ALEX PADILLA
CALIFORNIA SECRETARY OF STATE

September 8, 2020

Honorable Chief Justice Tani Gorre Cantil-Sakauye
and Honorable 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:

I write to respectfully request that the California Supreme Court grant the Petition for Review of the Court of Appeal's opinion in *Pico Neighborhood Association v. City of Santa Monica*.

Statement of Interest of Amicus Curiae

As California chief election official, it is my responsibility to "administer the provisions of the Elections Code . . . [and to] see that elections are efficiently conducted and that state election laws are enforced." Cal. Govt. Code § 12172.5. Additionally, as Secretary of State, to ensure that every Californian has the opportunity to participate in the electoral process, I have made it my priority to reduce or eliminate barriers that interfere with these efforts -- from increasing access to voter registration, expanding access to language services, offering voters more choices when casting ballots, as well as supporting the California Voting Rights Act ("CVRA"). Cal. Elec. Code § 14025 *et seq.*

The CVRA, at its core, promotes fair elections.

The CVRA prohibits use of an at-large method of election if it "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. Elec. Code § 14027. The Court of Appeal's opinion, however, threatens to interfere with the ability of aggrieved plaintiffs to obtain relief from voting rights violations the CVRA was specifically intended to remedy.

The CVRA has been remarkably successful in addressing the disadvantages to minority communities, often experienced as part of at-large local elections. Spurred on by the CVRA, across California hundreds of cities, school districts and other jurisdictions have transitioned - many voluntarily - from at-large elections to single member district-based elections that provide community members the opportunity to participate in the electoral process on an equal footing. A recent study provides additional quantification of the CVRA's success concluding that it has contributed to increased minority representation at the city level. Loren Collingwood and Sean Long, "Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act," *Urban Affairs Review* (Dec. 2019).

The success of the CVRA inures to its design. It differs in a number of critical ways from its federal analogue -- the most important of which relates to the manner in which liability is established under the CVRA.

Under the federal regime, plaintiffs must prove a Section 2 Voting Rights Act racial vote dilution claim by satisfying the three-part *Gingles* prongs or "preconditions" established in the U.S. Supreme Court's opinion in *Thornburg v. Gingles*. 478 U.S. 30 (1986). (See 52 U.S.C. § 10301).

> "To make out a § 2 "effects" claim, a plaintiff must establish the three so-called "Gingles factors." These are (2) a geographically compact minority population sufficient to constitute a majority in a single-member district, (2) political cohesion among the members of the minority group, and (3) bloc voting by the majority to defeat the minority's preferred candidate. *Gingles*, 478 U.S., at 48–51, 106 S.Ct. 2752; *LULAC*, 548 U.S., at 425, 126 S.Ct. 2594."

Abbott v. Perez, 138 S. Ct. 2305, 2330–31, 201 L. Ed. 2d 714 (2018).

By contrast, liability under the CVRA is established absent a requirement that the protected minority group contain a sufficient population and be geographically compact so as to constitute a majority in a single member district -- the first *Gingles* prong. Section 14028(c) of the CVRA explicitly instructs "[t]he 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, but may be a factor in determining an appropriate remedy."

Election Code section 14027, by extension, frames the CVRA's expansive scope: "An at-large method of election may not be imposed or applied in a manner that 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, as defined pursuant to Section 14026. Cal. Elec. Code § 14027 (Emphasis added).

The Court of Appeal's opinion, as it relates to establishing liability for impairing influence, threatens to upend the express statutory requirements for establishing liability. The Opinion has introduced ambiguity and uncertainty where none previously existed. In fact, in *Sanchez v. City of Modesto*, the court found the legislative history of the CVRA instructive. Citing committee analyses, the court recounted:

> "This bill would allow a showing of dilution or abridgement of minority voting rights by showing the first two Thornburg [v. Gingles, supra, 478 U.S. 30] requirements without an additional showing of geo-graphical compactness. . . . This bill recognizes that geographical concentration is an appropriate question at the remedy stage. However, 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. Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown)." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3.)

Sanchez v. City of Modesto, 145 Cal.App.4th 660, 669 (2006). In *Jauregui v. City of Palmdale*, the Second District summarized these distinctions as well, further noting, "[O]ur Fifth District colleagues explained the California Voting Rights Act of 2001 does not require that the plaintiff prove a 'compact majority-minority' district is possible for liability purposes." (See *Jauregui v. City of Palmdale*, 226 Cal.App.4th 781, 789 (2014) (citing *Sanchez v. City of Modesto*, 145 Cal.App.4th 660, 669 (2006).)

By stating that plaintiffs failed to establish liability under the CVRA because "there are too few Latinos to muster a majority, no matter how the City might slice itself into districts or wards," the Court of Appeal's opinion sidesteps the unambiguous language in Election Code section 14028(c) and 14027. The Court of Appeal's conflation of majority-minority district-based electoral results with those of an influence district do not provide the proper measure of a violation under the CVRA. See Court of Appeal opinion at 30-31.

Furthermore, contrary to the Court of Appeal's characterization of evidence – or lack thereof – that an influence district could translate into electoral success, the trial court highlighted such evidence in its Statement of Decision, including reference to a study that found in districts with a minority population of even less than 30% of a district's electorate, previously unsuccessful candidates in at-large elections, won in district elections. See Statement of Decision, at 65-66, citing Florence Adams, "Latinos and Local Representation: Changing Realities, Emerging Theories (2000) at 49-61.

Additionally, the trial court found that Plaintiff's expert witness David Ely's seven-district plan would increase the ability of Latinos to influence the election, or elect their candidate of choice, and was consistent with previous U.S. Supreme Court pronouncements of acceptable influence district ranges (between 20% and 50%) (Id., at 66 citing *Georgia v. Ashcroft,* 539 U.S. 461, 471-72, 482 (2003)). The trial court further pointed to testimony about the political organizing strength of the Pico Neighborhood proposed remedial district as ameliorating the effects of campaign and wealth disparities between the minority and majority communities.

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 by the California Supreme Court.

On these grounds, I support review of the Court of Appeal's decision.

Respectfully submitted,

Alex Padilla
California Secretary of State

PROOF OF SERVICE

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

I, Franki Becerra, declare under penalty of perjury that I am employed in the Office of the Secretary of State, in the County of Los Angeles, State of California, that I am over the age of 18 years and am not a party to this matter, that my business address is 300 S. Spring St., #16507, Los Angeles, CA 90013,, that on September 8, 2020, I served the following item(s) on the person(s) listed below.

1. ITEM(S) SERVED:

- Amicus Curiae Letter – California Secretary of State

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:

Kevin Shenkman Mary R. Hughes Andrea Alarcon Shenkman & Hughes 28905 Wight Road Malibu, CA 90265 Emails: Kevin Shenkman - kshenkman@shenkmanhughes.com Mary Ruth Hughes - mrhughes@shenkmanhughes.com Andrea Alarcon - aalarcon@shenkmanhughes.com	Milton C. Grimes Law Offices of Milton C. Grimes 3774 West 54th Los Angeles, CA 90043 Email: miltgrim@aol.com
Morris Baller Laura Ho Anne Bellows Goldstein, Borgen, Demchak & Ho 300 Lakeside Drive, Suite 1000 Oakland, CA 94612-3534 Emails: Morris Baller mballer@gbdhlegal.com Anne Bellows	R. Rex Parris Ellery Gordon Parris Law Firm 43364 10th Street West Lancaster, CA 93534 Emails: R. Rex Parris rrparris@rrexparris.com Ellery Gordon egordon@parrislawyers.com

abellows@gbdhlegal.com Laura Ho lho@gbdhlegal.com	
Helen Lane Dilg George Cardona Office of the City Attorney 1685 Main Street, 3rd Floor Santa Monica, CA 90401 Emails: George Cardona george.cardona@smgov.net Helen Lane Dilg lane.dilg@smgov.net	Theodore J. Boutrous Kahn Scolnick Marcellus McRae Tiaunia Henry Daniel Adler Gibson Dunn & Crutcher LLP 333 South Grand Avenue Los Angeles, CA 90071-3197 Emails: Theodore Boutrous - tboutrous@gibsondunn.com Marcellus McRae mmcrae@gibsondunn.com Tiaunia Henry thenry@gibsondunn.com Daniel R. Adler dadler@gibsondunn.com Kahn Scolnick kscolnick@gibsondunn.com
Robert Rubin Law Offices of Robert Rubin 131 Steuart Street, Suite 300 San Francisco, CA 94105 Email: robertrubinsf@gmail.com	Dana Ali Office of the Attorney General 300 S Spring St Ste 1702 Los Angeles, CA 90013-1256 Email: dana.ali@doj.ca.gov

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 8, 2020 at Los Angeles, California.

SIGNED: Frank Bacon