Coalition of 2001-2002 California Legislators

August 31, 2020

Hon. Chief Justice Tani Gorre Cantil-Sakauye and Hon. Associate Justices
Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797

Re: ***Amicus Curiae* Letter in Support of Petition for Review**
Pico Neighborhood Association, et al. v. City of Santa Monica
California Supreme Court, Case No. S263972
Court of Appeal, Second Appellate District, Division Eight, Case No. B295935
Los Angeles Superior Court Case No. BC616804

Dear Chief Justice and Associate Justices of the California Supreme Court,

Since its enactment in 2002, the California Voting Rights Act ("CVRA") has been critically important, and overwhelmingly successful, at combatting the use of racially discriminatory at-large election systems by local governments. As legislators, who served in both houses of the California Legislature in 2002 and supported Senate Bill 976, which became the CVRA, we are proud of that success.

However, all of that is now threatened by the Court of Appeal's decision in *Pico Neighborhood Ass'n, et al. v. City of Santa Monica*. If that decision is allowed to stand, it would eviscerate the CVRA, and with it the voting rights of millions of Californians. That decision would also fundamentally alter anti-discrimination law to prevent all but the most obvious and egregious racial discrimination from being redressed by the courts. The Court of Appeal's decision is wrong, and should be corrected by this Court.

Therefore, we respectfully submit this *amicus curiae* letter, pursuant to rule 8.500(g) of the Rules of Court, in support of the Petition for Review filed by Plaintiffs.

INTEREST OF THE UNDERSIGNED 2001-02 LEGISLATORS WHO VOTED FOR THE CVRA

This *amicus curiae* letter is submitted by 18 California legislators, all of whom served in the California Legislature in 2002 and contributed to the enactment of the CVRA. The California legislators who submit this letter include the principal legislative author and sponsor of the CVRA, Senator Richard Polanco (Ret.), as well as 5 members of the Elections and Judiciary committees[1] that reviewed and approved the CVRA before it was approved by the full Senate and Assembly.

While in the Legislature, we supported the CVRA because California's diversity and unique demographics justified the elimination of the requirement in federal Voting Rights Act cases that to show an at-large election system diluted minority votes a majority-minority district must be possible. In a racially diverse community, common in California, any single group might not be quite large enough or concentrated enough to form a compact majority of a potential district, but nonetheless may have their voice drowned out by an at-large election system. So, in California we needed a different standard. With wide-ranging support from community activists, civil rights organizations, legal experts, and ultimately the Governor, we enacted the CVRA.

We are proud to say that the CVRA has been an unmitigated success since it was enacted in 2002. The CVRA has eliminated racially discriminatory at-large election systems in many cities, counties, school districts, college districts, hospital districts and water districts, most often without the need for litigation. That shift away from at-large elections, well known to disadvantage minorities, has resulted in more representative local government, with local elected officials accountable to their constituents and ensuring that all communities are represented. The local officials elected through district-based elections are also more descriptively representative of their communities, with a significant increase in minorities being elected to local offices.

The Court of Appeal's decision threatens to unwind that progress. That decision grossly misinterprets the CVRA, undermining our original intent. Despite the clear language of the CVRA, its legislative history, and the opinions of other courts, Division Eight ruled that the CVRA protects minority voting rights only if the minority group is geographically concentrated enough to comprise the majority of an election district. In most California jurisdictions no minority group is geographically concentrated enough to comprise the majority of an election district, and their voting rights can be denigrated by an at-large election system just as much as a more concentrated minority community. That is precisely why the CVRA expressly eliminates the majority-minority district requirement of the federal Voting Rights Act. California has a tradition of providing its residents with greater protection against discrimination than afforded by federal law, and that is what we aimed to do with the CVRA.

Having worked to pass the CVRA, the undersigned legislators have a significant interest in the proper interpretation of that statute. Similarly, having worked to protect the voting rights of minorities against at-large election systems, often crafted and maintained by a majority group for the purpose of suppressing the minority's voting power, the undersigned legislators have a significant interest in the proper application of the Equal Protection Clause of the California Constitution to protect minority voters from those at-large systems.

We, the undersigned legislators, fought long and hard to enact the CVRA in 2002. Now we stand in solidarity to urge this Court to review and reverse the dangerous decision of the intermediate appellate court in *Pico Neighborhood Ass'n, et al. v. City of Santa Monica*.

[1] US House of Representatives Congressmember Tony Cardenas, Assembly Elections Committee; Senator Kevin Murray (ret.), Senate Elections Committee; Senator Deborah Ortiz (ret.), Senate Elections Committee; Senator Don Perata (ret.), Senate Elections Committee; Senator Marta Escutia (ret.), Senate Judiciary Committee.

REASONS WHY REVIEW SHOULD BE GRANTED

Since its enactment in 2002, the CVRA has caused hundreds of political subdivisions to discard their dilutive at-large election systems in favor of more democratic and inclusive district-based elections. The vast majority of these political subdivisions have, prompted by the CVRA, recognized the inequities of at-large elections and made that change voluntarily; others have been compelled to do so by the courts. Even those political subdivisions that have been compelled by the courts to comply with the CVRA often come to appreciate the democratic benefits of their new district-based elections.

One of the key differences between the CVRA and the federal Voting Rights Act that has allowed the CVRA to be so successful, is that liability under the CVRA does not depend on the minority community being compact enough to comprise the majority of an election district. (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."]; see also Elec. Code § 14027 ["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."] (emphasis added)).

The legislative history further makes the point – the potential for a majority-minority district is <u>not</u> required under the CVRA. For example, the June 4, 2002 Bill Analysis of SB 976 by the Assembly Judiciary Committee explains:

> In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the court created three requirements that a plaintiff must establish to prove that an election system diluted the voting strength of a protected minority group: (1) the minority community was politically cohesive, in that minority voters usually supported minority candidates; (2) there was racially polarized voting among the majority community, which usually voted for majority candidates rather than for minority candidates; and (3) the minority community was sufficiently concentrated geographically that it was possible to create a district in which the minority could elect its own candidate. ... This bill would allow a showing of dilution or abridgement of minority voting rights by showing the first two *Thornburg* requirements **<u>without an additional showing of geographical compactness</u>**. … **<u>[G]eographical compactness would not appear to be an important factor in assessing whether the voting rights of a minority group have been diluted or abridged by an at-large election system</u>**." (emphasis added).

Similarly, the July 1, 2002 Enrolled Bill Memorandum to the Governor summarized:

> This bill enacts the California Voting Rights Act of 2001 that is very similar to the federal Voting Rights Act but with one key exception. In 1985, the Supreme Court imposed three pre-conditions (*Gingles* factors) for determining if a protected class' voting rights have been/are being diluted. One of the three conditions is that the plaintiff must show that the protected class is-geographically compact enough that it would be a majority in a single district (and presumably elect its own candidate.) **<u>This bill provides that such a finding is not necessary</u>** and that a protected class need only demonstrate the other two *Gingles* factors. (emphasis added).

And, Sen. Polanco's April 2, 2002 statement to the Assembly Elections and Reapportionment Committee explained why a majority-minority district requirement is inappropriate in California:

> [A]lthough a particular group may be too small to ensure that its own candidate is elected, **the group may still be able to favorably *influence*** the election of a candidate. This influence may only come about with district rather than at-large elections. (emphasis added).

That the CVRA does not require a plaintiff to show a potential majority-minority district is so clear from the statutory text and legislative history, every appellate court that has addressed the CVRA has understood this. The Fifth District Court of Appeal expressly discussed this aspect of the CVRA in *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660:

> The legislative history of the CVRA indicates that the California Legislature wanted to provide a broader cause of action for vote dilution than was provided for by federal law. Specifically, the Legislature wanted to eliminate the *Gingles* requirement that, to establish liability for dilution under section 2 of the FVRA, plaintiffs must show that a compact majority-minority district is possible.

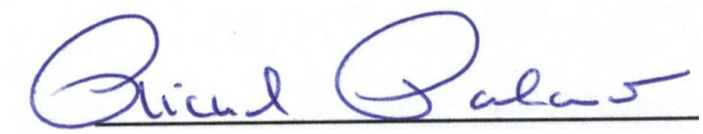
(*Id.* at 669 (emphasis added); see also *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789 ["[O]ur Fifth District colleagues explained the California Voting Rights Act does not require that the plaintiff prove a "compact majority-minority" district is possible for liability purposes."]; *Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1229 ["To prove a CVRA violation, the plaintiffs must show that the voting was racially polarized. However, they do not need to either show that members of a protected class live in a geographically compact area or demonstrate a discriminatory intent on the part of voters or officials."].)

The electoral history and political dynamic in Santa Monica perfectly demonstrate why a majority-minority district requirement makes no sense in California. The Superior Court adopted a seven-district map, with a remedial influence district, centered on the Pico Neighborhood, in which Latinos comprise 30% of the eligible voters. Latino candidates, strongly preferred by Latino voters, received the most votes in the Pico Neighborhood District but lost in the at-large elections. The Superior Court considered this election history, as well as the strong political organization of Latinos in the Pico Neighborhood, the extraordinary cost of citywide council campaigns in Santa Monica, the wide disparity in wealth between Latinos and non-Hispanic whites in Santa Monica, and the results of similar influence districts in other cities, concluding that Latinos could elect candidates of their choice in the Pico Neighborhood district, or at least influence the outcome of the elections. The Superior Court also recognized that the Latino proportion of eligible voters exceeded the threshold of exclusion for the non-district remedies of cumulative voting, limited voting and ranked choice voting, so those remedies would also give Latino voters the opportunity to elect candidates of their choice.

Yet, the Court of Appeal in *Pico Neighborhood Ass'n, et al. v. City of Santa Monica* ignored all of this, and held that without the potential for a majority-minority district there can be no "dilution." The Court of Appeal ignored the statutory text (Elec. Code 14028(c)), the legislative history, and the decisions in all three of the previous appellate decisions concerning the CVRA – *Sanchez*, *Rey* and *Jauregui*. Moreover, the Court of Appeal ignored the substantial evidence that several remedial options are available that would give Latino voters in Santa Monica the opportunity to *elect* candidates of their choice, or at least influence the outcome of city council elections.

The Court of Appeal's interpretation of the CVRA is clearly wrong. Under the Court of Appeal's reading of the CVRA, cities would be free to discriminate against voters on the basis of race as long as the victimized racial group is not sufficiently large and compact to constitute a majority in a single-member district. This theory is fundamentally at odds with our intent in adopting the CVRA. If not reversed by this Court, the Court of Appeal's opinion will undermine the voting rights of millions of Californians to be free from racially discriminatory at-large elections, simply based on where they reside. That must not stand, so we urge this Court to grant review of, and ultimately reverse, the Court of Appeal's decision.

Respectfully,



Hon. Senator Richard Polanco (ret.)
CVRA Principal Author and Legislative Sponsor
Chair, Latino Legislative Caucus 1990-2002
State Senate, 22nd District, 1994-2002
State Assembly, 55th/45th Districts, 1986-1994

Hon. Senator Richard Alarcón (ret.)
CA Latino Legislative Caucus
Senate Majority Whip
State Senate, 20th District, 1998-2006
State Assembly, 39th District, 2006-2007

Hon. Congressmember Tony Cárdenas
US House of Representatives, 29th District
Congressional Hispanic Caucus
CA Latino Legislative Caucus
CA Assembly Elections Committee
State Assembly, 39th District, 1996-2002

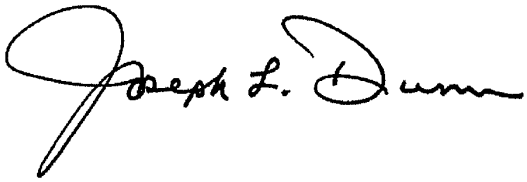
Hon. Assemblymember Ed Chavez (ret.)
President, Upper San Gabriel Valley Municipal Water District, Division 3
CA Latino Legislative Caucus
State Assembly, 57th District, 2000-2006

Hon. Senator Wesley Chesbro (ret.)
State Senate, 2nd District, 1998-2006
State Assembly, 1st/2nd District, 2008-2014

Hon. Congressmember Judy Chu
US House of Representatives, 27th District
Chair, Congressional Asian Pacific American Caucus
CA Asian Pacific Islander Legislative Caucus
CA State Board of Equalization, 4th District, 2007-2009
State Assembly, 49th District, 2001-2006

Hon. Congressmember J. Luis Correa
US House of Representatives, 46th District
Congressional Hispanic Caucus
CA Latino Legislative Caucus
State Senate, 34th District, 2006-2014
State Assembly, 69th District, 1998-2004

Hon. Assemblymember Manny Diaz (ret.)
Vice Chair, CA Latino Legislative Caucus
State Assembly, 23rd District, 2000-2004



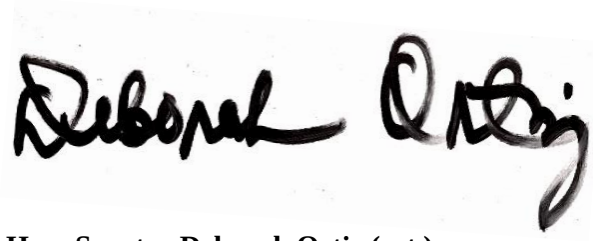
Hon. Senator Joe Dunn (ret.)
Chair, Senate Judiciary Committee
State Senate, 34th District, 1998-2006

Hon. Senator Martha M. Escutia (ret.)
Chair, CA Latino Legislative Caucus
Chair, Senate Judiciary Committee
Chair, Assembly Judiciary Committee
Chair, CA Legislative Women's Caucus
State Senate, 30th District, 1998-2006
State Assembly, 50th District, 1992-1998

Hon. Senator Liz Figueroa (ret.)
CA Latino Legislative Caucus
CA Legislative Women's Caucus
Assembly Judiciary Committee
State Senate, 10th District, 1999-2006
State Assembly, 20th District, 1995-1998

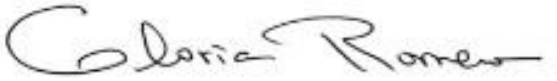
Hon. Los Angeles City Councilmember Paul Koretz
LA City Councilmember, 5th District, 2009-Present
State Assembly, 42nd District, 2000-2006

Hon. Senator Kevin Murray (ret.)
Chair, Legislative Black Caucus
Senate Elections Committee
State Senate, 26th District, 1998-2006
State Assembly, 47th District, 1994-1998

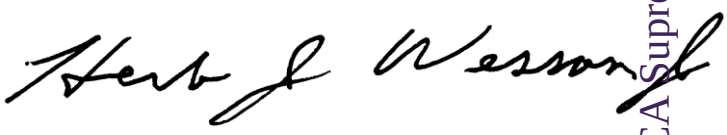


Hon. Senator Deborah Ortiz (ret.)
CA Latino Legislative Caucus
Senate Elections Committee
State Senate, 6th District, 1998-2006
State Assembly, 9th District, 1996-1998

Hon. President Pro Tempore Don Perata (ret.)
Senate Elections Committee
48th President Pro Tempore CA Senate, 2004-2008
State Senate, 9th District, 1998-2008
State Assembly, 16th District, 1996-1998



Hon. Senator Gloria Romero (ret.)
CA Latino Legislative Caucus
Senate Majority Leader, 2005-2008
State Senate, 24th District, 2001-2010



Hon. Los Angeles City Councilmember
Herb J. Wesson Jr.
CA Legislative Black Caucus
LA City Councilmember, 10th District, 2005-Present
President, LA City Council, 2011-2018
65th Speaker of the State Assembly, 2002-2004
State Assembly, 47th District, 1998-2004

Hon. Senator Roderick Wright (ret.)
CA Legislative Black Caucus
State Senate, 35th District, 2008-2014
State Assembly, 48th District, 1996-2002

PROOF OF SERVICE

Pico Neighborhood Association, et al. v. City of Santa Monica
California Supreme Court, Case No. S263972
Court of Appeal, Second Appellate District, Division Eight, Case No. B295935
Los Angeles Superior Court Case No. BC616804

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 232 North Canon Drive, Beverly Hills, California 90210-5302.

On September 4, 2020, I served on interested parties in said action the within:

***Amicus Curiae* Letter in Support of Petition for Review**

☐ (MAIL) by placing a true copy thereof in sealed envelope(s) addressed as stated on the attached mailing list and causing such envelope(s) to be deposited in the U.S. Mail at Beverly Hills, California.

I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (FAX) I caused the foregoing document to be served by facsimile transmission to each interested party at the facsimile machine telephone number shown as stated on the attached mailing list.

☒ (ELECTRONIC TRANSMISSION) by transmitting via electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) as stated on the **attached list**. The party on whom this electronic mail has been served has agreed to such form of service.

Executed on September 4, 2020, at Beverly Hills, California.

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction the service was made and that the foregoing is true and correct.

DEBRA KNIGHTEN
(Type or print name)

/s/ *Debra Knighten*
(Signature)

Kevin Shenkman
Mary R. Hughes
Andrea Alarcon
Shenkman & Hughes
28905 Wight Road
Malibu, CA 90265
kshenkman@shenkmanhughes.com
mrhughes@shenkmanhughes.com
aalarcon@shenkmanhughes.com

Milton C. Grimes
Law Offices of Milton C. Grimes
3774 West 54th
Los Angeles, CA 90043
miltgrim@aol.com

Morris Baller
Laura Ho
Anne Bellows
Goldstein, Borgen, Demchak & Ho
300 Lakeside Drive, Suite 1000
Oakland, CA 94612-3534
mballer@gbdhlegal.com
lho@gbdhlegal.com
abellows@gbdhlegal.com

R. Rex Parris
Ellery Gordon
Parris Law Firm
43364 10th Street West
Lancaster, CA 93534
rrparris@rrexparris.com
egordon@parrislawyers.com

Helen Lane Dilg
George Cardona
Office of the City Attorney
1685 Main Street, 3rd Floor
Santa Monica, CA 90401
lane.dilg@smgov.net
george.cordona@smgov.net

Theodore J. Boutrous
Kahn Scolnick
Marcellus McRae
Tiaunia Henry
Daniel Adler
Gibson Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
tboutrous@gibsondunn.com
kscolnick@gibsondunn.com
mmcrae@gibsondunn.com
thenry@gibsondunn.com
dadler@gibsondunn.com

Robert Rubin
Law Offices of Robert Rubin
131 Steuart Street, Suite 300
San Francisco, CA 94105r
robertrubinsf@gmail.com

State of California
Office of Attorney General
Los Angeles California
300 South Spring Street
Suite 1702
Los Angeles, CA 90013-1230
dana.ali@doj.ca.gov