show members of a protected class live in a geographically compact area or that there was discriminatory intent on the part of voters or officials); Elec. Code § 14028(a) ("A violation of Section 14027 is established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision."); Elec. Code § 14028(c) ("The 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, but may be a factor in determining an appropriate remedy.")

C. California's Equal Protection Clause

The equal protection clause prohibits a state from denying any person equal protection of the laws and prohibits discriminatory classifications of persons or groups. Clark v. Jeter (1988) 486 U.S. 456, 461. While discriminatory classifications are usually lawful if rationally based, discriminatory classifications based on "suspect" classifications, such as race or national origin, are subject to heightened judicial scrutiny. Id. Explicit discrimination and discrimination by "disparate impact" are unconstitutional only when motivated at least in part by the purpose or intent to harm

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a protected group. Kim v. Workers' Comp. Appeals Bd. ("Kim") (1999) 73 Cal.App.4th 1357, 1361.

Defendant argues that the FAC fails to allege facts that the law is discriminatory on its face as the City's Charter, which establishes the at-large method, is facially neutral. There is no allegation that despite being facially neutral, the law was applied in a racially discriminatory way. Yick Wo v. Hopkins (1886) 118 U.S. 356, 374 (a facially neutral ordinance that prohibited operation of laundries in wooden buildings was applied in a racially discriminatory manner when only white laundry owners and no Chinese laundry owners were granted variances to operate such laundries). There is no allegation that the facially neutral and evenhandedly applied law had a disparate impact on ethnic minorities and that this was intended by decision makers. Spurlock v. Fox (6th Cir. 2013) 716 F.3d 383, 401. The FAC alleges that only one individual of seventy-one City Council members has been Latino. Defendant argues that the allegation does not support a disparate impact because the ethnicity of City Council members does not address what candidates have been preferred by certain minorities. FAC ¶ 41. Defendant argues that Plaintiffs "continue to misunderstand" when the at-large election system was adopted versus when the number of seats were expanded. From 1914 until 1946, voters

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elected three commissioners on an at-large basis[5] and candidates could only run for one of these three offices. The greatest number of votes won and thus a bare majority could control all three spots. However in 1946, Defendant created the present seven-council member at-large system which expanded voting power for cohesive voting groups because candidates no longer ran for one seat, but now ran for three or four vacancies. FAC ¶¶ 2, 4, 19, 35-36, 38-42, 45; DRJN Exh. E. Defendant argues that this "first past the post" system made it easier for small groups of voters to select a candidate of their choice.

And Defendant argues that Plaintiffs, even if some disparate impact is assumed, cannot show discriminatory intent because disparate impact is only unconstitutional when motivated at least in part by a purpose or intent to harm a protected group. Kim v. Workers' Comp. Appeals Bd. (1999) 73 Cal.App.4th 1357, 1361-62. According to Defendant, there are no facts alleged that those who amended the City's Charter were aware that the process could have a disparate impact on minorities and intended for it to do so. Defendant argues that if anything, the 1946 change strengthened minority voting rights. In the FAC, Plaintiffs reliance upon an advertisement that called for the rejection of the 1946 amendment which warned that such

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[5] For safety, finance, and public works.

system could be used to discriminate against minority groups does not identify the decision makers and their motivations were for putting forth the 1946 amendment. FAC ¶¶ 35-37, 40, 42. Defendant argues that whatever discriminatory animus may have been present when the system was amended in 1946, voters have twice reaffirmed the current system in 1975 and 2002 and there are no allegations such actions were motivated by any discriminatory intent. DRJN Exh. B.

Plaintiffs respond that the current election model was adopted with the intent to prevent racial minorities from electing candidates of their choice to the City Council and that such model has been effective at accomplishing its goal. FAC ¶¶ 19-25, 35-43, 56-59. Despite Latinos being 13.1% of Santa Monica's population, only one of 71 council members since the current election model was adopted has been Latino. FAC ¶¶ 15, 19, 41. Plaintiffs urge that the allegations are sufficient to place Defendant on notice of the nature of the claims, take discovery, and prepare a case for trial. Plaintiffs conclude that the current election mode has had a disparate impact because of the lack of success of Latino-preferred candidates. FAC ¶¶ 19-25, 41. Contemporary newspaper articles reflect the opinions of the time, as well as the historically racially hostile climate. FAC ¶¶ 36, 40, 42. The current election model has remain unchanged since 1946. The fact that an intentionally

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discriminatory model may have later been ratified by those without the same animus does not render the current election model legal. Hunter v. Underwood (1985) 471 U.S. 222, 232-33 (the original enactment was motivated by the desire to discriminate against blacks and that effect continued). Plaintiffs argue that whether the current election model is "worse" or "better" than that from 1914 also does not render the current election model legal if the current model was implemented with a discriminatory motive.

The court finds that Plaintiffs have alleged a violation of the Equal Protection Clause. Similar to above, much of Defendant's arguments goes to the sufficiency or the weight of the evidence, which may or may not ultimately be successful, but is not appropriate to consider at the pleading stage when inferences are not drawn against the pleadings. CrossTalk Productions, Inc. v. Jacobson (1998) 65 Cal.App.4th 631, 635 (a demurrer is not the appropriate place to determine the truth of disputed facts or what inferences should be drawn when competing inferences are possible). Plaintiffs allege that the current election model was adopted with the intent to prevent racial minorities from electing candidates of their choice to the City Council and that such model has been effective at accomplishing its goal, as despite Latinos being 13.1% of Santa Monica's population, only one of 71 council members since the current

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election model was adopted has been Latino. Plaintiffs further allege that there has been a disparate impact on Latino-preferred candidates, as discussed above in the four specific elections identified in the FAC. FAC ¶¶ 15, 19-25, 35-43, 56-59. Whether Plaintiffs can ultimately prove such allegations is not a matter for demurrer, but is a matter of the evidence that cannot be decided on the pleadings.

III.

CONCLUSION

Based upon the foregoing, the court orders that:

1) Defendant's Demurrer to the First Amended Complaint (FAC) is OVERRULED.

2) Defendants shall file and serve an Answer within 20 days of service of the notice of ruling.

3) Defendant's Requests for Judicial Notice are GRANTED, except for Defendant's Request for Judicial Notice submitted for the first time on reply, which is DENIED.

4) Plaintiffs' Requests for Judicial Notice are GRANTED as to Exhibit 1 (existence only) and Exhibit 2.

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Clerk

MOVING PARTY TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

DATED: June 6, 2017

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT

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