B295935

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION EIGHT

CITY OF SANTA MONICA,
Appellant and Defendant,
v.
PICO NEIGHBORHOOD ASSOCIATION; MARIA LOYA,
Respondents and Plaintiffs,

Los Angeles County Superior Court
Case No. BC616804
The Honorable Yvette M. Palazuelos, Judge, Dept. 28

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; PROPOSED AMICUS CURIAE BRIEF OF THE SANTA MONICA TRANSPARENCY PROJECT IN SUPPORT OF APPELLANT CITY OF SANTA MONICA'S POSITION ON REMEDIES

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL Second APPELLATE DISTRICT, DIVISION Eight	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*): The Santa Monica Transparency Project

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	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

Caroline Chiappetti
(TYPE OR PRINT NAME)

▶ Caroline Chiappetti
(SIGNATURE OF APPELLANT OR ATTORNEY)

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The Santa Monica Transparency Project applies for leave as amicus curiae to file the following brief in *City of Santa Monica v. Pico Neighborhood Association and Maria Loya*, Case No. B295935.

The Santa Monica Transparency Project is an all-volunteer group of Santa Monica residents concerned about openness and accountability in the government and politics of the City of Santa Monica. The Transparency Project uses public records to reveal political campaign contributions, compliance with good governance ordinances, lobbying by special interests, conflicts of interest, and city revenues, expenditures, and capital improvement projects. Since 2010, the Transparency Project has brought to the attention of the City and of the California Fair Political Practices Commission political campaign irregularities and violations of Santa Monica's Oaks Initiative, the City's anti-corruption law. In 2018, the Transparency Project sponsored a City Charter amendment to impose term limits on Santa Monica City Councilmembers. The measure was adopted with 74% of the vote.

This Court is being asked to determine, *inter alia*, the propriety of the trial court's remedy for a violation of the California Voting Rights Act ("CVRA")—the adoption of a seven-

district map drawn by Respondents' expert. Specifically, the City of Santa Monica ("City" or "Appellant") is asking the Court to determine whether the adoption of a district map absent public input violates section 10010 of the Elections Code.[1] If the trial court's finding of liability is affirmed, any remedy adopted by the Court in this case will affect not just Respondents, but all residents of the City.

The Transparency Project represents the interests of Santa Monica residents in openness, accountability, and the promise of the CVRA, including the series of public hearings that section 10010 of the Elections Code requires before any "court-imposed change from an at-large method of election to a district-based election." The amicus curiae therefore has a substantial interest in the outcome of this appeal.

The parties, perhaps understandably, have focused their arguments on whether the City's existing at-large system violates the CVRA, and have devoted limited attention to the remedies aspect of this case. Given the importance of this issue to the Transparency Project and to all Santa Monica residents, amicus curiae believes that additional argument on section 10010's public hearings requirement and the important purposes and public policies served by that requirement would assist the Court

[1] All subsequent statutory references are to the Elections Code unless otherwise noted.

in deciding this matter. The Transparency Project and its all-Santa Monica membership further believe it would be beneficial to the Court to hear the perspective from the very Santa Monica residents who would be subject to the district maps imposed by the trial court. It therefore respectfully requests the Court grant its application to file the attached proposed amicus brief.

No party or counsel for a party authored, in whole or in part, the proposed brief. No party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than the amicus curiae, their members, or their counsel has made a monetary contribution intended to fund the preparation or submission of the proposed brief.

Dated: February 4, 2020

Respectfully submitted,

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By: 
Caroline Chiappetti

Attorneys for Amicus Curiae
The Santa Monica Transparency Project

BRIEF OF AMICUS CURIAE

STATEMENT OF THE CASE

The facts of this appeal have been stated fully in the briefs of both parties. Santa Monica has been governed by a seven-member City Council elected "at-large" since 1946. In 2016, the Pico Neighborhood Association and Maria Loya ("Respondents") sued the City, alleging that its at-large system for electing City Councilmembers dilutes Latino voting power in violation of the CVRA and the Equal Protection Clause of the California Constitution.

Following a bench trial held from August 1 to September 13, 2018, the trial court issued a "Tentative Decision" on November 8, 2018, in favor of Respondents on both causes of action. (22AA9966.) The court also set a hearing "regarding the appropriate/preferred remedy" to be held on December 7, 2018, and ordered the parties to submit briefing in advance of the hearing. (22AA9967.) Respondents' briefing asked the court to adopt the district map drawn by their expert and introduced at trial. (23AA10079.) The City's responding brief asked the court for an opportunity to conduct a public process and to propose a districting map subject to judicial approval. (23AA10174.) The trial court did not provide the City that opportunity, and instead, on February 13, 2019, issued a statement of decision that confirmed its Tentative Decision in favor of Respondents on both causes of action and that adopted Respondents' district map

without alteration. (24AA10669.) Judgment was entered that same date. (24AA10649.)

The trial court's statement of decision found that the City had waived its opportunity to hold public hearings under section 10010 and to propose a district map because it had failed to do so during trial or in the month between the court's November 8, 2018 Tentative Decision and the December 7, 2018 hearing on remedies. The trial court dismissed the City's argument that it would have been "highly impractical and inefficient . . . for the City to have gone through the public hearing and outreach process that California law requires" until there was a final determination that a violation actually existed and that this process was therefore necessary. (23AA10182.) The City appealed on February 22, 2019. (24AA10740.)

ARGUMENT

I. THE CALIFORNIA VOTING RIGHTS ACT

In 2002, the Legislature enacted the California Voting Rights Act ("CVRA") (§§ 14025-14032) to implement the California constitutional guarantees of equal protection and the right to vote. (§ 14031.) Broadly speaking, the CVRA prohibits "at-large" election systems that "impair[] 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." (§ 14027.) If a violation is found, "the court shall

implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy the violation." (§ 14029.)

The Elections Code provides detailed requirements that apply when a political subdivision "changes from an at-large method of election to a district-based election," which include holding a series of public hearings to allow the public the opportunity to provide input on the potential districts and on the proposed maps under consideration. (§ 10010, subd. (a).)

Specifically, section 10010 of the Elections Code requires that:

- Before drawing a draft map, the political subdivision shall hold at least two public hearings over a period of no more than 30 days for the public to provide input on the composition of the districts (*id.* § 10010, subd. (a)(1));

- After maps are drawn, the political subdivision shall publish at least one draft map and hold at least two additional public hearings over a period of no more than 45 days for the public to provide input on the content of the draft map or maps (*id.* § 10010, subd. (a)(2));

- The first version of a draft map shall be published at least seven days before consideration at the hearing (*ibid.*);

- If a draft map is revised at or following the hearing, it shall be published and made available to the public at least seven days before being adopted (*ibid.*).

These procedural requirements apply not just when a political subdivision voluntarily decides to transition to district-based voting, but also when "a proposal . . . is required due to a court-imposed change from an at-large method of election to a district-based election." (§ 10010, subd. (c).)

By providing for at least four public hearings, the Legislature thus recognized the utmost importance of public participation in the process of transitioning to district-based elections. These provisions were, in fact, added to the CVRA specifically to "protect[] the voting rights for people of color when new district lines are drawn for local elections" and to encourage "community involvement, representation, and ownership of local elections." (Assem. Comm. on Elections and Redistricting, Rep. on Assem. Bill No. 1440 (2013-2014 Reg. Sess.) as amended March 25, 2014, at p. 2 ("Comm. On Elections and Redistricting Report.") At the time they were enacted, it was recognized that requiring that public hearings be held "empowers the groups and individuals who have had their voices silenced with the tools to make sure their interest and newly obtained advances will be protected," "safeguard[s] against further discrimination," and "ensure[s] their rights and perspective will be heard." (*Ibid.*)

II. THE TRIAL COURT SHOULD HAVE PROVIDED THE CITY, AND ITS RESIDENTS, THE OPPORTUNITY TO HAVE PUBLIC HEARINGS ON THE PROPOSED DISTRICT MAP

The trial court below never requested or ordered that the City conduct public hearings under section 10010 and submit a proposed district map. Instead, it adopted wholesale the proposed district map submitted by Respondents, without any notice to, or input from, the public. This is not only inconsistent with section 10010 and purposes of the CVRA, but is unfair to the voters of Santa Monica who will be subject to the district map imposed by the court.

A. Elections Code Section 10010 Contemplates That a Court Will Seek and Consider a Proposal from the Political Subdivision to Allow for Public Input in the Process

In section 10010, subdivision (a), the Legislature went to great lengths to set forth detailed public notice and hearing requirements that a political subdivision must follow when transitioning to a district-based voting system. Section 10010, subdivision (c) makes clear these requirements apply to a "proposal that is required due to a *court*-imposed change." (Emphasis added.)

The trial court nevertheless determined that section 10010 did not "constrain[] the Court's ability to adopt a district plan without holding a series of public hearings," because "section 10010 speaks to what a *political subdivision* must do (e.g., a

series of public hearings) in order to adopt district elections or propose a legislative plan remedy in a CVRA case." (24AA10736, italics by court.) Thus, under the trial court's reading of section 10010, a court has no obligation to request or consider a district map proposal from a political subdivision that is being required to change from an at-large method to a district-based election, and can entirely disregard the statutory requirements to hold public hearings.

But such a narrow interpretation would eviscerate the public hearing requirements of section 10010, by transforming the mandatory nature of subdivision (c) into a purely voluntary option to be exercised at the sole discretion of the trial court. Public hearings could be avoided altogether as long as the trial court never provides the public subdivision a reasonable opportunity to submit a proposed district map.

This result makes no sense and is contrary to the purposes of the CVRA to protect voting rights and to encourage public participation in the process. Why would the Legislature impose such specific public hearing procedures in section 10010, subdivision (a) and explicitly make them applicable to a "proposal required due to a court-imposed change" if the trial court could entirely circumvent the procedures by not allowing for such a proposal? Taken to its logical conclusion, the trial court's argument suggests that there is nothing in the CVRA that would

prevent a court from implementing a district map wholly of its own choosing—without any input from the parties to the case, let alone from the actual voters who will be subject to the new voting system.

This would not only be inconsistent with the general principle that courts should defer to legislative bodies on matters relating to legislative acts (*Nadler v. Schwarzenegger* (2006) 137 Cal.App.4th 1327, 1337-1338 [applying principle that "courts may not engage in unwarranted interference with the role of the legislative branch" to court's review of reapportionment plans enacted by Legislature]), but also directly contrary to how federal courts interpret and apply the federal Voting Rights Act. In case after case, the courts have recognized that redistricting is a task traditionally performed by legislative bodies, and those bodies should therefore be allowed to do so in the first instance. As the U.S. Supreme Court stated, "it is therefore appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan." (*Wise v. Lipscomb* (1978) 437 U.S. 535, 540.)

Courts should not attempt to fashion voting rights remedies on their own without allowing and considering input from the relevant legislative body. (See, e.g., *Westwego Citizens*

for Better Gov't v. City of Westwego (5th Cir. 1991) 946 F.2d 1109, 1123-24 ["this Court has repeatedly held that it is appropriate to give affected political subdivisions at all levels of government the first opportunity to devise remedies for violations of the Voting Rights Act]; *McGhee v. Granville County, N.C.* (4th Cir. 1988) 860 F.2d 110, 115 ["a court . . . properly give[s] the appropriate legislative body the first opportunity to devise an acceptable remedial plan"]; *Williams v. City of Texarkana, Ark.* (8th Cir. 1994) 32 F.3d 1265, 1268 ["Federal courts are reluctant to devise and impose redistricting and reapportionment plans, because such tasks are traditionally performed by legislative bodies."].) "If an appropriate legislative body offers a remedial plan, the court must defer to that proposed plan unless the plan does not completely remedy the violation or the proposed plan itself constitutes a section two violation." (*Williams v. City of Texarkana*, 32 F.3d at p. 1268.)

Consistent with the relevant federal case law, and given the plain language of section 10010 and the underlying purposes of the CVRA, the Transparency Project submits that the trial court should have sought and considered a proposal from the City before imposing a final district map. Doing so would have ensured the public proper notice of, and an opportunity to provide input on, the district map being considered by the Court, as contemplated by section 10010.

B. The Trial Court Failed to Provide the City a Reasonable Opportunity to Submit a Proposal on a District Map

At no point below did the trial court ever request—let alone order—the City to propose a district-based map.

The trial court apparently believed that the City should have submitted such a proposal during the trial on whether the City had violated the CVRA. (24AA10735.) But it is unclear how or why the City would begin the process of proposing and holding public hearings on a remedy for a hypothetical violation that it doesn't believe, and no court has adjudged, exists. Indeed, the value of public input on how to correct an unknown violation would be questionable at best.

This is *not* how the CVRA contemplates the process will work. As discussed, section 10010, subdivision (c) applies the public hearing requirements to "a proposal that is required due to a court-imposed change from at-large method of election to a district-based election." This provision thus recognizes that a proposal from a political subdivision will be required *after* a court finds a CVRA violation and *after* there is a court-imposed change to district elections. In this case, the trial court had not found a CVRA violation and had not "imposed" any such change until February 13, 2019, when it issued its statement of decision and judgment concurrent with its imposition of Respondents' district map. (24AA10669; 24AA10649.) Before then, the City had not

been ordered, or otherwise required, to submit a proposal of its own, which would have triggered the public hearing requirements.

The trial court also agreed with Respondents that the Court's November 8, 2018 Tentative Decision provided another opportunity for the City to submit a proposal. (24AA10735.) In that Tentative Decision, the Court tentatively ruled in Respondents' favor on their first and second causes of action, set a December 7, 2018 hearing "regarding the appropriate/preferred remedy for violation of the CVRA," and ordered the parties to file staggered briefing in advance of the hearing in accordance with the time limits of the Code of Civil Procedure.

First, the Court's Tentative Decision was not binding, and did not constitute a "court-imposed change" requiring a proposal under section 10010, subdivision (c). (Cal. Rules of Court, rule 3.1590, subd. (b) ["The tentative decision does not constitute a judgment and is not binding on the court."]; *Phillips v. Phillips* (1953) 41 Cal.2d 869, 874 ["Until a judgment is entered, [a tentative decision] is not effectual for any purpose."]).

Second, the Court's order on the briefing and hearing did not request, require, or otherwise indicate that a City proposal to change to district-based elections must be submitted. It simply told the parties to brief the court and appear at a hearing "regarding the appropriate/preferred remedy." (22AA9967.) At

that point, there was no indication what remedy the Court was considering, if it ultimately found a CVRA violation.

In fact, as the trial court's statement of decision recognized, "[o]nce liability is established under the CVRA, the Court has a broad range of remedies from which to choose," including "not only the imposition of district-based elections per § 14029, but also, for example, less common at-large remedies imposed in CVRA cases such as cumulative voting, limited voting and unstaggered elections." (24AA10728-10729.) "The court may also order a special election," or may even "remove all members of a city council where necessary". (24AA10729-10730.)

Respondents themselves did not interpret the trial court's November 8, 2018 order as a request or requirement to submit a proposal for district-based elections. In their briefing, Respondents stated that transitioning to district-based voting was their preferred remedy (23AA10076), but fully recognized that other potential remedies remained on the table. For instance, they strenuously argued against the trial court imposing cumulative voting, limited voting, or ranked choice voting, which they asserted would be less likely to remedy voter dilution than district-based voting. (23AA10082.)

In response, the City sought to dispute the court's tentative ruling on liability (23AA10175), but agreed with Respondents that, if the court ultimately found a CVRA violation, a court-

ordered change to district-based voting would be the appropriate remedy (23AA10181). In such a circumstance, the City argued that "the Court should order the City to undertake a public process to devise a districting plan for judicial review within a reasonable time after any judgment becomes final" consistent with section 10010, as "California law and fundamental tenets of democracy would require that the City be given an opportunity to conduct a public process and fashion proposed districts subject to judicial approval." (23AA10174-10175.)

Thus, given that neither party understood the trial court's order to request or require a City proposal for district elections, it is unreasonable to now contend, after the fact, that the City should have responded to that order by immediately noticing and conducting public hearings, scrambling to draft a proposed map, holding further public hearings on the draft map, and submitting a proposal for district maps.

Separate from this ambiguity in the trial court's order, there simply wouldn't have been enough time for the City to fairly hold these public hearings and meaningfully consider and incorporate the public's input. The parties received the trial court's order on November 13, 2018 (23AA10215; 24AA10736) and the City's responding brief was due 17 days later on November 30 (24AA10737).

The trial court proposes an extremely expedited schedule under which this might have been accomplished notwithstanding the intervening Thanksgiving holiday. (24AA10736-10737.) Even putting aside whether this timeline would actually work given the notice requirements under section 10010 and California law, the Transparency Project asks why the court would have expected the City to rush through this process. The point of the public hearing requirements is to give members of the public the opportunity to have their voices heard and their input considered. They should be given reasonable time to achieve this purpose. Of course, the City must act promptly in proposing a remedy to a CVRA violation, but that does not mean that the four required public hearings and the drafting of a proposed district map should be arbitrarily crammed into a period of 12 working days.[2]

[2] Citing out-of-state cases not subject to section 10010's public hearing requirements, Respondents contend that "17 days . . . is perfectly in line with what other courts have afforded defendants to propose a remedy following a determination that voting rights have been violated." (23AA10207.) This ignores not only the fact that the trial court's November 8, 2018 Tentative Decision and Order did not make "a determination that voting rights have been violated," but also that the explicit deadlines set forth in section 10010 contemplate that the section's rigorous public hearing process will take much longer than 17 days. Political subdivisions have up to 30 days to hold the two initial public hearings under subdivision (a)(1), and then, after the maps are drawn and published for at least seven days, political

Following the parties briefing on remedies and the December 7, 2018 hearing—after which it became clear that a change to district-based elections was both parties' preferred remedy—the trial court should have provided the City the opportunity, or directly ordered the City, to submit a proposal for such a change consistent with section 10010. This would have allowed for the series of public hearings required by

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subdivisions must hold two additional public hearings within a period of 45 days.

Respondents cite *Jauregui v. City of Palmdale* (Super. Ct. L.A. County, 2013, No. BC483039) 2013 WL 7018376, but that case undermines their position. The court there issued its statement of decision on August 27, 2013, finding a CVRA violation, and set a "further hearing re proposed remedies for September 20, 2013." (*Id.* at p. *3.) At that further hearing, the court did not expect the city to have completed all the public hearings required by section 10010 and to have submitted a proposal to change to district elections, as the trial court here did. On the contrary, "[f]urther evidence, testimony and arguments were taken at hearings on September 20, September 30, October 9, October 15, and October 16, 2013." (*Jauregui v. City of Palmdale* (Super. Ct. L.A. County, 2013, No. BC483039) 2013 WL 7018377, *1.) Thereafter, on November 27, 2013, the court "issued a further Tentative and Proposed Statement of Decision Re: Remedies and Order Thereon, detailing the remedial measures this Court found to be appropriate to address Defendant's violation of the California Voting Rights." (*Ibid.*) The court entered its final judgment imposing the districts on December 19, 2013. (*Ibid.*)

subdivision (a) of that section, and would have allowed the trial court to consider the perspective of the City and its residents on a proposed district map.

C. Even If the City Improperly Failed to Propose a Remedy, Santa Monica Residents Should Not Be Deprived of Their Statutory Right to Public Hearings

Regardless of whether the City waived its opportunity to propose a district map, the residents of Santa Monica should not be forced to suffer the consequences of a map proposed by a single party with no public notice or input.

The Legislature added the public hearing requirements to the CVRA with the specific purpose of providing the public an opportunity to be notified of and to comment on proposed district maps before a political subdivision transitions to a district-based election system. The trial court's decision below denied the residents of Santa Monica these rights to participate in the process. The seven-district plan proposed by Respondents and imposed by the trial court affects the voting rights of *all* Santa Monica residents, not only Respondents.

While the courts certainly have " 'the authority to fashion appropriate legal remedies'" for violations of the CVRA, they must also consider that a key aspect of the law is "to ensure that our electoral system is fair and open." (*Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 807 [quoting legislative

history].) It would be contrary to a "fair and open" electoral system if the voting rights of the residents of Santa Monica were determined for years to come by a district map proposed by a single party and imposed by a court without any opportunity for public input or scrutiny.

III. COMPLIANCE WITH SECTION 10010'S PUBLIC HEARING PROCEDURES WILL FURTHER THE PURPOSES OF THE CVRA

A. A City Proposal and Public Hearings Will Improve the Districting Process

Allowing the City to comply with the requirements of section 10010 would give the City an opportunity to propose a district-based election map that better reflects the City of Santa Monica.

"[J]udicial redistricting is not ideal." (*Georgia State Conference of NAACP v. Fayette County Bd. of Com'rs* (N.D. Ga. 2014) 996 F.Supp.2d 1353, 1357.) Legislative bodies will likely have more district-mapping expertise, and allowing them to perform this fundamentally legislative function is more consistent with democratic principles. "[R]edistricting involves 'criteria and standards that have been weighed and evaluated by the elected branches in the exercise of their political judgment.'" (*Id.* at p. 1358 [quoting *Perry v. Perez* (2012) 565 U.S. 388, 393].) Unlike a court, elected officials must consider the views and interests of their constituents, particularly where, as here, those

elected officials would hear the views of their constituents at a series of mandated public meetings.

A map that is subjected to such rigorous scrutiny and that takes into account more perspectives should result in better district-drawing than a map created by a hired expert with limited familiarity with Santa Monica. Respondents' expert, who is not a Santa Monica resident and has never lived in Santa Monica, drew up a seven-district plan based on limited conversations with a few Santa Monica residents (RT2572:14-2573:6; see also RT2330:17-2331:14) and after "driving around the City of Santa Monica and looking at—looking at different neighborhoods and speaking to—speaking to some people" (RT2285:13-16; see also 2555:16-26.) That is not an adequate substitute for the public hearing process required by section 10010.

Conducting public hearings will further allow residents to be informed of and to have access to the district-mapping process. It will, as section 10010's legislative history explains, "empower the groups and individuals who have had their voices silenced with the tools to make sure their interests and newly obtained advances will be protected" (Comm. on Elections and Redistricting Report at p. 2). On the other hand, shutting the public out of this process entirely will undermine the credibility and legitimacy of the new voting system imposed by a court.

B. Public Hearings Would Not Cause "Endless Delay" and Are Consistent with the Requirement That Violations Be "Promptly" Remedied

Respondents argue that applying the public hearing requirements of section 10010 would cause an "endless delay" and violate the requirement that "voting rights violations be remedied promptly." (23AA10208.) But section 10010 expressly contemplates and requires these public hearings. And it places specific time limits on the process to ensure it is completed on a timely basis. (§ 10010, subd. (a)(1)-(a)(2) [requiring the initial hearings to be conducted "over a period of no more than 30 days" and the next set of hearings to be held "over a period of no more than 45 days"].) Surely, the Legislature would not have set deadlines to complete the public hearing process that are inconsistent with the requirement to promptly remediate CVRA violations.

If, as Respondents fear, "a CVRA defendant refused to conduct the public meetings contemplated in section 10010" after being ordered to do so (Respondents' Br., pp. 94-95), a court, in that instance, would have the authority to implement a remedy without the public entity's input. But, as reflected in the authorities cited in the trial court's statement of decision (24AA10736), a trial court should take such a drastic step only after the legislative body was ordered to, but refused to, submit a

proposed remedy (*Williams v. City of Texarkana Ark.*, *supra*, 32 F.3d at pp. 1268-1269 [city did not propose a districting plan in response to court's order]; *Bone Shirt v. Hazeltine* (D.S.D. 2005) 387 F.Supp.2d 1035, 1037-1038 [court "ordered defendants to file remedial proposals" but they "refused to fashion a remedial plan"].) A court cannot immediately jump to imposing a remedy of its own choosing without first ordering the appropriate legislative body to provide one.

Before adopting Respondents' proposed map wholesale, the trial court should have ordered the City to submit its own proposal and to conduct the public hearings required by section 10010 in a timely fashion. Its failure to do so violated the law, undermined the purposes of the CVRA, and deprived Santa Monica residents of their right to participate in the districting process.

CONCLUSION

If the Court affirms the City's liability for a CVRA violation, it should vacate the district map imposed by the trial court and order the City to conduct a public process in compliance with the CVRA.

Dated: February 4, 2020 Respectfully submitted,

STRUMWASSER & WOOCHER LLP
Bryce A. Gee
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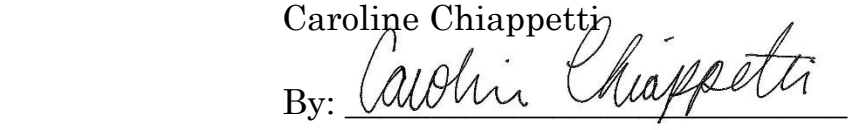
By: 
Caroline Chiappetti

Attorneys for Amicus Curiae
The Santa Monica Transparency Project

CERTIFICATE OF COMPLIANCE WITH RULE 8.204(C)(1)

I certify that, pursuant to California Rules of Court, rule 8.204(c)(1), the attached **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; PROPOSED AMICUS CURIAE BRIEF OF THE SANTA MONICA TRANSPARENCY PROJECT IN SUPPORT OF APPELLANT CITY OF SANTA MONICA'S POSITION ON REMEDIES** is proportionally spaced, has a typeface of 13 points or more, and contains 4,802 words, as determined by a computer word count.

Dated: February 4, 2020 Respectfully submitted,

STRUMWASSER & WOOCHER LLP
Bryce A. Gee
Caroline Chiappetti

By: Caroline Chiappetti
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Attorneys for Amicus Curiae The Santa Monica Transparency Project

PROOF OF SERVICE

STATE OF CALIFORNIA

Re: *City of Santa Monica v. Pico Neighborhood Association, et al.,* 2DCA No. B295935; L.A.S.C. No. BC616804

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024. My electronic email address is jthomson@strumwooch.com.

On **February 4, 2020**, I served the foregoing document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; PROPOSED AMICUS CURIAE BRIEF OF THE SANTA MONICA TRANSPARENCY PROJECT IN SUPPORT OF APPELLANT CITY OF SANTA MONICA'S POSITION ON REMEDIES** on all appropriate parties in this action, as listed on the attached Service List, by the method stated:

☒ If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with the Clerk of the Court by using the EFS/TrueFiling system as required by California Rules of Court, rule 8.70. Participants in the case who are registered EFS/TrueFiling users will be served by the EFS/TrueFiling system. Participants in the case who are not registered EFS/TrueFiling users will be served by mail or by other means permitted by the court rules.

☒ If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and

processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and executed on **February 4, 2020**, at Los Angeles, California.

Jeff Thomson

SERVICE LIST

City of Santa Monica v. Pico Neighborhood Association, et al.
2DCA No. B295935, L.A.S.C. No. BC616804

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Via U. S. Mail Hon. Yvette M. Palazuelos (Judge Presiding) LOS ANGELES COUNTY SUPERIOR COURT 312 North Spring Street Los Angeles, California 90012 Phone: (213) 310-7009	Via U. S. Mail Rule 8.29: Information only Attorney General Office of the Attorney General-Appellate Coordinator 300 South Spring Street North Tower, 5th Floor Los Angeles, California 90013