



# MALDEF

The Latino Legal Voice for Civil Rights in America.

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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 District, Division Eight, Case No.  
B295935  
Los Angeles Superior Court Case No. BC66804

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

*Amici* urge the Court to grant the petition for review in this action for the simple reason that the Court of Appeal failed to recognize that the California Voting Rights Act (CVRA) protects a protected class’ right to “influence” districts as well as majority-minority districts. The Court of Appeal should have recognized that a 30-percent Latino district, as was presented by plaintiffs here, is, as a matter of law, an “influence” district, and that, as such, a CVRA plaintiff has proven an “abridgment” or “dilution” in violation of the statute if the plaintiff can create a compact district that is 30 percent Latino and are deprived of such a district by the perpetuation of an at-large election system.

In failing to hold that a 30-percent district is sufficient to support a successful CVRA challenge, the Court of Appeal, in effect, excised the language of the CVRA that protects influence districts, and such a construction violates the plain-language intent of the CVRA.

*Amici* Statements of Interest

**Mexican American Legal Defense and Educational Fund (“MALDEF”)**

MALDEF is a national civil rights organization established in 1968. Its principal objective is to promote the civil rights of Latinos living in the United States. MALDEF is committed to pursuing political and civil equality and opportunity through advocacy, community education, and the courts. In its over 50-year history, MALDEF has made significant

contributions in securing the rights for Latinos in the areas of education, employment, immigrant rights, and political access at both the state and federal levels.

Since its founding, MALDEF has focused on securing equal voting rights for Latinos and promoting increased civic engagement and participation within the Latino community as among its top priorities. From its first major national victory in a 1970 Supreme Court case that struck a blow to racial gerrymandering and at-large redistricting systems to one of MALDEF's more recent victories in a federal Voting Rights Act ("VRA") case that led to a new Kern County Board of Supervisors district plan that will respect Latinos' right to elect candidates of their choice, MALDEF has a long history of voting rights work. MALDEF played a significant role in securing the full protection of the VRA for the Latino community through the 1975 congressional reauthorization of the 1965 VRA. MALDEF has over the years litigated numerous cases under section 2, section 5, and section 203 of the VRA, challenging at-large systems, discriminatory redistricting, ballot access barriers, undue voter registration restrictions, and failure to provide bilingual ballot materials. MALDEF has also litigated significant cases challenging statewide redistricting in Arizona, California, Illinois, and Texas, and has engaged in pre-litigation advocacy efforts as well as litigation related to ballot access and local violations, in those states, as well as in Colorado, Georgia, Nevada, and New Mexico. As the growth of the Latino population expands, MALDEF's work in voting rights expands as well.

In California, MALDEF co-sponsored the California Voting Rights Act ("CVRA"), which the California legislature enacted in 2002, to streamline challenges to at-large local elections in any jurisdiction experiencing racially-polarized voting. In the years since the CVRA took effect, MALDEF has played a significant role in ensuring that dozens of local jurisdictions – cities, school districts, community college districts, and special districts – have converted to district elections.

Accordingly, the question presented by this case is of great interest to MALDEF as it implicates the availability of voting rights protections for Latinos in this country.

### **NALEO Educational Fund**

NALEO Educational Fund is the leading non-profit, non-partisan organization whose mission is to facilitate full Latino participation in the American political process, from citizenship to public service. Established in 1981, the organization's constituency includes the more than 6,800 Latino elected and appointed officials nationwide, including 1,640 in California. NALEO Educational Fund has made significant contributions in advocacy, civic engagement and through providing professional development opportunities in helping to ensure that Latinos can fully participate in our nation's democracy and can surmount barriers to fair representation in our political system.

NALEO Educational Fund has actively engaged in advocacy to promote Latino voting rights. In 2006, it worked with a national collaborative to help secure renewal of key provisions of the Voting Rights Act of 1965. As California has moved forward to

institute election reforms such as voter registration modernization, the Voter's Choice Act of 2016 and similar measures, NALEO Educational Fund has advocated for practices and provisions which protect and promote Latino access to voting. The organization has also opposed published research on and advocated against unfair state practices which would create obstacles for Latino participation in various states, including proof of citizenship voter registration requirements, restrictive voter identification requirements, and failure to provide the language assistance required by federal and state mandates.

NALEO Educational Fund also conducts non-partisan voter and redistricting engagement activities, including its 1-888-Ve-Y-Vota ("Go and Vote!") hotline, a bilingual hotline which provides information about voting and elections, and helps voters address unfair practices they may encounter when registering to vote or voting. In 2010-2011, NALEO Educational Fund mobilized Latinos to participate in California's redistricting process, and reviewed draft maps produced by the California Citizens Redistricting Commission, in part to evaluate whether the districts provided Latinos with a fair opportunity to elect the candidates of their choice.

Accordingly, the question presented by this case is of great interest to NALEO Educational Fund as it implicates the ability of Latinos in this country to fully participate and achieve fair representation in California and our nation's democracy.

### Argument

The CVRA provides a judicial remedy for any at-large election system that, in a context of racially-polarized voting, "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 . . . ." Cal. Elections Code § 14027. There may be significant merit to the Court of Appeal conclusion that "dilution" or "abridgment" is a separate element of a CVRA claim from proof of racially-polarized voting; however, the plain language of the CVRA establishes that dilution or abridgment occurs if a protected class is deprived of either a) "the ability . . . to elect candidates if its choice" or b) "the ability . . . to influence the outcome of an election." *See* Court of Appeal Opinion ("Op.") at 26.

These are two separate means of demonstrating a prohibited "dilution" or "abridgment." The former is satisfied with a district that includes a majority of protected class members as to permit the usual election of candidates supported by voters from the protected class. The latter is something different – a district that falls short of a majority of protected class members, but with a sufficient minority to influence electoral outcomes.

Where the precise line is drawn between actionable minority "influence" districts and those that present so little opportunity to influence electoral outcomes as to not support a CVRA claim is an interesting question that can await a subsequent case. Here, the plaintiffs presented a 30-percent Latino district, yet the Court of Appeal rejected that as an "influence" district. *Op.* at 30-31. The Court of Appeal then faulted plaintiffs for

not showing more to support a “dilution.” The court further posited the ludicrous example of a 1.5 percent district in defeating an argument that the court largely seems to have manufactured on its own. Op. at 35-36.

The Court of Appeal should have interpreted “influence” district as part of its analysis of the legislative construction of the CVRA. In doing so, it should have readily concluded that, wherever the specific threshold may lie, 30 percent certainly qualifies as an “influence” district. Indeed, the United States Supreme Court, in the 2003 case of *Georgia v. Ashcroft*, defined “influence” districts as including those with a minority voting population of 25 to 30 percent. 539 U.S. 461, 471 (2003). The Court of Appeal here should have construed that definition as an indicator of what the California Legislature intended as “influence” districts when it enacted the CVRA in 2002, less than a year prior to the *Georgia v. Ashcroft* decision.

The legislature did not have the specific decision before it in 2002, so the case language cannot be considered definitive. Indeed, the legislature may well have considered a lower threshold as defining an “influence” district. However, the ease with which the United States Supreme Court considered 25-to-30 percent districts to be “influence” districts is a strong indication that a 30-percent district should be construed, as a matter of law, to be an “influence” district under the CVRA.

Instead, the Court of Appeal here has raised doubts about virtually all districts below the majority-minority threshold under the CVRA. Doing so effectively writes “influence” out of the statute. That result is inconsistent with the canons of legislative construction.

For these reasons, *amici* urge the Court to grant the pending petition for review in *City of Santa Monica v. Pico Neighborhood Association*.

Respectfully,

/s/Thomas A. Saenz

Thomas A. Saenz

MALDEF’s President & General Counsel

/s/Belinda Escobosa Helzer

Belinda Escobosa Helzer

MALDEF’s National Senior Counsel