B295935

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

City of Santa Monica,

Appellant-Defendant,

vs.

Pico Neighborhood Association, et al.

Respondents and Plaintiffs.

Appeal from the Superior Court for the County of Los Angeles
The Hon. Yvette M. Palazuelos, Judge Presiding
Superior Court Case No. BC616804

APPLICATION FOR LEAVE TO FILE AND BRIEF OF AMICI CURIAE, LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, IN SUPPORT OF APPELLANT CITY OF SANTA MONICA

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL SECOND **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER: B295935
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APPELLANT/ PETITIONER: CITY OF SANTA MONICA RESPONDENT/ REAL PARTY IN INTEREST: PICO NEIGHBORHOOD ASSOCIATION, ET AL.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Amicus Curiae League of California Cities, et al.

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
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	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 4, 2020

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANT

The League of California Cities ("League") and California Special Districts Association ("CSDA") seek leave to file the attached amicus brief in support of Appellant City of Santa Monica ("City").

The League is an association of 478 California cities united in promoting open government and home rule to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life in California communities. The League is advised by its Legal Advocacy Committee, which is composed of 24 city attorneys representing all regions of the State. The committee monitors appellate litigation affecting municipalities and identifies those cases, such as the instant matter, that are of statewide significance.

CSDA is a California non-profit corporation consisting of over 900 special district members throughout California that was formed in 1969 to promote good governance and improved core local services through professional development, advocacy, and other services for all types of independent special districts. These special districts provide a wide variety of public services to urban, suburban and rural communities, including water supply, treatment and distribution, sewage collection and treatment, fire suppression and emergency medical services, recreation and parks, security and police protection, solid waste collection, transfer, recycling

and disposal, library, cemetery, mosquito and vector control, road construction and maintenance, pest control and animal control services, and harbor and port services. CSDA is advised by its Legal Advisory Working Group, comprised of attorneys from all regions of the state with an interest in legal issues related to special districts. CSDA monitors litigation of concern to special districts and identifies those cases that are of statewide or nationwide significance. CSDA had identified this case as having statewide significance for special districts.

The League and CSDA offer the proposed amicus brief to express their support for the City's appeal, which seeks clarity regarding interpretation of the California Voting Rights Act ("CVRA"). Numerous League and CSDA members have followed the procedures of this Act and the Elections Code in converting their at-large elections to district elections. In explaining their decisions to convert, city and district officials have often expressed concern about the significant attorney fees that can be awarded in CVRA litigation. In some instances, city and district officials have expressed a preference for retaining at-large systems and a belief that these at-large systems did not dilute minority voting strength, and yet have explained that they felt compelled to change because of uncertainty regarding application of the CVRA and the potentially large exposure to plaintiff's attorneys' fees if they lost.

Here, the City received a written demand alleging its at-large city council elections violate the CVRA. The City did not agree to the demand and this litigation followed. This case became one of only a few CVRA cases to go to trial. On appeal, the case now presents important issues that no California court has decided.

Because of this case's potential to become seminal precedent, the League and CSDA submit this proposed amicus brief to be heard on the important issues regarding application of the CVRA. As the City has correctly noted, there is very limited California precedent regarding the CVRA's application, including the elements of a violation and how they apply to cities and districts in which the minority population at issue is fairly low and unconcentrated. The League and CSDA agree with the City's positions on these legal issues, and urge the Court to address and resolve these issues to provide their members with clarity regarding the CVRA's application so that decisions to abandon voter-selected at-large election systems can be made on the basis of the law, not uncertainty regarding its application and fear of economic consequences.

The League and CSDA also offer the proposed amicus brief to be heard concerning the correctness of the remedy the superior court ordered. The League and CSDA believe the superior court acted contrary to California law in ordering its own, judicially-drawn districts map for the City. As these amici explain, the Legislature has created a city-council

supervised public process governing the conversion to district elections. California law mandates this public process be followed for court-imposed conversions as well as voluntary ones. A reported decision affirming this position would clarify the authority of superior courts in administering CVRA remedies.

No party in this action authored this brief in whole or in part. Nor did any party or person contribute money toward the research, drafting, or preparation of this brief, which was authored entirely on a pro bono basis by the undersigned counsel.

Dated: February 4, 2020

COLE HUBER LLP

By: /s/ *Derek P. Cole*
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AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT

I. INTRODUCTION

Enacted in 2002, the California Voting Rights Act ("CVRA") provides a means for compelling local agencies to convert their at-large elections to district elections under certain circumstances. Building from the Federal Voting Rights Act ("FVRA") and its well-developed case law, the CVRA recognizes that at-large elections can sometimes dilute the voting power of protected classes by preventing them from electing their preferred candidates. The CVRA provides a cause of action when elections are shown to be characterized by racially polarized voting ("RPV") that results in the dilution of minority voting strength.

The CVRA provides a judicial mechanism for compelling agencies to convert from at-large to district elections—a civil action that may be brought by any member of a protected class who resides within the agency's jurisdiction. (Elec. Code, § 14032.) But under statutory provisions added in 2014, agencies threatened with potential CVRA lawsuits can also choose to voluntarily convert to district elections and avoid litigation. (*Id*., § 10010). In either instance, whether compelled to convert to districts as the result of litigation, or choosing voluntarily to convert to districts to avoid litigation, these statutory provisions mandate

that the agency be the entity that draws the districts, pursuant to a specified public process. (*Ibid.*)

In this case, after receiving written notice of the Plaintiffs' intention to file a CVRA lawsuit, Appellant City of Santa Monica ("City") declined to convert to district elections. This action ensued and the case proceeded to trial. After the superior court determined that the City's at-large elections violated the CVRA, it ordered the City to convert to district elections and drew the maps for the new council districts. The City appealed, both as to the superior court's findings of CVRA liability and the appropriateness of its remedy.

As the League and CSDA will explain, this case presents this Court with an opportunity to provide the first published decision clarifying the CVRA's liability standards. Many of the League's and CSDA's members have forgone defense of the at-large election systems chosen by their voters because of the lack of California precedent providing clarity regarding the CVRA's application, coupled with the significant exposure to attorney fees they face if they are unsuccessful. This case provides the opportunity for the Court to clarify whether the positions the Plaintiffs take regarding the CVRA's application—which have been commonly asserted in the many CVRA demand letters League and CSDA members have received—are correct. For the reasons the City has persuasively explained, the Court should find they are not.

As to the remedy the superior court ordered, the League and CSDA will explain that the CVRA required the court to order that the City follow the legislative process in implementing district elections. Once it determined that district elections were the most appropriate remedy, the court's role was to retain jurisdiction to supervise the City's compliance. The court had no authority to implement its own district maps.

II. ARGUMENT

A. This Court Should Reverse the Superior Court's Determination that the City's Elections Violate the CVRA

The League and CSDA represent members whose councils and governing boards are elected through at-large and district elections. Both methods of election can provide for effective and democratic local governance. Neither the CVRA nor any other California statute prefers one method of elections over the other. The CVRA recognizes, rather, that at-large elections can *in certain circumstances* dilute the relative voting power of protected classes to elect the candidates they prefer. In *those* situations, the CVRA provides for the conversion to district elections as the usual means of ensuring that the election system does not deprive a protected class of its ability to elect the candidates that class prefers.

Cities and districts with at-large elections have legitimate reasons for preferring their methods of election. Indeed, voters who favor at-large election systems have often done so because they believe at-large elections

maximize the ability of elected officials to represent the entire constituency. They believe that at-large elected officials can better make decisions for an entire City or district when they do not feel constrained to consider how decisions impact just one portion of the City or district. A concern expressed when considering conversion to district elections is that "ward politics"—decision-making alleged to favor individual officials' districts, rather than the City or district as a whole—may result.

To be sure, voters who prefer districts do not necessarily agree their method of election is any less representative than at-large elections. To these voters, it is not fair to suggest one's representation of a district means he or she will inevitably discount the interests of other districts. To the contrary, officials serving districts may feel their connections to distinct communities allows them to better represent those communities' interests by identifying and responding to their unique issues and interests. Under this view, a city or district benefits as a whole when all its constituencies believe they have a voice in city or district governance.

In noting these competing views, the League and CSDA do not take a position as to whether at-large or district elections should be preferred. These amici observe, rather, that there are valid reasons why their members may prefer either system. Under California law, the *only* situation in which cities or districts are precluded from deciding which system they may have is when their elections violate the CVRA. If racially polarized voting that

violates the CVRA does not exist within a city or district, the fundamentally political decision of how best to elect governing bodies should be left to the electorate.

Although this is how the CVRA works in theory, it is not how the Act has worked in practice. Numerous cities and districts have chosen to convert to district elections due to the threat of potential CVRA lawsuits. As many city and district officials have observed, the cost of losing CVRA lawsuits can be overwhelming to municipal budgets. The few CVRA cases that have gone to trial or have settled after substantial litigation resulted in widely reported payments well into seven figures for the plaintiffs' attorney fees. Many cities and districts have chosen to convert to district elections solely for fear of exposure to similar payments.[1]

The lack of published precedent interpreting the CVRA only adds to this concern. The League and CSDA are unaware of any California appellate decision squarely addressing application of the CVRA, particularly to demographics such as the City's. These amici note, however, that the positions taken by Plaintiffs in this case have been expressed in the numerous CVRA demand letters the amici's members have received. This case presents a unique opportunity for a California

[1] When cities or special districts voluntarily convert to district elections following receipt of CVRA demand letters, their exposure to attorney fees is limited to a base cap of $30,000, which is adjusted annually for inflation. (Elec. Code, § 10010(f)(3).)

appellate court to address the significant and important legal issues presented regarding the CVRA's application

On the merits, the City has thoroughly and persuasively explained the superior court's legal errors in accepting the Plaintiffs' positions regarding application of the CVRA. The League and CSDA will not repeat the City's arguments here. Rather, for the reasons the City has asserted, the League and CSDA request that this Court reverse the judgment below and clarify the appropriate methodologies for determining liability under the CVRA.

B. Even if liability under the CVRA Can be Established, the Superior Court Ordered a Remedy California Law does not allow and that Usurps Cities' and Special Districts' Role in Overseeing the Conversion to District Elections

Even if this Court affirms the superior court's findings as to the City's CVRA liability, it *must* remand to correct the improper remedy the superior court ordered to address the violations it found. In ordering the City to implement a districting plan prepared by one of the Plaintiff's expert witnesses—in court proceedings that were not publicly noticed or in which the public was entitled to participate—the superior court usurped the exclusive role California law gives to governing bodies in overseeing the conversion to district elections.

California law states the process for converting from at-large to district elections in Elec. Code § 10010. This section requires a detailed

process in which cities and special districts must hold at least five public hearings before district elections are implemented. (Elec. Code, § 10010(a).) As part of the process, cities and districts are required to elicit input from the public as to the composition of the districts to be created. (*Id*., § 10010(a)(1).) Cities and districts are also specifically commanded to conduct public outreach to ensure maximum participation, including through outreach to non-English speaking communities. (*Ibid*., *id*. § 10010(e)(3)(C)(ii).) As has been noted, numerous California cities and special districts have undertaken this process.

Although much of the text of section 10010 is devoted to outlining a private remedy for compelling conversion to district elections (*id*., § 10010(e)-(f)), the section makes clear it is equally applicable to judicially-mandated conversions. Subdivision (c) of section 10010 plainly states that it "applies to … a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election." There is nothing ambiguous about this command. If a court "requires" a city or special district to convert to district elections, Elec. Code § 10010 "applies to" the city's proposal for districts that results from the "court-imposed change." The text in subdivision (c) nowhere suggests the legislative conversion process is optional or may be disregarded in favor of some other process.

This reading of Elec. Code § 10010(c) is the only one that harmonizes with the CVRA's remedial provision, Elections Code section 14029. That section, which governs when CVRA claims are litigated rather than undertaken voluntarily, specifies that upon a finding of CVRA liability, a court "shall implement appropriate remedies, *including district elections*, that are tailored to remedy the violation." (*Id*., § 14029.) Because statutes that are part of the same statutory scheme must be read together, such that all parts are given effect,[2] Elec. Code § 14029 must be read as modified by section 10010. Elec. Code § 14029 provides the *general* directive—to implement "appropriate" remedies. And when a court chooses to order district elections, section 10010 provides the *specific* directive—to order the city to follow the legislative conversion process.

The Plaintiffs attempt an end run around the clear command of Elec. Code § 10010 by claiming the section applies only to "political subdivisions," which by definition do not include courts. (*Id*., §§ 10010(d)(3), 14026(c).) This reading of section 10010 is nonsensical. The command of subdivision (c) requires the court to order that the city or special district undertake the legislative districting process; but the court itself does not—nor cannot—follow that process. Rather, if a superior court believes conversion to districts is the most efficacious remedy, its

[2] *Merrill v. Dept. of Motor Vehicles* (1969) 71 Cal.2d 907, 918.

proper course is to issue a writ or judgment compelling the city or special district to complete the district-conversion process. The court then retains jurisdiction to ensure the city's or district's compliance.

This, indeed, is the very procedure utilized in any number of proceedings concerning review of local agency actions. In a California Environmental Quality Act case, for instance, a court does not participate in the process of rewriting an environmental impact report it finds deficient. Instead, the court orders the agency to address the deficiencies and recirculate the report through the agency's normal administrative and public-hearing process. When the agency has done so, it files a return to the writ. Upon the return, the court may discharge the writ if it believes the agency has complied, or it may order further proceedings if it believes the agency has not.

In this case, the superior court did not follow this type of process but chose instead to fashion its own districting plan for the City. In doing so, it not only acted contrary to the plain command of Elec. Code § 10010(c), it deprived City voters of *any* input in how to implement a fundamental change in their relationship with their elected officials. Before selecting the districting plan it ordered, the court heard only from lawyers and demographers about how best to draw the City's new districts. It considered no input from members of the public, including from Latinos or members of other protected classes who live within the City. The superior

court effectively usurped the role of the city council in supervising the conversion to district elections. It substituted its own judicial process for the political one the legislature has carefully detailed in section 10010.

At a minimum, this case must be remanded to ensure the district plan the superior court imposed is vacated and the section 10010 districting process is followed. Whenever a court determines a city's or special district's elections violate the CVRA and orders conversion to district elections, it is essential that city and district voters be allowed to participate in crafting such a significant change in how their governing bodies are elected. Reading Elec. Code § 10010 in conjunction with section 14029, courts should retain jurisdiction to supervise that process, but they may never undertake it themselves.

III. CONCLUSION

This case provides an opportunity for this Court to provide needed clarity regarding the CVRA's application. For the reasons the City has persuasively argued, this Court should reverse the superior court's determination that the City's at-large council elections violate the CVRA.

If this Court does not reverse on liability, it should remand to the superior court to order that the Elections Code section 10010 process be followed. Whenever courts order district elections as the appropriate

remedy to redress CVRA violations, they cannot nor should not deprive voters of the right to participate in such a fundamental political change.

Dated: February 4, 2020 COLE HUBER LLP

By: /s/ *Derek P. Cole*
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CERTIFICATE OF COMPLIANCE

I certify that pursuant to California Rules of Court, Rule 8.204, in reliance on a word count by Microsoft Word, the above brief is proportionately spaced, has a typeface of 13 points or more, and contains 3,062 words, which is within the 14,000-word limitation imposed for said brief.

Dated: February 4, 2020

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CERTIFICATE OF SERVICE

Case: ***City of Santa Monica v. Pico Neighborhood Association, et al.***

Case Number: Second District Court of Appeal Case No. B295935
Los Angeles County Superior Court
Case No. BC616804

I, Mylene Tiongco, declare that I am a resident of the State of California over the age of eighteen years and not a party to the within action. My business address is Cole Huber LLP, 2281 Lava Ridge Court, Suite 300, Roseville, California 95661. On February 4, 2020, I served the within documents:

APPLICATION FOR LEAVE TO FILE AND BRIEF OF AMICI CURIAE, LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA SPECIAL DISTRICTS ASSOCIATION, IN SUPPORT OF APPELLANT CITY OF SANTA MONICA

X **BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

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X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Roseville, California, addressed 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 February 4, 2020, at Roseville, California.

/s/ Mylene Tiongco
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