

# Hero or opportunist? Pugilistic Malibu lawyer remakes California voting

*Kevin Shenkman practices for a California Supreme Court hearing on Pico v. Santa Monica, a voting rights case, in front of law professors in San Francisco. Attorneys like Shenkman and their clients have wielded the California Voting Rights Act against hundreds of jurisdictions — big cities, small towns, schools, even water boards and fire agencies — forcing them to switch from at-large to district elections that fundamentally reshape their democracies.*

By Jason Fagone, Daniel Lempres – Special to The Chronicle – Dec 21, 2023

Waiting for someone to turn on the microphone clipped to his blue button-down shirt, Malibu attorney Kevin Shenkman cracked a joke at his own expense. He struck a pose like one of those personal-injury lawyers who advertise on billboards, holding out his right arm and pointing.

“I will fight for YOU,” he said, laughing.

It was a weekday in June, and Shenkman stood at a podium in an auditorium at UC Law San Francisco, facing an audience of professors. He might have been a bit nervous.

Shenkman, 45, is one of the most influential civil rights attorneys in the state and probably beyond. He wields a sweeping law called the California Voting Rights Act, which is meant to give disenfranchised minority communities more voting power in local elections.

Usually representing Latino clients, Shenkman has sued or threatened to sue at least 175 cities, school boards and special-purpose agencies like fire stations and water boards, pressuring them to align their democracies with the CVRA’s blueprint.

To some Latino officials and communities, he’s a straight-up hero, a one-man wrecking ball who has cleared a path for them to reach public office.

Others see a cynical opportunist exploiting a flawed law to extract fees from cities and other public boards — \$15 million in the last decade, including some

settlements from cash-strapped towns and schools who say they're doing nothing wrong but pay to avoid getting sued.

“He gets to shake down” small towns and boards, said Annabel Grimm, a Latino woman of Mexican heritage and the general manager of the Chico Area Recreation & Park District, a small parks department that was targeted by Shenkman in 2021 and reluctantly sent him a \$30,000 check.

“The dude’s from Malibu! Give me a break.”

The CVRA, passed in 2002, aims to equalize power imbalances caused by “at-large” elections, where leaders are chosen through citywide votes. At-large systems have sometimes allowed slim majorities of white people to control 100% of seats in city government, “diluting” the voting strength of racial minorities by dispersing their votes across an entire city.

So the CVRA allows minority voters to sue places like that and force them to adopt “district-based” elections, where different neighborhoods pick their own representatives and minority areas can, in theory, exert more power.

The law also lets attorneys like Shenkman get paid to bring these cases.

Under one provision, lawyers can collect \$30,000 just by sending a letter pressuring a city or board to “voluntarily” adopt district elections.

Shenkman wins almost every time out.

Lawsuits, letters, it doesn’t matter — for the last decade, he’s been nearly invincible.

But occasionally, someone challenges him. That’s why he was in San Francisco, speaking to the law school professors.

He came to practice his opening statement in *Pico v. Santa Monica*, a state voting rights lawsuit that Shenkman filed almost eight years ago and has been jostling through the courts ever since.

His client, the Pico Neighborhood Association, based in a Latino section of Santa Monica, says the city’s at-large election system has long deprived the group of a fair seat at the table.

The city has denied that, pointing to the victories of Latino candidates in recent citywide elections and arguing that their at-large system has actually given Latino voters more power.

Fighting back in appeals courts after Shenkman beat them in a six-week trial, Santa Monica has accused Shenkman and his client of manipulating the CVRA and has asked for the law's powers to be clarified.

The future of voting rights in California is tied up in this case.

The state Supreme Court scheduled oral arguments for later in June.

But Shenkman had never appeared before the body, so a few weeks before the big day, he took advantage of a moot court program at the law school.

In a Moot session, professors pretend to be justices, peppering a lawyer with questions as he delivers his argument and critiquing his performance afterward.

The school agreed to let reporters observe on the condition that the participants not be quoted.

Tall and lanky, with tousled brown hair, Shenkman began by reading from his planned opening statement. It was heavy on details about voting and elections in Santa Monica — the nitty-gritty stuff of a trial.

After a few minutes, though, the professors started interrupting, asking much bigger questions that cut to the heart of the law — and the staggering complexity of race in America.

What kind of election system is the fairest to minorities, especially in a multi-ethnic state like California?

How do you identify and measure racially discriminatory election structures?

How do you fix them without creating new problems?

Shenkman answered every question with calm, poised replies. When the session was over, the professors said they were impressed and offered a few tips.

But walking out of the auditorium, he frowned.

“That was harder than I thought,” he said.

Many people who know Shenkman’s name know it only from his short letters full of legal boilerplate, threatening to sue them.

In person, he’s the opposite — talky, earnest and profane.

“You could just say: Kevin Shenkman is a juvenile asshole,” he told a Chronicle reporter.

He has a knack for taking whatever you might think is the worst thing about him, owning up to it with a joke, then pivoting to the injustices faced by minority communities and how the CVRA corrects them. “I’ve seen the transformative impact that this can have on representation and government,” he said. “We are bettering people’s lives.”

The law might be “a blunt instrument,” he admits, but there are a lot of towns in this state where Latino people have been “shit on” since anyone can remember. Other kinds of reforms haven’t worked. But the CVRA is a disruptive tool: The whole idea of district elections is that “every neighborhood, every area, has a voice,” Shenkman said. “The CVRA shakes things up. If that’s what it takes, so be it.”

As for the fees he earns, Shenkman makes no apologies. He has four young kids. And it costs money to research and pursue these cases, he said. He collaborates with a small team of lawyers and demographic experts and pays them for their work. Enforcing the CVRA takes “a lot of effort, and I’ve got to support my family,” he said.

“I get this a lot. I hear, like, why don’t you do this for free? Well, I don’t go to their job and tell them that they shouldn’t get paid.”

Shenkman admits that when he took his first CVRA case, his only knowledge of election law came from a law school survey course. He had to look up the CVRA on Wikipedia, he said.

One day in 2011, when Shenkman was 33, he got an unexpected phone call from a Black activist named Darren Parker, then chairman of the state Democratic Party’s

African American Caucus. Parker said he was concerned about unfair elections in the city of Palmdale, north of L.A. Even though Palmdale was 69% Latino and Black, the City Council was controlled by white Republicans. Parker, who has since passed away, told Shenkman he wanted to sue the city under the CVRA. He needed a lawyer.

“I told him I’m not a voting rights attorney,” Shenkman recalled. “But I’ve always been a Democrat, so I’m like, ‘OK.’”

His legal career up to that point had been a quirky one. He’d grown up in Detroit, where his mother was a schoolteacher and his father did building maintenance. At Columbia Law School in the early 2000s, he found many classes boring. He preferred to spend his time at a New York boxing gym, training and fighting with other light heavyweights.

“You ever try it?” Shenkman asked two Chronicle reporters during a lunch conversation at a Mexican spot in the Sherman Oaks neighborhood of Los Angeles. The reporters admitted that no, they hadn’t. Shenkman nodded. It was the answer he expected.

“I really think everyone should try boxing,” he said. “There’s something to be said for developing at least the confidence that you can do it — get into a fight.”

During law school, Shenkman worked a summer at a large, prestigious firm in Los Angeles, Gibson Dunn & Crutcher — the same firm now representing Santa Monica in the Pico case.

He graduated and spent the next six years at a Los Angeles firm specializing in patent law.

“If I was still doing patent work, I would kill myself,” Shenkman said, then paused. “I don’t mean to be flippant about suicide. That’s not right.”

Shenkman quit in 2011 and started his own firm with his wife, Mary Hughes, a lawyer he’d met at Gibson Dunn. The headquarters of Shenkman & Hughes was their home office. Then Shenkman got the call from Parker, asking him to sue Palmdale.

Shenkman reached out to his former law school professor, Rick Hasen, who connected him with other experts on voting rights law.

“I didn’t know what the hell I was doing,” Shenkman said, but “I had the good sense to go get people who did, and learn.”

Leaping into his first CVRA case, he sued Palmdale on behalf of Latino and Black voters. Instead of settling like almost every city, Palmdale punched back, taking Shenkman to an eight-day trial.

Shenkman “very much believed in his case” and “did a very good job,” recalled Judge Mark Mooney, who presided over the trial and decided the outcome. He now works as a mediator in L.A.

The CVRA says a plaintiff must demonstrate a pattern of “racially polarized voting” in at-large elections — different racial groups voting as blocs — that harms the ability of a minority group to “influence the outcome” because there’s a “dilution” of their voting strength. That’s the key test.

But the law is vague on what “dilution” and “influence” mean. There are no numerical thresholds.

The federal Voting Rights Act, passed in 1965 at the peak of the Civil Rights Movement and recently undermined by conservative courts, is more precise than the CVRA.

Federal plaintiffs need to show that drawing a district would make them a majority of voters there. The CVRA does away with that 50% threshold. One of its key ideas is that minority communities should matter even when they lack that size, and if drawing a district can take them from 20% to 40%, for example, that still makes elections more fair.

It can also be hard in California for any one racial group to reach 50% because there are so many different ethnic communities here.

But is a 10% improvement enough? What about 5% or 1%?

At times, judges have struggled to understand how to measure “dilution” and where the threshold should be.

Starting with Palmdale and all the way through Santa Monica, Shenkman has argued there’s no need to draw a universal line.

That's what local trials are for, to weigh the evidence in each case.

One state appeals court has pushed back.

Without some guardrails, the law can be manipulated by plaintiffs to give “a winning cause of action to any group, no matter how small, that can draw a district map that would improve its voting power by any amount, no matter how minuscule,” Judge John Shepard Wiley Jr. wrote in a 2020 ruling in the Santa Monica case, handing a win to the city and sending the case up to the Supreme Court after Shenkman appealed.

In the Palmdale case, though, there was little such ambiguity. Whites in that city were a minority yet dominated the City Council. Judge Mooney ruled against Palmdale in 2013, finding that racially polarized voting had harmed Latino and Black voters and leaving aside subtler questions about dilution and the law's reach.

Starting three years later, after adopting districts, the city would see a pair of firsts: Juan Carrillo, a Mexican immigrant from East Palmdale, would become the council's first Latino Democrat, while Andrea Alarcón, a Mexican American attorney, would join the council as its first woman of color.

Mooney ordered Palmdale to send Shenkman a \$4.6 million check.

“Picture me rollin', bitches.”

Shenkman exulted in the victory, posting an image of the seven-figure check on Facebook along with that line from Tupac Shakur.

For years to come, the taunt would provide fodder for his critics, who could point to it and say he was suing places only for the money.

It even made some of his fellow plaintiffs' attorneys cringe.

Robert Rubin, the civil rights attorney who co-authored the CVRA, has worked on the Santa Monica case with Shenkman; they're close colleagues. Rubin attended the practice session in San Francisco and told Shenkman afterward, “Good job, buddy.”

But some of Shenkman's quotes have been a bit much for him. "He made some unfortunate comments," Rubin said.

"Yeah, I did that. I did that shit," Shenkman said in a recent evening phone call from his car, en route to a sports practice for one of his kids.

"That's right. What I don't think that people recognize is why."

It was a message to other cities: Switch to district elections, or you too could lose millions.

He said he was trying to push cities everywhere in the state to adopt districts, and he needed to be "brash" to make it happen.

By now, Shenkman said, he has become a true believer in districts above all other systems.

"I was raised Jewish, right?" he said. "There are experiences in life that are common to being in a minority."

Before the trial, when he spoke to Latino audiences about the CVRA, they'd been skeptical. "They see this white guy coming in and talking about: Hey, we're going to win this," he said. None of them believed it.

But then they did win, and the seeds of a lasting Latino power structure began to sprout. Carrillo, the councilman, would later win a seat in the state Assembly. "So this not only has an impact on the city of Palmdale," Shenkman said. "You have a more diverse representation on the state level."

Alarcón, the other new council member, said she was so struck by the impact of Shenkman's lawsuit that she ended up joining his legal team, working with him on new CVRA cases. Shenkman "gets a bad rap, but he really believes in this, to the core of who he is," Alarcón said. "That's what most people miss."

After Palmdale, events played out exactly as Shenkman hoped.

The behavior of cities shifted. Some began adopting districts proactively, without hearing from Shenkman, just to make sure he couldn't tag them for millions.

And he started going after the others in bulk.

Linking up with a new client — a Latino-led nonprofit called the Southwest Voter Registration Education Project, which recruits volunteers to register Latino voters in Texas, Arizona and California — Shenkman targeted a vast range of California towns and local boards.

He accused them of violating the voting rights of SVREP's members.

A handful of times, he filed actual lawsuits for SVREP and other clients, racking up large awards from the city of Highland (\$1.3 million), Rancho Cucamonga (\$1.37 million), San Juan Capistrano (\$293,000) and the Santa Clarita Community College District (\$850,000).

On several of these bigger cases, Shenkman partnered with other Southern California plaintiffs' attorneys who helped litigate and shared the fees, including Rex Parris, a personal injury lawyer, and Milton Grimes, who has often represented police brutality victims.

Much more often, however, Shenkman stayed out of the courts, merely threatening to sue.

Starting in 2016, he blanketed the state with letters, informing at least 151 local jurisdictions that they were violating the CVRA and had to adopt districts "voluntarily."

Under the law's "safe harbor" provision, targets of these letters can avoid a lawsuit if they agree to the change and pay the plaintiffs' attorney up to \$30,000. (Clients don't get any of these fees; ethics rules prohibit lawyers from sharing fees with nonlawyers.)

The letters are typically short, three or four pages, and full of legal boilerplate.

Usually there are only a few paragraphs specific to the town or board, with some anecdotes about election results but no detailed evidence of a violation.

Despite that, almost every agency gives in, paying Shenkman and switching to district elections — it's cheaper than getting sued.

The merits, though, never get litigated.

SVREP's president, Lydia Camarillo, said the group has seen "extraordinary impact and transformation" from their work with Shenkman on these CVRA lawsuits and letters. "Kevin is part of our long-term strategy to give people respect and dignity and a voice," she said. "We have a mission: allow Latinos to vote and choose, and let them define their destiny."

She spoke by phone on the night of SVREP's annual fundraising dinner at a restaurant near Los Angeles, where U.S. Rep. Adam Schiff was about to speak — a sign of the group's political influence and the power of the Latino vote in California.

Aside from fundraising and seasonal voter-registration drives, however, SVREP's physical footprint in the state is minimal.

Camarillo lives in Texas. Between 2012 and 2019, SVREP's corporate status in California was suspended because it hadn't paid state franchise taxes for years, according to documents uncovered by the city of Barstow in a legal tussle with Shenkman and the group.

Shenkman said SVREP forgot to file the right forms because it was focused on "trying to do good" instead of attending to paperwork.

"Barstow can suck it," he added.

Many recipients of Shenkman's letters are small, including a dozen cities with fewer than 10,000 voters and two with fewer than 5,000.

Some are special-purpose boards like fire stations, water boards and even a library.

The Buena Park Library District, a small library housed in a two-story concrete building near Disneyland, received a Shenkman letter in May 2020, right after the start of the COVID pandemic.

The library serves a diverse community of Latinos, Asians, whites and others, operating on a shoestring.

Their yearly budget to buy new books is \$82,000; their "storytime" budget for children's puppets and crafts is \$12,000.

At the time, the library had a Latino woman and an Iranian American man on its five-member board.

Helen Medina, the library's director, a 40-year-old Puerto Rican woman, said she doesn't know why the library was targeted. "None of us had any idea," Medina said.

But the board ultimately paid Shenkman \$30,000 and switched to districts. They couldn't afford to risk getting sued, she said.

The demand letters have produced a wide range of results in the towns they target.

The Chronicle analyzed a sample of 45 city councils and school boards that switched to districts under legal pressure.

Almost all had been targeted by Shenkman and SVREP.

In that sample, 22 boards became more diverse after the switch, with the number of Latinos doubling — a huge shift.

But 23 other boards saw no increase in diversity or became whiter.

Camarillo said Latinos often vote for non-Latino candidates, so it's hard to measure the law's impact just by looking at the ethnicities of officials.

"Democracy is never perfect," Camarillo said. "We have to remember that the system has always been against us."

The Chronicle also found that some of Shenkman's letters contain factual errors — including errors about the racial identities of local officeholders.

On at least two occasions, Shenkman wrote about Latino individuals as if they were white, and vice versa, the Chronicle found.

In a 2021 demand letter mailed to the city of Petaluma, Shenkman said the city's at-large elections were damaging "Latino candidates."

He then cited the example of Ken Quinto, who lost a 2014 bid for Petaluma City Council.

According to Shenkman, Quinto received “significant support from Latino voters” but lost anyway “due to a lack of support from non-Hispanic white voters.”

Quinto is Italian.

“Dude’s nuts,” said Quinto, a 52-year-old insurance professional whose family hails from New Jersey.

“It was hilarious. One of my friends goes, ‘Look, Ken, you’re famous, and now you’re Latino.’ I’m like, my goodness. My grandfather was one of the founding members of the North New Jersey Italian Club. So if (Shenkman) had done any research, he would have seen, OK, this guy has zero Latino in him.”

Nevertheless, Petaluma gave in to Shenkman.

Switching to districts “seemed like an inevitability,” said Petaluma’s mayor, Kevin McDonnell. “People have stopped trying to fight it.”

The city of Big Bear Lake folded too — angrily. Shenkman sent a demand letter to the tiny ski town of 3,000 voters in 2017.

On one page, he switched mid-paragraph to an allegation about “the Victorville City Council,” a different entity that had received a letter from him two weeks earlier.

“Your letter ... appears to be taken from a much overused template,” Big Bear replied. The city enclosed a \$30,000 check but noted it was “making this payment under protest.”

In another letter, Shenkman targeted the Southern California town of Monrovia, which is 45% Latino. He claimed that Latinos struggle to win citywide elections there and highlighted Monrovia’s 2001 election as an “illustrative” example.

But that year, the No. 1 and No. 3 vote-getters for City Council were Latino, and a woman born in Cuba, Lara Larramendi Blakely, was elected mayor of Monrovia, handily beating a white man.

Monrovia replied to Shenkman, “It appears that you have relied strictly on Spanish surnames to determine which City Council candidates were of Latino background, which fails to account for Latino candidates who do not have Spanish surnames.”

Shenkman appears to have backed off, and Monrovia still conducts at-large elections today.

Shenkman has “carpet-bombed places” with letters, said Scott Rafferty, a Walnut Creek lawyer who noticed Shenkman’s envelopes pushing into Contra Costa County in 2017.

Rafferty started working on CVRA cases of his own around the same time.

He portrays himself as an anti-Shenkman, a kind of good cop to his bad cop.

Rafferty says he selects his targets more carefully and does more research.

In contrast to Shenkman’s brief letters, Rafferty’s often stretch to 20 pages with charts and graphs.

“There’s a reason for every one of these I file,” Rafferty said. “I try to go to every hearing. I’m proud of what I’ve accomplished. It’s about giving communities of color an equal opportunity.”

Sometimes agencies receive letters from Shenkman and Rafferty within days of each other. When that happens, the attorney who postmarked his letter first gets priority.

“There’s kind of a race to the post office,” Rafferty said.

“Scott Rafferty is a moron,” Shenkman said.

Shenkman denied that he has ever misidentified anyone’s ethnicity.

He added, “I can’t say in all of those letters that we haven’t made any mistakes, but there’s quite a few letters.”

When asked about specific places or letters, Shenkman often responded by talking about principles and the bigger picture.

Why go after the library or some other little board or small town?

What about the expenses imposed on these places that can’t easily afford them?

His answer to each is the same: Minorities everywhere deserve voting rights, even in small towns, even when budgets are tight, and district elections are the best way to get there.

One size fits all.

“It is a far better election system,” he said.

But the CVRA stops short of banning at-large systems, and the U.S. Supreme Court hasn’t condemned them either.

In *Pico v. Santa Monica* — Shenkman’s biggest case — the city of Santa Monica has now battled him for seven years to keep its at-large system.

To defend itself, the city hired a team of Democratic lawyers at Gibson Dunn led by Theodore Boutros, who represented same-sex couples in a successful 2013 challenge to California’s gay-marriage ban.

Santa Monica is not Palmdale.

During the 2018 trial, two members of its seven-person City Council identified as Latino, and today that number is four, despite the fact that Latinos are only 13.6% of all voters.

The city argued in briefs that districts could only reduce Latinos’ power: At best, they’d go from 13.6% to 30% in one district, not enough to win, while Latinos in other parts of the city would be submerged in white districts, weakening them.

The law shouldn’t apply unless Latinos would reach a “near-majority” in a district, the city said.

Shenkman countered that 30% would be enough for Pico voters to build power and win with crossover votes. For most of the city’s modern history, he wrote, Pico has lacked representation, allowing the city to exploit it — “dissecting their community with a freeway,” for example — and without districts, he argued, the recent diversity gains on the council won’t last.

The fight with Santa Monica peaked on June 27, the day of oral arguments in the California Supreme Court, held via Zoom.

The debate centered on the heart of the CVRA — the fuzzy-edged test for showing that minority voting strength has been “diluted” by at-large elections.

What should that standard be, exactly?

Shenkman, in a suit and tie, was the first to address the seven black-robed justices.

Behind him, on the wall, hung a framed jersey of Ndamukong Suh, the former Detroit Lions defensive tackle twice voted the dirtiest player in the NFL by his peers.

The Malibu attorney began with a high-minded appeal.

“What’s at stake is the voting rights of millions of Californians,” he said, arguing that any sharpening of the standard would create arbitrary barriers for minorities and hold them back.

Justices began interrupting.

If drawing a district can increase Latino strength from 14% to 15%, one justice asked, is that enough?

“I would hesitate to simply stop at a number,” Shenkman said. “because every jurisdiction is different, in terms of its politics, its history, its sociomics.”

One size, in other words, does not fit all.

Pushed further, Shenkman offered that the improvement should be “meaningful.”

“The word meaningful has, we all recognize, a capacious component to it,” replied Justice Joshua Groban.

“You don’t want to put a number on it. That wouldn’t be good. So let’s take the first part. Improvement needs to be meaningful. What does improvement mean?”

Shenkman smiled. “This seems like almost a law school exam.”

One justice laughed out loud.

Boutrous, the silver-haired lawyer for Santa Monica, did not find it funny.

Shenkman, he said, was asking the court to “endorse an amorphous standard” that “ignores the reality of sustained Latino success” in Santa Monica.

“Mr. Shenkman just declares that (at-large systems) are evil,” Boutrous said.

“This is a very, very dangerous case. It’s based on very dangerous theories.”

Two months later, the court released its unanimous decision.

It didn’t resolve much of anything.

While punting the case back down to a lower court, the justices took a middle approach.

They sided with some of Shenkman’s key arguments, refusing to make the law’s standard more precise.

And they let his trial victory stand.

At the same time, the justices declined to say that Santa Monica’s at-large system violates the CVRA.

They also clarified that it’s not enough just to show racially polarized voting, as Shenkman has often argued in lawsuits and letters.

A plaintiff also has to show that districts would give minority voters more influence, not less.

How much more? The court did not say.

The battle will resume in the lower court early next year.

If Shenkman prevails, Pico will “go down as the most expensive voting rights case in the history of the United States,” he said.

Santa Monica has not disclosed how much it’s paying its own lawyers in the case, but the figure is likely in the high seven or low eight figures.

And in 2019, after the trial judge handed Shenkman a victory, he and three other firms who joined him on the case requested \$22.3 million in fees and expenses from Santa Monica, equal to about 3% of the city's annual budget.

Shenkman billed his time at \$815 an hour, up from \$550 in 2014.

Some of his time entries raised eyebrows.

He said in a court declaration that he'd toiled on the case for 19.5 hours one day, 18.9 another, 18.2 a third.

"I have seen him not eat, not sleep," said Alarcón.

It is by far the largest fee request in CVRA history.

"People will focus on that and somehow blame me or my plaintiffs," Shenkman said. But if the city had just agreed to adopt districts in the beginning, the whole thing could have been simple and free.

Yes, "These are tax dollars," he said.

"We should guard it. But I am not the one responsible for guarding it."

*Alexandria Bordas and Emma Stiefel contributed to this report. This story was reported as part of a partnership between The Chronicle and The Investigative Reporting Program at the UC Berkeley Graduate School of Journalism.*