SCLC
Southern Christian Leadership Conference
of Southern California

September 9, 2020

The 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,

The Southern Christian Leadership Conference of Southern California (SCLC-SC) respectfully submits 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 SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE OF SOUTHERN CALIFORNIA

SCLC-SC was formed in 1964 by Dr. Martin Luther King Jr. and his colleagues in Los Angeles, as one of several local chapters of the Southern Christian Leadership Conference (SCLC). SCLC, and its constituent local chapters, have been at the forefront of the struggle for voting rights since its work on the Montgomery Bus Boycott of 1955-1956. Since that time, SCLC has been committed to promoting Dr. Martin Luther King Jr.'s dream, in which every person enjoys the civil rights that are so essential to democracy, and Dr. King's philosophy of pursuing those rights absolutely and nonviolently.

SCLC's seven decades of organizing and advocacy for civil rights, human rights and voting rights provide an understanding of the dynamics and pressures associated with fighting against discrimination. And, by organizing voters and working with elected officials, SCLC has come to understand what it takes for minority candidates to win local elections. SCLC's experience fundamentally conflicts with the Court of Appeal's opinion in *Pico Neighborhood Ass'n, et al. v. City of Santa Monica.*

The Court of Appeal's opinion threatens to fundamentally alter anti-discrimination law in California, and undermine the voting rights of Californians. It is critical that this Court review and reverse the Court of Appeal's decision.

Majority-Minority Districts Are Not Necessary to Elect Minority Candidates

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. The Court of Appeal is demonstrably wrong. **All** of the African Americans serving in the California Legislature were elected by districts where African Americans are less than a majority of the district's eligible voters. Most were elected by "influence districts."

	African American Legislators	District	% Black Eligible Voters
1	Assembly Member Shirley N. Weber	79th Assembly District	12.04%
2	Senator Steven Bradford	35th Senate District	30.87%
3	Assembly Member Sydney Kamlager	54th Assembly District	32.60%
4	Assembly Member Autumn Burke	62nd Assembly District	32.77%
5	Senator Holly J. Mitchell	30th Senate District	43.11%
6	Assembly Member Reginald Byron Jones-Sawyer, Sr.	59th Assembly District	39.99%
7	Assembly Member Mike Gipson	64th Assembly District	42.66%
8	Assembly Member Jim Cooper	9th Assembly District	13.53%
9	Assembly Member Kevin McCarty	7th Assembly District	11.43%
10	Assembly Member Christopher Holden	41st Assembly District	9.56%

Georgia Congressman and legendary civil rights activist John Lewis understood this political reality as well. When Georgia's legislative districts were re-drawn following the 2000 Census, the Georgia Legislature chose to include several "influence districts" with a black voting-age-population of between 25% and 50%, at the expense of adding majority-black districts. Congressman Lewis defended that districting plan, testifying that "giving real power to black voters comes from the kind of redistricting efforts the State of Georgia has made," and that the Senate plan "will give real meaning to voting for African Americans" because "you have a greater chance of putting in office people that are going to be responsive." (*Georgia v. Ashcroft* (2003) 539 U.S. 461, 489). According to Congressman Lewis, adding influence districts at the expense of majority-black districts "was designed to increase black voting strength throughout the State" because African Americans did not need a majority-minority district to elect their preferred candidates or at least exert electoral influence that would translate to responsiveness by elected officials. (*Id.* at 472)

In enacting the CVRA, the California Legislature understood the same thing that Congressman Lewis explained – majority-minority districts are not necessary for minorities to achieve representation; that can be accomplished with influence districts. As a result of the California Legislature's wisdom, for 18 years the CVRA has opened doors for minority communities throughout California; the Court of Appeal's Opinion unjustifiably closes them, and must be ***reversed***.

The Difficulties of Organizing Historically-Oppressed Minorities

Though perhaps less so today, it has always been difficult to organize minority communities to advocate for their rights. Vocal advocacy by minorities has been met with severe consequences – even violence – so minorities come to understand that in order to remain physically safe and provide even the barest subsistence for their families, they must avoid confrontation with their oppressors.

SCLC's early efforts to organize African Americans illustrates the point. African Americans who dared to oppose segregation were stripped of their employment, arrested, beaten, and even lynched. During the Montgomery Bus Boycott, African Americans who refused to take the bus were often replaced by their employers, leaving them without even the meager wages they had earned and unable to provide the basic necessities for their families. Violence was commonplace as well. When civil rights activists demonstrated or even sought to register voters, they were beaten or killed. Michael Schwerner, James Chancey and Andrew Goodman, like many before them, were killed in 1964 for registering voters in Mississippi. Opponents of civil rights did not hesitate to inflict violence even when they knew cameras were recording their actions – on Bloody Sunday the aforementioned John Lewis had his skull fractured along with other demonstrators for merely attempting to cross the Edmund Pettus bridge to demonstrate for their voting rights. Even in the last few months, civil rights demonstrators protesting the murders of George Floyd, Breonna Taylor and others, have been beaten, shot and gassed by police and opponents of civil rights. It is no wonder why minority leaders and groups have been hesitant to vocally oppose even the most discriminatory government actions – the fear of physical violence and economic starvation are strong deterrents.
It is only through the herculean efforts of groups like SCLC, and the charisma of its extraordinary leaders, like Dr. Martin Luther King Jr. and Dr. Ralph David Abernathy, that we were able to succeed in organizing African Americans and others in support of the cause of civil rights. But minority leaders are also subject to the same pressures as the minority communities they seek to empower. Dr. King, for example, was beaten, jailed, threatened along with his family, and ultimately killed.

There are several reasons that minority leaders or groups might not vocally oppose a decision or action that is nonetheless discriminatory. The minority groups or leaders might fear retribution from the powerful decision makers, or they might not believe their vocal advocacy will have a positive impact, or they might not have sufficient resources to fight every act of discrimination and thus must choose their battles. The decision to not vocally protest those decisions should not be taken as an indication that those decisions were not discriminatory; rather, it is just as likely an indication that a necessarily pragmatic strategy towards a larger goal does not permit minority leaders and groups to vocally oppose every act of discrimination when discrimination is so prevalent. Indeed, there was little vocal opposition to segregation until the 1950s – that doesn't mean that it wasn't intentionally discriminatory in the 1940s.

The Court of Appeal's "litmus test" – asking only whether contemporary minority leaders and groups vocally protested a decision as discriminatory – ignores the many reasons minority groups and leaders might choose to not vocally oppose certain discriminatory acts. Rather, it puts the onus on contemporary minority groups and leaders to vocally oppose discriminatory decisions by powerful officials, even when that opposition is futile, and denies racial minorities any redress in the absence of contemporary vocal opposition. Minority leaders and groups should not be required to put their lives and livelihoods at risk in order to ever be permitted to challenge discriminatory decisions in court.

The Court of Appeal's application of its "litmus test" makes even less sense in this case. Though ignored by the Court of Appeal, the support of minority leaders in Santa Monica in 1946 was not for the decision to offer voters only the option of at-large elections – the decision the Trial Court found to be tainted with discriminatory intent. Rather, minority leaders only supported the 1946 charter amendment once district elections were off the table, and the charter amendment became the better of two bad options: a three-member commission elected at-large, or a seven-member council elected at-large. This dynamic too is common in struggles for civil rights – minorities are often faced with the choice between the status quo and incremental progress, when they would prefer fundamental change. Minority leaders and civil rights groups must often be pragmatic if they are to achieve any progress at all; they should not be punished for accepting incremental progress when fundamental change appears out of reach.

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Over the course of seven decades, SCLC has worked to advance the civil, human and voting rights of African Americans. The CVRA and the Equal Protection clause of the California Constitution have protected those same rights. The Court of Appeal's Opinion undermines those rights in a way that, if not reversed, will reverberate throughout California. We implore this Court to grant review and ***reverse*** the Court of Appeal's dangerous decision.

Regards,

Pastor William D. Smart Jr.

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PROOF OF SERVICE

***In the Matter of PICO NEIGHBORHOOD ASSOCIATION v. CITY OF SANTA MONICA*; Case No. S263972**

I, Karen Slyapich, am employed in the County of Los Angeles, State of California and am over the age of eighteen years and not a party to the within action. My business address is 21800 Burbank Boulevard, Suite 310, Woodland Hills, California 91367. that on September 11, 2020, I served the following item(s) on the person(s) listed below.

1. ITEM(S) SERVED:

   • Amicus Curiae Letter – Southern Christian Leadership Conference

2. METHOD OF SERVICE:

   • E-Mail - I sent via electronic mail a true and correct copy of the item(s) listed above.
   • US Mail- - I sent via US Mail a true and correct copy of the item(s) listed above.

3. PERSON(S) SERVED:

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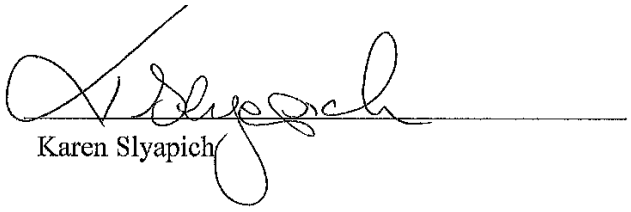
I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 11, 2020, at Woodland Hills, California.



Karen Slyapich