



August 20, 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
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:

In its July 9, 2020 Opinion, the Court of Appeal held that the California Voting Rights Act (Elections Code 14025-14032, "CVRA") only applies to jurisdictions in which a minority community is numerous and geographically concentrated enough to comprise the majority of voters in a compact election district. The Court of Appeal reasoned that only with a majority in an election district could a minority community elect its preferred candidates.

Our collective experience, as Latino, Black and Asian Pacific Islander elected officials in California demonstrates that the Opinion is wrong. As discussed below, nearly half of us were elected to the Legislature by districts where the corresponding minority community accounts for between 20% and 49% of the district's eligible voters. Still, it is, in part, because of the strong support we receive from our respective minority communities that we have prevailed in elections.

Not only is the Opinion wrong, it is horribly damaging to the voting rights of millions of Californians, and the prospects for the next generation of minority leaders. Because California is exceptionally diverse (one of our state's great strengths), and not as segregated as the Deep South (at which the federal Voting Rights Act of 1965 was directed), minority communities are not compact enough to comprise the majority of voters in an election district in many jurisdictions. By narrowing the CVRA, the Opinion leaves all of those minority communities vulnerable to being denied any voice in their local governments. Many of us started our political careers in local government; had those local governments employed at-large elections our public service might have been cut down before we even got started.

We, the undersigned Caucuses, comprise 49 members of the California Legislature, and speak with one voice to express our dismay at the Court of Appeal's Opinion. Therefore, we respectfully submit this *amicus curiae* letter, pursuant to rule 8.500(g) of the Rules of Court, and urge this Court to grant review and reverse the Court of Appeal's misguided and dangerous ruling.

**INTEREST OF THE UNDERSIGNED LEGISLATIVE CAUCUSES:
 LATINO CAUCUS, BLACK CAUCUS, and ASIAN PACIFIC ISLANDER CAUCUS**

This *amicus curiae* letter is submitted by three California legislative caucuses: the Latino Legislative Caucus, the Legislative Black Caucus, and the Asian Pacific Islander Legislative Caucus. Together, these three legislative caucuses represent 49 legislators from both the Assembly and the Senate – nearly half of the full Legislature.

Our members represent minority communities which the CVRA was intended to protect. While some of our members represent “majority-minority districts,” in which a racial or ethnic minority group comprises a majority of the eligible voters, most do not. Rather, many members represent what the California Supreme Court has recognized as “influence districts.” (See *Wilson v. Eu* (1992) (Appendix) 1 Cal.4th 707, 771 & n.43, 773).

LATINO LEGISLATIVE CAUCUS	District	% Latino Eligible Voters
Senator Anna Caballero	12 th Senate District	42.91%
Senator Ben Hueso	40 th Senate District	45.90%
Senator Susan Rubio	22 nd Senate District	44.12%
Assembly Member Sabrina Cervantes	60 th Assembly District	35.66%
Assembly Member Susan Talamantes Eggman	13 th Assembly District	26.37%
Assembly Member Monique Limon	37 th Assembly District	22.90%
Assembly Member Jose Medina	61 st Assembly District	34.56%
Assembly Member Sharon Quirk-Silva	65 th Assembly District	22.96%
Assembly Member James Ramos	40 th Assembly District	30.02%
Assembly Member Robert Rivas	30 th Assembly District	44.02%
Assembly Member Rudy Salas	32 nd Assembly District	46.26%

ASIAN PACIFIC ISLANDER LEGISLATIVE CAUCUS	District	% API Eligible Voters
Assembly Member David Chiu	17 th Assembly District	23.35%
Assembly Member Al Muratsuchi	66 th Assembly District	20.26%
Assembly Member Ash Kalra	27 th Assembly District	34.73%
Assembly Member Rob Bonta	18 th Assembly District	20.48%
Assembly Member Kansen Chu	25 th Assembly District	40.14%
Assembly Member Phil Ting	19 th Assembly District	40.21%

LEGISLATIVE BLACK CAUCUS	District	% Black Eligible Voters
Senator Steven Bradford	35 th Senate District	30.87%
Assembly Member Sydney Kamlager	54 th Assembly District	32.60%
Assembly Member Autumn Burke	62 nd Assembly District	32.77%
Senator Holly J. Mitchell	30 th Senate District	43.11%
Assembly Member Reginald B. Jones-Sawyer, Sr.	59 th Assembly District	39.99%
Assembly Member Mike Gipson	64 th Assembly District	42.66%

Data Source: Statewide Database, UC Berkeley Law block level estimates of the 2005 - 2009 American Community Survey Data, 5-year estimates, U.S. Census Bureau, used by the most recent Independent Citizens Redistricting Commission

Being tasked with representing minority communities that may not be large enough or concentrated enough to comprise the majority of voters in an election district – precisely the communities from which the Opinion strips the protections of the CVRA – we have an interest in ensuring that the CVRA is properly interpreted and allowed to fulfill its purpose.

REASONS WHY REVIEW SHOULD BE GRANTED

The CVRA has been a critical tool in eliminating racially discriminatory at-large election systems from local governments in California. The CVRA has prompted hundreds of California cities, school districts and special districts to scrap their at-large elections, in favor of more inclusive district-based election systems. With that shift towards district-based elections, more minority candidates have been elected to local government offices. Many of the jurisdictions, minority communities and minority candidates most beneficially impacted by the CVRA lie within the legislative districts represented by members of the Latino, Black and Asian Pacific Islander Legislative Caucuses.

The CVRA's success is at least partly due to the choices reflected in its statutory text, which is expressly broader than that of the federal Voting Rights Act. Under the CVRA, liability does not depend on a 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."].) The CVRA prohibits not just those at at-large elections "that impair the ability of a protected class to elect candidates of its choice," but also those that impair "its ability to influence the outcome of an election." (Elec. Code §14027.) The CVRA thus expressly rejects the notion that it only applies where plaintiffs can show the potential for a majority-minority district.

The 2002 Legislature understood this key difference between the CVRA and the federal Voting Rights Act. The legislative analysis in both the Assembly and the Senate made the point clear:

"This bill ... does not require that a minority community be sufficiently concentrated geographically to create a district in which the minority community could elect its own candidate." (Senate Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended June 11, 2002, p. 4, emphasis added.)

This bill would allow a showing of dilution or abridgement of minority voting rights by showing [racially polarized voting] without an additional showing of geographical compactness . . . [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. (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001–2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3

California has a tradition of providing its residents with greater protection against discrimination than afforded by federal law, and that is what the Legislature intended to do with the CVRA. (See Kousser, J., *Beyond Gingles: Influence Districts and the Pragmatic Tradition in Voting Rights Law*, 27 U.S.F.L.Rev. 551 (1993) ["To cut off lawsuits with a bright line rule is to deny minority voters equal protection of the law."].)

The meaning of the CVRA is so plain, obvious and straightforward that every appellate court that had addressed the CVRA confirmed that a violation of the CVRA does not depend on the ability to create a majority-minority district. (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789 [the CVRA “does not require that the plaintiff prove a compact majority-minority district is possible for liability purposes.”]; see also *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 669; *Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1229.)

The Opinion of the intermediate appellate court in *Pico Neighborhood Ass’n v. City of Santa Monica* ignores all of that. Instead the Opinion holds, contrary to the decisions of those other appellate courts, that to prove “dilution” under the CVRA a plaintiff must show that a majority-minority election district could be created. The Opinion reasons that the Latino community could not possibly elect their preferred candidates unless Latinos comprise the majority of voters in a district. And, because it was inconvenient to the Court of Appeal’s reasoning, the Opinion disregards the evidence demonstrating, as the trial court found, that the Latino candidates preferred by Latino voters often received more votes in this 30% Latino district than any other candidate.

Our experience demonstrates that the Opinion is wrong. As shown in the tables above, dozens of our caucus members – Latino, Black and Asian Pacific Islander members of the Legislature – have been elected in districts with minority communities that are significant but still not a majority within those districts. In fact, the minority proportions in many of those districts are approximately the same as what the Superior Court found would afford Latinos in Santa Monica a fair opportunity to elect candidates of their choice – 30%. We recognize, as did the Independent Citizens Redistricting Commission in crafting legislative districts, that minority candidates preferred by minority voters can and do win in influence districts. The Opinion fails to recognize this political reality in California.

Not only is the Opinion wrong, it is also dangerous and harmful to the goal of ensuring fair representation for all Californians. The Opinion, if allowed to stand, makes the CVRA inapplicable to most minority communities in California. California is a diverse state that is not as segregated as other regions. That diversity and integration should be celebrated, not exploited for the purpose of denying minorities representation in their local governments. Yet, the Opinion would deprive meaningful representation to millions of Californians based solely on the diversity of their neighborhoods.

Moreover, if local governments are unconstrained by the CVRA, and thus permitted to deny their minority constituents meaningful representation, there will be no political consequence for further discriminating against those minority constituents in other areas. Santa Monica is a cautionary example of this effect: because the minority-concentrated Pico Neighborhood lacked representation on the city council, that council sited all the undesirable toxic elements of the city (e.g. the 10-freeway, hazardous waste storage, trash sorting facility and vehicle maintenance yard) in the Pico Neighborhood. With the CVRA narrowed as the Opinion holds, minority communities throughout California will all be vulnerable to this environmental racism.

The voting rights of our constituents – indeed, all minorities in California – are of paramount importance. We urge the Court to grant review to protect that most fundamental right in our democracy; failing to do so would set minority voting rights back decades.

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Thank you for your consideration. Please do not hesitate to call us, or our caucus staff, at (916) 651-1535 should you have any questions or need additional information.

Sincerely,



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Chair, CA Latino Legislative Caucus
Assemblywoman, 80th District



DAVID CHIU
Chair, CA API Legislative Caucus
Assemblymember, 17th District



DR. SHIRLEY N. WEBER
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PROOF OF SERVICE

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 128 N. Fair Oaks Avenue, Pasadena, California 91103.

On September 11, 2020, I served the foregoing document described as: **AMICUS CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW** on the interested parties in this cause as follows:

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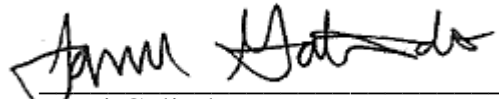
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XX BY EMAIL

XX I caused the foregoing document(s) to be transmitted to the addressees listed above, and to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.

Executed on September 11, 2020, at Pasadena, California.

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Pami Galindo
Declarant

PROOF OF SERVICE

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 128 N. Fair Oaks Avenue, Pasadena, California 91103.

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XX I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on the same day with postage thereon fully prepaid at Pasadena, 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 this affidavit.

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XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Tami Galindo, Declarant