September 10, 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, S263972
Court of Appeal, Second App. Dist., Division Eight, Case No. B295935
Los Angeles Superior Court Case No. BC616804

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

With its opinion in *Pico Neighborhood Association v. City of Santa Monica*, the Second Appellate District of the California Court of Appeal threatens to undermine not only the proper application of the California Voting Rights Act ("CVRA") but the recent progress achieved by minority communities seeking political empowerment at the local government level. As such, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area submits this *amicus curiae* letter pursuant to Rule 8.500(g) of the California Rules of Court, urging the Supreme Court to grant the Petition for Review and reverse the Court of Appeal decision.

BACKGROUND AND INTEREST OF LAWYERS' COMMITTEE FOR CIVIL RIGHTS

Established in 1963 at the behest of President John F. Kennedy to provide representation to Black people in the South, particularly in response to attacks on the right to vote, the Lawyers' Committee for Civil Rights has been one of the nation's leading advocates for voting rights in the courts over the past 50 years. "Since 1965, the Lawyers' Committee has been at the forefront of the legal struggle to advance and protect the right to vote and to ensure that it is provided equally to all."[1] See, *e.g., Connor v. Finch*, 431 U.S. 407 (1977).

The Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCRSF) was formed in 1968 as the Committee's Bay Area affiliate and is one of the oldest civil rights institutions on the West Coast. A key function of the LCCRSF has been to serve as a bridge between the private bar and disenfranchised communities, including people of color, immigrants, refugees and low-income individuals. Its grounding in community and direct legal services help identify the most pressing civil rights issues and inform the broader impact litigation and policy advocacy efforts undertaken. Furthermore, its connection to the private bar helps to ensure that *pro bono* counsel is ready and available to assist in protecting our most fundamental rights.

[1] See https://lawyerscommittee.org/project/voting-rights-project/

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Prominent on LCCRSF's legal docket over the years have been cases arising under federal and state voting rights laws. See, *e.g., Lopez v. Monterey County*, 519 U.S. 9 (1996); 525 U.S. 266 (1999) (federal Voting Rights Act sec. 5 enforcement actions); *Voting Rights Coalition v. Wilson*, 60 F.3d 1411 (9th Cir. 1995), *cert. denied*, 516 US 1093 (1996) (action upholding constitutionality of National Voter Registration Act); *Sanchez v. City of Modesto* (2006), 145 Cal App 4th 660 (first action filed under California Voting Rights Act). In *Sanchez*, the Court of Appeal upheld the facial constitutionality of the CVRA. This Court and the US Supreme Court refused to disturb that ruling. LCCRSF staff and former staff were counsel in all of the published CVRA decisions of the California appellate courts. *Sanchez, supra*; *Rey v. Madera Unified School District* (2012) 203 Cal. App. 4th 1223; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781; *City of Santa Monica, supra*.

Following *Sanchez*, the Lawyers' Committee continued its CVRA enforcement efforts with a challenge to the Madera school board election system. In the *Madera Unified School District* matter, the Lawyers' Committee's suit forced the conversion of the school board's at-large election system into a district system. After the victory, Madera Unified's 7-member school board--which included only one Latinx member at the time of the suit--quickly increased to four Latinx members. "Making Sure Minority Votes Count," Los Angeles Times, https://www.latimes.com/archives/la-xpm-2009-jan-04-me-madera4-story.html; https://www.madera.k12.ca.us/Page/13343.

LCCRSF also has a long history of education advocacy across the state, particularly in the Central Valley. In LCCRSF's discriminatory discipline cases, in advocating for the rights of English Learner students, in eliminating barriers to enrollment for immigrant students, and ensuring equal opportunities for Black and Latinx students, LCCRSF staff have found that the racial and ethnic makeup of a district's school board can significantly impact which reforms are possible.

Latinx students are 54.9% of the California K-12 public school population (https://dq.cde.ca.gov/dataquest/dqcensus/EnrEthGrd.aspx?cds=00&agglevel=state&year=2019-20)) but only 15% of school board members are Latinx. NALEO Educational Fund, National Directory of Latino Elected Officials. The CVRA plays an essential role in promoting full and fair participation in our democratic processes still owed to this unrepresented Latinx population. And it is beginning to fulfill that purpose. Many jurisdictions have converted their election systems to district systems as a result of CVRA court orders, and hundreds of local government entities, aware of those court orders, have "voluntarily" converted to district systems.

The impact of the CVRA is not merely symbolic: LCCRSF has seen political representation change discriminatory practices. The Court of Appeal Opinion threatens that progress and must be reversed.

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FLOUTING EXPLICIT LEGISLATIVE INTENT, THE COURT OF APPEAL'S OPINION UNJUSTIFIABLY NARROWS THE SCOPE OF THE CVRA

Long plagued by at-large election systems that invariably diluted their vote,[2] Latinx, African-American, Asian, Native American and other minority voters have often been forced to seek judicial remedies to cure racially discriminatory vote dilution. When the federal courts imposed unnecessarily burdensome evidentiary requirements in voting rights suits, the California state legislature opted to enact the CVRA in 2002 with the explicit intention of broadening state law protections beyond that afforded under federal law. "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 federal Voting Rights Act, plaintiffs must show that a compact majority-minority district is possible." See *Sanchez,* 145 Cal.App.4th at 669. The legislature's clear intention to go beyond federal law is demonstrated by its extension of protection for ability to influence claims. Thus, under California Election Code 14027, "[a]n 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."

The Court of Appeal's Opinion does not respect this clear legislative expression. Failing even to acknowledge that the Legislature enacted the statute with the express purpose of eliminating the evidentiary burden of having to show a majority-minority district, the Court of Appeal disregarded the Legislature's clear wishes and imposed the precise burden on plaintiffs that the Legislature had rejected. Contravening such explicit legislative intent will have a significant negative effect on voting rights in California.

CONCLUSION

LCCRSF believes that the Court of Appeal decision is legally unsupportable for the reasons stated in the Petition for Review, as well as devastating to the political empowerment of minority communities at the local level. For these reasons, the Court of Appeal decision should be reviewed and reversed so that viable avenues of relief for challenging disenfranchisement remain available as intended with the enactment of the CVRA.

Respectfully,

Elisa Della-Piana
Legal Director
Lawyers' Committee for Civil Rights of the San Francisco Bay Area

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[2] Courts have "long recognized" that "at-large voting schemes may 'operate to minimize or cancel out the voting strength of racial [minorities in] the voting population.'" *Thornburg v. Gingles* (1986) 478 U.S. 30, 47.

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