No. S263972

In the

Supreme Court

of the

State of California

City of Santa Monica,
Defendant and Appellant,
v.
Pico Neighborhood Association, *et al.,*
Plaintiffs and Respondents.

REPLY IN SUPPORT OF PETITION FOR REVIEW

After a Published Decision of the Court of Appeal
Second Appellate District, Division Eight
Case No. BC295935

Appeal from the Superior Court of Los Angeles
Case No. BC616804
Honorable Yvette M. Palazuelos

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I. INTRODUCTION

This case presents a question of utmost importance impacting the fundamental right to vote in California – whether the CVRA means what it says: that the level of geographic concentration of a protected class "does not preclude a finding of" a violation, and at-large elections may not be used in a manner that impairs the ability of a protected class to "influence the outcome of an election." The Court of Appeal's Opinion finds exactly the opposite of what the CVRA's plain language and legislative history state, and what three other Courts of Appeals recognized. California's voters, as well as hundreds of local jurisdictions impacted by the CVRA, deserve a definitive interpretation of the CVRA from this Court to resolve the confusion created by the Opinion.

The Court should also grant review to settle the conflict created by the Opinion's newly announced, and dangerous, exception to substantial evidence review where the trial evidence includes "historic artifacts" like videotapes. That exception directly conflicts with *Hoberman-Kelly v. Valverde* (2013) 213 Cal.App.4th 626.

II. REVIEW OF THE COURT OF APPEAL'S MISINTERPRETATION OF THE CVRA IS NECESSARY

The CVRA has been successful in transforming California's municipal election systems where they have disenfranchised substantial minority voter populations. The Opinion undermines the CVRA and

contradicts its plain language and legislative history which instruct that liability is not dependent on the minority proportion of a potential remedial district.

The Opinion's interpretation of the CVRA cannot be squared with the statutory language. (Petition for Review ("Petn.") pp. 17-22, 24-25, 27). Defendant attempts to restate what the Court of Appeal held. But no amount of reinterpretation can reconcile the Opinion's actual holding with §§14027, 14028(a), and 14028(c) as drafted by the Legislature and understood by every other appellate court that previously examined those provisions. Rectifying the conflict and confusion created by the Opinion presents an important issue that this Court should resolve.

The issue's importance is underscored by the *amicus curiae* letter of California's Secretary of State,[1] and by Defendant's *own* assertions regarding the importance of correctly interpreting the CVRA at an earlier stage of *this* case. In 2017, seeking review of denial of its demurrer, Defendant stated "[t]his case is a perfect vehicle for the Court to elucidate the meaning of the CVRA's interlocking provisions and clarify its content" (Case No. S244171, Petn., p. 12), and that the CVRA is "a complex statute

[1] Secretary Padilla states, "To ensure that the CVRA continues to provide the vehicle for Californians to ensure that they can participate in fair elections without being deprived of that right as a result of impermissible vote dilution, the Court of Appeals opinion requires review …."

of great public significance." (*Id*. p. 21). Plaintiffs did not disagree about the importance of reviewing the statute, but contended that such review was premature at that stage of the case. (Case No. S244171, Answer to Petn., p. 4)

Defendant was correct about the importance of the legal issues raised by this case; now that a full record has been developed at trial and the lower courts have weighed in, this Court should have the final say.

A. THE OPINION ADDS A COMPACTNESS REQUIREMENT THAT THE LEGISLATURE EXPRESSLY ELIMINATED.

To distract from the Opinion's holding that CVRA liability depends on the ability to create a majority-minority district, Defendant instead pretends the Opinion has no such holding. It absolutely does; that is the Opinion's reason for finding no dilution in this case. (Opn., p. 31 ["Pico failed to prove the City's at-large system diluted the votes of Latinos. Assuming race-based voting, 30 percent is not enough to win a majority and to elect someone to the City Council, even in a district system. … The reason for the asserted lack of electoral success in Santa Monica would appear to be that there are too few Latinos to muster a majority , no matter how the City might slice itself into districts or wards."].)

Defendant's Answer (pp. 12-13) highlights the Court of Appeal's statement that it "need not decide" whether "a near-majority of minority voters in a hypothetical district would often be sufficient for the minority

group to elect its preferred candidates" because "this case presents no such district." (Opn., pp. 36-37). Whether the Opinion inserts a "majority-minority" or a "near-majority-minority" district requirement,[2] the same defect remains – either interpretation of the CVRA contradicts its plain language and legislative history. (*See* 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 …"].)

Defendant claims the CVRA merely "relaxed [the] geographic-compactness requirement" of the Federal Voting Rights Act ("FVRA"). (Answer, p. 14 .)[3] The Legislature didn't just "relax," but *eliminated,* that requirement because, "geographical 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).[4]

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[2] In oral argument, Defendant described a near-majority-minority district as having 48-50% minority voters.

[3] Defendant cites several FVRA decisions (Answer, pp. 18-19 that discuss a requirement the Legislature and the CVRA's text expressly reject.

[4] State and federal courts reject Defendant suggestion (Answer, pp. 19-20) that the CVRA's elimination of the compactness requirement renders it unconstitutional (*Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660; *Higginson v. Becerra* (S.D. Cal. 2019) 363 F.Supp.3d 1118, aff'd No. 19-55275 (9th Cir. 2019), cert. denied (No. 19-1199, May 26, 2020).

1. The CVRA Does Not Premise "Dilution" on the Potential for a Majority-Minority District.

Three other appellate courts have recognized that liability under the CVRA does *not* depend on the minority proportion of a hypothetical district. (See Petn., pp. 13-14, 19-20, citing *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 789; *Sanchez*, 145 Cal.App.4th at 669 and *Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1229). Defendants' argument that the language in those cases is dicta misses Plaintiffs' point: the statutory language and legislative history are so clear that every other appellate decision has correctly identified this basic feature of the CVRA. Any distinction between "holding" and "dicta" doesn't lessen the confusion caused by the Opinion's contradictory interpretation of the CVRA.[5] Defendant effectively conceded Plaintiffs' point in 2017, when it recognized that *Sanchez*, *Rey*, and *Jauregui* confirm an "unremarkable proposition, which is also set out in the CVRA itself" – that a plaintiff "need not show that members of a protected class live in a geographically compact area." (Case No. S244171, Reply in Support of Petn., p. 15)

[5] *Jauregui* found vote dilution was established by the finding of racially polarized voting, creating a conflict between the CVRA and the city charter, requiring the court to decide which must yield. (226 Cal.App.4th at 788-791, 798; see *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1158 ["Statements by appellate courts responsive to the issues on appeal … are not dicta.").

Without review by this Court, other courts and political subdivisions contemplating their obligations under the CVRA will wonder not only whether they are required to assess dilution, but whether to follow the statute's plain language as described by *Jauregui*, *Sanchez* and *Rey*, or the Opinion's interpretation.

2. Vote Dilution Does Not Depend on the Proportion of Minority Voters in a Potential District.

The dilutive effect of at-large elections is not a matter of arithmetic, as the Opinion posits; it is a political reality for Santa Monica's Latinos. The Opinion fails to recognize that in California majority-minority districts are not necessary to elect minority-preferred minority candidates – districts with 20-46% minority voters are often sufficient, as 49 members of the Legislature, represented by the Latino, African American, and Asian Pacific Islander Legislative Caucuses, show in their *amicus curiae* letter.

This case illustrates how an at-large system plagued by racially polarized voting can dilute minority votes even where a majority-minority district is not possible. In 2004, Maria Loya received votes for City Council from an estimated 100% of Latino voters, but just 21% of non-Hispanic white voters, and lost, placing seventh in a race for four seats. ((RA65-66). .) Defendant conceded this election exhibited racially polarized voting. (See ARB p. 32). In the district election system ordered by the trial court, Loya would have won: she received more votes in the

30%-Latino Pico Neighborhood district than any other candidate. (25AA11003). The same was true for Tony Vazquez in 1994 when he enjoyed overwhelming support from Latino voters but lost at-large, while receiving the most votes in the Pico Neighborhood district. Plaintiffs' expert, David Ely, explained that these results are not anomalous, but typical of expected outcomes in the remedial district (RT2318:7-2330:4, RA 29-30, 25AA11002-11004). The trial court credited that testimony (24AA10734). The Opinion would require courts to allow such vote dilution to continue in Santa Monica and many other California jurisdictions.

To determine whether district elections would "make a difference in … electoral results" (Opn., p. 37), the trial court considered numerous factors, including the performance of Latino-preferred candidates in the Pico Neighborhood district in past elections, the results of elections in districts with similar Latino proportions in similar cities, and local political and financial factors, (24AA10706-10707, 24AA10733-10735). It determined the Pico Neighborhood district would, unlike the at-large system, elect Latino-preferred candidates. (*Id.*). It also determined that non-district remedies, such as ranked-choice-voting, would "make a difference." (24AA10706-10707, see also Petn., pp. 23-24, RB pp. 31-32).[6]

[6] FairVote's *amicus curiae* letter describes how such non-district remedies work and would be effective here.

The trial court's analysis reflects political realities recognized by the Legislature; the Opinion's refusal to consider anything other than minority percentages does not.

Plaintiffs do not, as Defendant insists, contend that "any improvement in minority voting power, however small, will demonstrate vote dilution." (Answer, pp. 6-7). The absurdly small numbers and differences hypothesized by Defendant (Answer, p. 15) and the Opinion (p. 35) are caricatures, not a reflection of Plaintiffs' position. As Plaintiffs' counsel explained at oral argument, "courts need to take a fact intensive approach to determining whether there is a remedy that will do any good, because at some point in a case the court is going to need to decide on a remedy, and the court should be satisfied that remedy is going to do something to solve the problem."

The court in *Vecinos De Barrio Uno v. City of Holyoke* (1st Cir. 1995) 72 F.3d 973 advised exactly that analysis of whether a district with less than 50% minority voters would give them cognizable influence. (*Id*. at 991 ["the district court should make a searching evaluation of the degree of influence exercisable by the minority, consistent with the political realities, past and present. … Although we are unwilling to prescribe any numerical floor above which a minority is automatically deemed large enough to convert a district into an influence district, we believe that when … a minority group constitutes 28% of the voting age population, its

potential influence is relevant ..."].) This Court recognized districts with minority proportions like the Pico Neighborhood district's confer meaningful influence in *Wilson v. Eu* (1992) (Appendix) 1 Cal.4th 707, 771 & n.43, 773 (identifying two "influence districts" where the protected class made up 35.9% and 46% of the electorate.) The CVRA explicitly recognizes claims for preventing minority voters from exercising the ability to "influence the outcome of an election" (Elec. Code, §14027), even if they alone cannot control it.

B. PLAINTIFFS DID NOT, AND CANNOT, "ABANDON" THE PLAIN LANGUAGE OF SECTION 14028(a).

Defendant argues that this Court cannot review the Opinion's holding that "dilution" requires something more than racially polarized voting because "Plaintiffs abandoned the question." (Answer, p. 17.) Relying solely on that contention, neither Defendant nor the Opinion offers any interpretation of §14028(a)'s language: a "violation of Section 14027 *is established* if it is shown that racially polarized voting occurs in elections for the governing body…." (emphasis added).

Defendant's "abandonment" argument is legally incorrect. Plaintiffs cannot make a concession of law that is "contrary to the Legislature's plain directive." (*People v. Castillo* (2010) 49 Cal.4th 145, 171). Moreover, Plaintiffs did not abandon the argument that §14028(a) provides "dilution" is established by showing racially polarized voting. Rather, Plaintiffs'

counsel stated that only "for purposes of this argument" would he concede that dilution requires something more than racially polarized voting — acknowledging that since the panel was not open to persuasion on this issue, he would focus his remaining time on the evidence that "dilution" was shown under any standard consistent with the CVRA.

C. THIS COURT SHOULD NOT SECOND-GUESS THE TRIAL COURT'S FINDING THAT DEFENDANT'S ELECTIONS EXHIBIT RACIALLY POLARIZED VOTING.

Defendant argues this Court should leave other courts and political subdivisions to apply the Opinion's erroneous interpretation of the CVRA, because the trial court erred on a different issue – racially polarized voting. Defendant is wrong.

Evaluating the group voting estimates, the trial court found: "In most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for Defendant's city council, but, despite that support, the preferred Latino candidate loses." (24AA10680-10681; see also 24AA10684-10690). That epitomizes racially polarized voting. (See *Thornburg v. Gingles* (1986) 478 U.S. 30, 61 ["[T]he District Court's approach, … which revealed that blacks strongly supported black candidates, while, to the black candidates' usual detriment, whites rarely did, satisfactorily addresses each facet of the proper legal standard" for racially polarized voting].) As a result of that racially polarized voting, despite cohesive Latino voter support , "only one Latino has been elected to

the Santa Monica City Council in the 72 years of the current election system – 1 out of 71 to serve on the city council." (24AA10681). The Opinion doesn't deny this pattern of racially polarized voting. (Opn., p. 19.) Defendant's claim that Latino-preferred candidates are usually elected is based on elections different than those specified by the CVRA, and identification of Latinos' less-preferred Anglo choices as equally "Latino-preferred," contrary to applicable authority. (See RB, pp. 45-60). The trial court specifically rejected Defendant's contention and the Opinion did not disturb that ruling. (See 24AA10683-10684, 24AA10697-10700).

Defendant complains the trial court's finding of racially polarized voting depends on an unconstitutional stereotype that Latino voters support only Latino candidates (Answer, pp. 30-31), but it's the Opinion that stereotypes voters. The trial court assessed racially polarized voting not by assuming Latinos would favor Latino candidates, but by reviewing actual election results. (24AA10684-10690). The Opinion, however, assumes, contrary to those election results, that no non-Latinos will vote for a Latino-preferred Latino candidate , and on that basis concludes that Latinos could not elect their preferred candidates, because they comprise less than 50% of the district's voters. (Opn., p. 31).

III. THIS COURT SHOULD GRANT REVIEW ON THE SECOND ISSUE PRESENTED TO PROTECT THE TRIAL COURTS' FACTFINDING FUNCTION.

Substantial evidence review serves vital purposes by allocating

judicial duties to the courts best suited to carry them out while allowing appropriate appellate review. Substantial evidence review reflects the trial court's superior vantage point in determining disputed facts while preserving appellate review in a way that does not completely displace the trial court. This standard is nowhere more justified than following a trial focused on discriminatory intent, which "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." (*Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.* (1977) 429 U.S. 252, 266; *Horsford v. Bd. of Trs. of Cal. State Univ.* (2005) 132 Cal.App.4th 359, 375.)

The Opinion upsets this balance by claiming for appellate courts the right to conduct "independent," *de novo* review of certain forms of evidence, termed "historical artifacts" such as "[n]ews articles, videos, and other texts that were not created for litigation." (Opn., pp. 38-39.) Defendant's Answer offers scant justification for this sweeping exception, instead attacking the merits of Plaintiffs' Equal Protection claim while mischaracterizing important aspects of the trial evidence.

Contrary to Defendant's suggestion, the Court of Appeal's use of *de novo* review was central to its ruling. That Court's substitution of its own interpretation of some evidence, and its dismissal of other evidence the trial court credited, illustrates the disruption to the proper standards of factfinding and review that the Opinion's newly announced exception to

substantial evidence review would wreak. *Hoberman-Kelly v. Valverde* (2013) 213 Cal.App.4th 626 correctly declined the invitation to treat factual issues as legal issues merely because the pertinent evidence was presented in video form. This Court should grant review to resolve the conflict.

A. THE OPINION'S INDEPENDENT REVIEW STANDARD IS FUNDAMENTAL TO ITS OUTCOME.

Defendant wrongly argues that the Opinion rests on the notion that "the trial court … appl[ied] the wrong legal standard" (Answer, p. 22), rather than appellate reweighing of the evidence. The trial court and the Court of Appeal *agreed* on the showing necessary on the Equal Protection claim: that Defendant "adopted or maintained its at-large system with the purpose of discriminating against minorities," i.e., "the decisionmaker selected or reaffirmed a particular course of action not in spite of adverse impact on a group, but because of that impact." (*Compare* Opn., pp. 40-41 *with* Statement of Decision (24AA10713-10716, 24AA10727.)

Defendant claims the Opinion's reversal of the trial court's finding of discriminatory intent echoes *Personnel Administrator of Massachusetts v. Feeney* (1979) 442 U.S. 256 and *Crawford v. Board of Education* (1980) 113 Cal.App.3d 633. But in neither of those cases did the trial court find discriminatory purpose. (*Feeney*, 442 U.S. at 260 [the district court "found … that the legislation had not been enacted for the purpose of discriminating against women"]; *Crawford*, 113 Cal.App.3d at 644.) Here,

the trial court followed the *Feeney* test, which the Opinion identifies as appropriate, and expressly found Defendant made a "deliberate decision to maintain the existing at-large election structure because of, and not merely despite" its discriminatory impact on Santa Monica's minority population." (24AA10727, *compare Feeney*, 442 U.S. at 279)

The trial court carefully analyzed all the evidence, applied the *Arlington Heights* factors, and found that the adoption of the at-large system in 1946 and its maintenance in 1992 were both infected with discriminatory intent. (*See,* 24AA10716-10727). The Opinion ignored that analysis and drew its own inferences from some of the evidence, while mischaracterizing or disregarding other important evidence. The Opinion gave no deference to the trial court's factual findings and its application of *de novo* review was fundamental to the outcome. (*Compare* Opn. pp. 42-49 to the trial court's decision (24AA10716-10727).

1. The Opinion Makes Credibility Determinations, Ignores Evidence the Trial Court Found Compelling, and Reweighs Selected Evidence.

The Opinion's treatment of the evidentiary record is heavily laden with its own inferences, credibility determinations, and judgments about what weight should be given to distinct pieces of evidence. For example, in discussing the adoption of the at-large system in 1946, the Opinion attacks the credibility of the Anti-Charter Committee, and disregards evidence of

the political debate drawn from its advertisements.[7] (*See* Opn., p. 45.) In contrast, it gives great weight to support for the proposed charter by certain minority leaders and members of the Committee for Interracial Progress. (*See* Opn., pp. 6-7, 42-43, 45.)

It also *entirely ignores* evidence linking support for the proposed charter with opposition to the contemporaneous purely-racial Proposition 11 (RT3484:22-3489:12; RA88; RA176; RA180; 24AA10720-10721), and the events surrounding the Freeholders' decision to offer voters only an at-large election option "in the wake of discussion of minority representation" through votes the local newspaper called "unexpected" (24AA10720-10721; RT3483:14-3484:16; RT3760:11-3761:15; *cf. Arlington Heights*, 429 U.S. at 267 [discussing the relevance of the "sequence of events leading up to the challenged decision" and "departures from the normal procedural sequence"].) The Opinion likewise ignores contextual evidence related to contemporary racial tensions and attitudes, including a resolution "calling for all Japanese Americans to be deported to Japan" following internment (RT3662:14-3666:3; 24AA10718-10719; RA87; RA184-187), and the endorsement of at-large elections and Freeholders supporting them

[7] The Opinion focuses on discrediting that group's advertisements , but other editorials and articles, and an expert historian's testimony, support the conclusion that at-large elections were linked in public debate to blocking minority representation. (*See, e.g.*, RT3473:14-3483:11; RA177-178; 25AA10889.)

by a local newspaper with outspokenly racist views (*See* RT3473:19-3481:1, RA187-188; *cf. Arlington Heights*, 429 U.S. at 267 [discussing relevance of "historical background"].)

In concluding minority leaders supported the charter – which the Opinion found dispositive – the Opinion ignores a Freeholder's acknowledgement to NAACP members that the seven-seat at-large system was "not perfect" but an improvement over three-seat at-large elections, suggesting their discontent with the Freeholder's preferred system.[8] (RT3481:6-3483:1) The Opinion also ignores that the Freeholders who were members of the Interracial Progress Committee supported offering voters a district election option, but were outvoted. (RA91-92).

Considering the maintenance of the at-large system in 1992 over the near-unanimous recommendation of the Charter Review Commission to abandon that system as discriminatory, the Opinion relies solely on its own interpretation of a videotaped council meeting (although the Court stated at oral argument it had viewed only unidentified "relevant portions"). (*See, e.g.* Opn. p. 46 [describing the discussion as "a model of civic engagement"], 47 [drawing inferences about Councilmember Zane's subjective intentions], 48 [crediting Zane's statement that he was not referring to the Pico area, although that neighborhood had most affordable

[8] The City attacks the expert historian's interpretation of this evidence. The trial court found the same attacks unconvincing. (*See* RT3483:8-11.)

housing projects and was the focus of the debate about representation].) The trial court drew the opposite inferences, based on substantial evidence.

The Opinion's characterization of the Charter Review Commission's report, as reflecting confusion and indecision, differs radically from that of the trial court. (*Compare*, Opn., p. 46 *and* 24AA10722-10723). The Opinion gives no weight to the Council's adoption of every Charter Review Commission recommendation *except* its recommendation to scrap at-large elections as discriminatory. (24AA10726-10727). Moreover, the Opinion ignores the historical context (24AA10721-10722; 24AA10725-10726) and contemporaneous actions of Defendant's Council that the lone Latino councilmember called "institutional racism" (24AA10728; RA287; RT3460:16-3461:20).

The mistakes and omissions in the Opinion demonstrate the pitfalls of *de novo* review of factual findings. "Deference is given to the factual findings of trial courts because those courts generally are in a better position to evaluate and weigh the evidence." (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 385.) This is particularly important in a discrimination case, where circumstantial evidence of discrimination must be viewed "collectively." (*Horsford, supra*, 132 Cal.App.4th at 377.) This case illustrates the flaws of the Opinion's broad exception to substantial evidence review. Appellate courts are not well situated to replicate long trials and make fresh findings of fact. Nor does it promote judicial

efficiency or accuracy for appellate courts to do so wherever the record contains video or documents, as the Opinion requires.

B. THE OPINION'S UNPRECEDENTED EXCEPTION TO SUBSTANTIAL EVIDENCE REVIEW WARRANTS REVIEW BY THIS COURT.

Defendant argues that the *de novo* review applied by the Opinion is neither novel nor worthy of review. It is doubly wrong.

Defendant cites *Hunt v. Cromartie* (2001), 532 U.S. 234, 243 (*Hunt*), *People v. Avila* (2006) 38 Cal.4th 491, 529 (*Avila*), and *Scott v. Harris* (2007) 550 U.S. 372, 380-81 (*Scott*) as supporting the Opinion's *de novo* review, but none of those citations stand up to scrutiny.[9] *Hunt* applied the "clear error" standard, the federal equivalent of substantial evidence review. (532 U.S. at 242.) *Avila* applied *de novo* review to the narrow question whether the trial court properly excused jurors from a capital case based solely on juror questionnaires, without opportunity for additional questioning. (*Id.* at 529.) It does not authorize *de novo* review of "cold record" documents relevant to the merits of a claim or defense. This Court has ruled to the contrary, mandating that deference is owed to "factual determinations made by the trial court" even where they are based on written statements rather than oral testimony. (*Shamblin v. Brattain*

[9] Other than *Scott*, Defendant conspicuously chooses not to defend the authorities relied on by the Opinion. None justify the application of *de novo* review. (Petn. pp. 36-38.)

(1988) 44 Cal.3d 474, 479.)

Scott's *de novo* review of video evidence has never previously been applied in California courts, much less a case presenting the elusive issue of whether officials acted with discriminatory intent. Yet the Opinion dramatically expands *Scott,* directing *de novo* review of any video or documentary evidence, even where that evidence, as here, includes statements subject to competing interpretations. (*Compare* Opn., pp. 38-39 *with* Petn., pp. 34-36 & n.11 and authorities cited therein.)

In contrast, the court in *Hoberman-Kelly*, directly confronting the same issue, reaffirmed the applicability of the substantial evidence standard to review of video evidence – the exact opposite of the Opinion's rule. (*See* 213 Cal.App.4th at 631.) For this alone, the Court should grant review to "secure uniformity of decision." (*See* Cal. Rule of Court 8.500(b)(1).)

The Opinion erroneously disregards the time-honored and well-reasoned strictures of substantial evidence review. But even if Defendant were correct that some more "extensive" or less deferential review might be warranted in a document-heavy case, the scope of that review and how it should apply would constitute "important question[s] of law" worthy of review by this Court.

Dated: September 14, 2020

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rules 8.2024(c)(1).)

I, the undersigned appellate counsel, certify that this brief consists of 4,198 words exclusive of those portions of the brief specified in California Rules of Court, rule 8.204(c)(3), relying on the word count of the Microsoft Word 2016 computer program used to prepare the brief.

Dated: September 14, 2020

Respectfully submitted,

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PROOF OF SERVICE

I am a citizen of the United States, am over the age of 18 years, and not a party to the within entitled action. My business address is 300 Lakeside Drive, Suite 1000, Oakland, CA 94612. I declare that on the date hereof I served the following documents:

REPLY IN SUPPORT OF PETITION FOR REVIEW

☒ **By Electronic Service:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service address(es) as set forth below

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 14th day of September 2020, at Oakland, California.

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